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MIRANDA PROCEDURE CHECKLIST

Name: Joe Suspect

Date of Birth:

Date of Assessment:

Date this Checklist Completed:

Requirements for a valid waiver of *Miranda* rights have been described as follows:

First, the relinquishment of the right must have been voluntary in the sense that it was the product of a free and deliberate choice rather than intimidation, coercion, or deception. Second, the waiver must have been made with a full awareness both of the nature of the right being abandoned and the consequences of the decision to abandon it. Only if the "totality of the circumstances surrounding the interrogation" reveals both an uncoerced choice and the requisite level of comprehension may a court properly conclude that the *Miranda* rights have been waived.

Police can advise a suspect of his or her rights fairly, with no intimidation, coercion, or deception. As they do so, police can create a clear record of what the police said and did, and of what the suspect understood at the time of the warning and waiver. This checklist facilitates analysis of police actions and the suspect's responses.

1. Police can record the entire interaction, beginning as close as possible to the initial contact between police and suspect.

	Strongly Disagree	Disagree	Neutral or N/A	Agree	Strongly Agree
Police did this in this case.				X	
Comments: It appears that police recorded the entire interaction that occurred in the interrogation room. It appears that they did not record the initial contact at the school, or any interactions that took place on the way to the sheriff's office and on the way to the interrogation room.					

2. Police can use a neutral camera angle, with equal focus on the interviewer and the suspect.

	Strongly Disagree	Disagree	Neutral or N/A	Agree	Strongly Agree
Police did this in this case.	X				
Comments: The camera focus was consistently on the suspect. The interrogator was sometimes out of the frame entirely. This procedure biases the viewer against recognizing the impact of the interrogator's input.					

3. Police can clearly inform the suspect, both orally and in writing, of the nature of the interaction and his or her true position. For example, "The police want to talk to you about [*describe allegation*]." And, if true, "The police suspect that you might have committed a crime."

	Strongly Disagree	Disagree	Neutral or N/A	Agree	Strongly Agree
Police did this in this case.	X				
Comments: Police failed to inform Joe that he was a suspect in a crime, or even that it had been alleged that a crime had taken place.					

4. Police can scrupulously avoid, verbally and nonverbally, making any statement, comment, or gesture to minimize the importance of the *Miranda* rights.

	Strongly Disagree	Disagree	Neutral or N/A	Agree	Strongly Agree
Police did this in this case.	X				
Comments: Rather than informing Joe that he was being advised of important Constitutional rights because he was a suspect in an alleged sexual battery, police told Joe that it was because his name had been brought up regarding an incident, because he was 14, and because he did not know how to get out of the sheriff's office.					

5. Police can clearly present *Miranda* warnings to the suspect in both written and oral form, allowing and encouraging the suspect to read along as the rights are read to him.

	Strongly Disagree	Disagree	Neutral or N/A	Agree	Strongly Agree
Police did this in this case.	X				
Comments: Police did not provide Joe with a copy of the rights form to read along as the rights were read to him. After the rights were read aloud, police provided a form for Joe to sign, encouraging him to “sign right here” even though Joe had not read the form and the form had not been read to Joe in its entirety. Incidentally, when the police officer read the rights aloud, the recitation was not identical to the words on the written form (though the differences did not appear to be substantive).					

6. Police can use a version of *Miranda* warnings that includes a clear statement that, if a suspect invokes any of his rights, that fact cannot be used against him or her in court.

	Strongly Disagree	Disagree	Neutral or N/A	Agree	Strongly Agree
Police did this in this case.	X				
Comments: The Leon County Sheriff’s Office Warning of Constitutional Rights Form that was used in this case does not mention that invocation of rights cannot be used against a suspect.					

7. Police can use a written version of *Miranda* rights that is literally accurate and is consistent with current law, including case law.

	Strongly Disagree	Disagree	Neutral or N/A	Agree	Strongly Agree
Police did this in this case.	X				
Comments: Item 2 on the form reads, “Anything you say can and will be used against you in a court of law.” Literally, that would mean that the following statements could be used against a suspect in court, if the suspect said them: <ul style="list-style-type: none"> • “I do not want to answer any questions.” • “I do not want to answer any questions without a lawyer. • “I want to stop answering questions.” 					

8. Throughout the interrogation, police can scrupulously avoid making any statement that contradicts, or tends to contradict, any of the *Miranda* rights. For example, police can refrain from telling a suspect that talking to the police provides him an opportunity to tell his side of the story, that talking to police would be used to help him, or that remaining silent could in any way be harmful to him.

	Strongly Disagree	Disagree	Neutral or N/A	Agree	Strongly Agree
Police did this in this case.	X				
<p>Comments: As mentioned regarding Item 7, police told Joe that anything he said could be used against him in court, without telling him that the invocation of his rights could not be used against him in court. In addition, police told Joe:</p> <ul style="list-style-type: none"> • ... but if you did something, it's going to be better in your favor now that we're involved for you to tell me the truth.¹ • Like I said a while ago, as far as being one hundred percent truthful with things, that matters as far as how we look at things.² • Because we got to -- Remember I told you about being truthful? Exactly what happened word for word?³ • And remember what I'm telling you about, you know, telling me the truth.⁴ • You have one chance to make it right and one chance to be truthful.⁵ • This is your chance to be truthful.⁶ 					

9. Police can refrain from communicating to a suspect that talking to the police might result in not being arrested.

	Strongly Disagree	Disagree	Neutral or N/A	Agree	Strongly Agree
Police did this in this case.		X			
<p>Comments: When Joe asked, "Will we be here at nighttime? Like, will it be dark when we leave here?" the detective told him, "Uh, I'm still looking into it so I can't answer yes or no right now."⁷ This implies that some things the detective was looking into, presumably including his interview with Joe, would affect when Joe would be allowed to go home. In fact, Joe was not going to be allowed to go home that day. The detective</p>					

¹ Page 14, lines 7-9.

² Page 22, lines 17-19.

³ Page 28, lines 7-11.

⁴ Page 31, lines 23-24.

⁵ Page 34, lines 2-3.

⁶ Page 41, line 25.

⁷ Page 21, lines 13-16.

misled Joe about that fact, and Joe showed surprise when informed, later, “You’re not going home, buddy. You’re under arrest for rape.”⁸

10. Police can use an unbiased written *Miranda* rights form that includes a clear option to invoke each right, presented with no less prominence than the option to waive the right. For example, “I want to remain silent, and I understand that my silence cannot be used against me in any way.”

	Strongly Disagree	Disagree	Neutral or N/A	Agree	Strongly Agree
Police did this in this case.	X				
Comments: The Leon County Sheriff’s Office Warning of Constitutional Rights Form that was used in this case only includes one place for a suspect to sign his name, and no opportunities to indicate that he wants to invoke any of his Constitutional rights.					

11. Police can use a written *Miranda* rights form that includes a simple, clear presentation of how the suspect can get questioning to stop. For example, “I understand that I can change my mind and stop questioning at any time by telling you, ‘I want to stop answering questions.’”

	Strongly Disagree	Disagree	Neutral or N/A	Agree	Strongly Agree
Police did this in this case.	X				
Comments: The written form includes no such instruction. This is crucial because some courts may insist on an unambiguous expression of a desire to stop answering questions. The right to stop answering questions could be meaningless if a suspect does not know what courts require as a clear invocation of the right.					

⁸ Page 51, lines 13-14.

12. Police can use a written *Miranda* rights form that is easy to read, and is understandable to all or most suspects.

	Strongly Disagree	Disagree	Neutral or N/A	Agree	Strongly Agree
Police did this in this case.	X				X
Comments: This item is marked both “Strongly Agree” and “Strongly Disagree” because (a) the version of the <i>Miranda</i> rights that was presented orally to Joe was at a sixth-grade level, ⁹ but (b) he was not allowed to read along while the rights were presented orally, and (c) police encouraged Joe to “sign right here” without reading the form.					

13. Police can read the *Miranda* rights form aloud, pausing after each right to allow an interaction between the interviewer and the suspect.

	Strongly Disagree	Disagree	Neutral or N/A	Agree	Strongly Agree
Police did this in this case.	X				X
Comments: This item is marked both “Strongly Agree” and “Strongly Disagree.” Police read part of the form aloud, mostly correctly, and paused after each right. However, the rights were read at blazing speed (see Item 14), with no opportunity for interaction.					

14. When police read the *Miranda* rights form aloud, they can do so slowly and carefully.

	Strongly Disagree	Disagree	Neutral or N/A	Agree	Strongly Agree
Police did this in this case.	X				
Comments: The detective talked at a rate 124% faster when advising Joe of his rights than he did when he was asking Joe how to spell his name. In this case, the amount of time the detective spent explaining Joe’s <i>Miranda</i> rights to him was nearly identical to the amount of time it took the detective to learn how to spell Joe’s name. In this case, the rights were only presented orally, and they were presented very fast (330 words per minute). Reading the rights to a suspect so fast not only results in the likelihood that the suspect would not have a full awareness of the rights and consequences of waiving them (knowing and intelligent), but it also raises concerns about the voluntariness of the					

⁹ Joe’s reading-comprehension score was at an entry-eighth-grade level.

waiver. If the detective were really attempting to make sure that the suspect understands his rights, why would the detective read them so fast? See Appendix A.

15. After each right is read aloud, police can ask the suspect to paraphrase the right. For example, “You have the right to remain silent. Tell me in your own words what that means.”

	Strongly Disagree	Disagree	Neutral or N/A	Agree	Strongly Agree
Police did this in this case.	X				
Comments: Although the detective repeatedly asked Joe, “Do you understand that one?” police did not elicit any statements from Joe to <i>show</i> whether, and to what extent, he understood his Constitutional rights. See the Oral <i>Miranda</i> Warning Checklist (Appendix D of my 2/11/13 report).					

16. If the suspect says, “I don’t know,” or gives inaccurate or incomplete paraphrases, police can provide additional, accurate information and clarify any misconceptions or misunderstandings. Then, police can give the suspect another opportunity to show his or her understanding of the right by providing another paraphrase in his or her own words.

	Strongly Disagree	Disagree	Neutral or N/A	Agree	Strongly Agree
Police did this in this case.	X				
Comments: No such interaction took place.					

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Appendix: And the Race is On!

Subject	Words	Syllables	Seconds	Words/Second	Syllables/Second
Spell Your Name	45	48	21.4	2.1	2.2
<i>Miranda</i> Rights (interaction)	104	141	22.2	4.7	6.4
<i>Miranda</i> Rights (detective's words only)	99	136	17.9	5.5	7.6

During the portion of the interrogation in which the detective learned how to spell Joe's name, the 45-word interaction lasted 21.4 seconds, which is 126 words per minute. During the portion of the interrogation in which the detective informed Joe of his *Miranda* rights, which occurred very shortly thereafter, the 104-word interaction lasted 22.2 seconds (282 words per minute). Thus, the detective talked at a rate 124% faster when advising Joe of his rights than he did when he was asking Joe how to spell his name. In this case, the amount of time the detective spent explaining Joe's *Miranda* rights to him was nearly identical to the amount of time it took the detective to learn how to spell Joe's name.

Focusing specifically at the detective's speech during the *Miranda* warning, the detective spoke 99 words in 17.9 seconds (330 words per minute). For comparison, the average rate of speech for English speakers in the United States is about 150 words per minute,¹⁰ with some regional variation. Audio books are generally presented at about 150 to 160 words per minute.¹¹ A rate of 250 words per minute would be within the typical range for an auctioneer.

This detective's accelerated rate for words read aloud, compared to spoken words, is contrary to the typical finding that, "in general, articulation rate in reading is much slower than in free speech."¹²

Reading the rights to a suspect so fast not only results in the likelihood that the suspect would not have a full awareness of the rights and consequences of waiving them (knowing and intelligent), but it also raises concerns about the voluntariness of the waiver. If the detective were really attempting to make sure that the suspect understands his rights, why would the detective read them so fast?

¹⁰ National Center for Voice and Speech. <http://www.ncvs.org/ncvs/tutorials/voiceprod/tutorial/quality.html>

¹¹ The largest purveyor of audiobooks, Audible, uses an average rate of 155 words per minute.

¹² See, e.g., O'Neill, C. G. (2008). Dialect Variation in Speaking Rate.

https://kb.osu.edu/dspace/bitstream/handle/1811/32122/Thesis_Dialect_Variation_in_Speaking_Rate.pdf?sequence=1