

# A STUDY OF JUVENILE WAIVER

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In a footnote to its recent decision, *In re Dennis M.*,<sup>1</sup> the California Supreme Court recommended, that "juvenile officers and police be prepared to give their compulsory *Miranda* warning in terms that reflect the language and experience of today's juveniles."<sup>2</sup> This language stimulated our attempt to draft and test the efficacy of a simplified *Miranda* warning, potentially more understandable to juveniles, and consistent with juvenile law requirements. The purpose of this article is to relate the findings of an empirical study<sup>3</sup> which sought to answer two questions: 1) should the *Miranda* warning be revised for the juvenile offender; and 2) does a minor have the capacity knowingly and intelligently to waive his *Miranda* rights?

Scholarly discussion generally tends to support the proposition that a minor is incapable of competently and intelligently waiving his constitutional rights.<sup>4</sup> In California, whether a minor has made an intelligent waiver depends upon the totality of circumstances:

There is no guide to the decision of cases such as this, except the *totality of circumstances* that bear on the two factors we have mentioned. The youth of the petitioner, the long detention, the failure to send for his parents, the failure immediately to bring him before the judge of the Juvenile Court, the failure to see to it that he had the advice of a lawyer or a friend—all *these combine* to make us conclude that the formal confession on which this conviction may have rested [citation] was obtained in violation of due process.<sup>5</sup>

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1. 70 Adv. Cal. 460, 450 P.2d 296, 75 Cal. Rptr. 1 (1969).

2. *Id.* at 480 n.13, 450 P.2d at 308 n.13, 75 Cal. Rptr. at 13 n.13.

3. The interviews which were used as a basis for this study were conducted during March and April, 1969.

4. Comment, 56 CALIF. L. REV. 1711 (1968); Comment, 19 HAST. L. J. 223, 227 (1967); Comment, 7 SANTA CLARA LAWYER 114, 127 (1967); Comment, 40 WASH. L. REV. 189, 200-01 (1965). *See also* *Harling v. United States*, 295 F.2d 161 (D.C. Cir. 1961).

5. *People v. Lara*, 67 Cal. 2d 365, 383, 432 P.2d 202, 214-15, 62 Cal. Rptr. 586, 598-99 (1967), *quoting from* *Gallegos v. Colorado*, 370 U.S. 49, 55 (1962).

I. CONDUCT OF THE INTERVIEWS

As a preliminary step, a modified version of the *Miranda* warning was tested by interviewing 10 juveniles detained at San Diego County Juvenile Hall. The preliminary test scores and interview results are not reported here. Experience gained from these initial interviews provided the basis for further revision of a *Miranda* warning for juveniles.

The next step was to conduct interviews with 90 juveniles to compare their understanding of the simplified warning with the formal warning. Setting aside academic speculation, the interviews were aimed at testing objectively the validity of waiver by 90 juveniles, half of whom were warned in formal *Miranda* language, the rest of whom were warned in simplified words.

The standard San Diego City Police Department *Miranda* warning was used for the formal warning.<sup>6</sup> The simplified warning devised for the purpose of this study was as follows:

You don't have to talk to me at all, now or later on, it is up to you.

If you decide to talk to me, I can go to court and repeat what you say, against you.

If you want a lawyer, an attorney, to help you to decide what to do, you can have one free before and during questioning by me now or by anyone else later on.

Do you want me to explain or repeat anything about what I have just told you?

Remembering what I've just told you, do you want to talk to me?

6. I certify that (defendant) was, prior to any questioning, admonished and advised of the following rights at

\_\_\_\_\_ (place) \_\_\_\_\_ (time) \_\_\_\_\_ (date)

1. You have a right to remain silent during any questioning now or at any time;
2. Anything you do say can and will be used in court against you;
3. You have a right to have an attorney present with you during this or any conversation, either an attorney of your own choosing or, if you cannot afford an attorney, one will be appointed for you prior to any questioning, if you so desire.

After the above admonishment, the above named defendant was asked the following questions and gave the following answers:

*Question:* Do you understand each of these rights that I have explained to you?

*Answer:*

*Question:* Having in mind and understanding your rights as I have told you, are you willing to talk with us?

*Answer:*

I hereby certify under penalty of perjury, that the foregoing is true.

Signed: \_\_\_\_\_ date & Time \_\_\_\_\_

One element of the formal warning was deleted—the right of a juvenile to appointed counsel if he could not afford one. This right is inherent in the California juvenile court law.<sup>7</sup> Generally, juveniles lack sufficient funds to hire counsel. Hence the California juvenile courts are required to appoint counsel without regard to financial need.<sup>8</sup> Accordingly, the simplified form adopted the word “free” rather than appointed counsel. Also, no mention was made in the simplified warning of the term “right,” because it is an abstract concept in the constitutional sense, not readily understood by minors.

The interviews went beyond testing the subject’s understanding of his constitutional rights. Information was solicited regarding his previous arrests, police contacts and attorney contacts—factors in the totality of circumstances.

At the outset, it was determined to concentrate generally on juveniles 14 years of age. This age was chosen because under California law a 14-year-old is competent to commit crime.<sup>9</sup> A child under 14 is not competent to commit crime unless there is clear proof that he knew that his conduct was wrongful. Consequently, 14 appeared to be an appropriate age for testing capacity to waive *Miranda* rights.<sup>10</sup>

Four diverse testing sites were selected:

A. *Rancho Del Campo Boys Institution*. Rancho Del Campo is the San Diego County detention facility for delinquent boys ages 13 to 17. The average term is 4.5 months. There were 24 boys interviewed: 7 Caucasians, 7 Negroes and 10 Mexican-Americans.

B. *Las Colinas Girls Institution*. Las Colinas is the San Diego County detention facility for delinquent girls ages 13 to 17. The average term is four months. There were 20 girls interviewed: 12 Caucasians, 5 Negroes and 3 Mexican-Americans.

C. *Mildred Hale Junior High School*. This seventh-eighth-ninth grade school is located in an almost exclusively Caucasian, middle class suburban area. There were 11 boys and 11 girls individually interviewed. All were Caucasian. Of the juveniles interviewed, 10 had measured IQs of 130 or above. The school is located in an area having the highest

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7. CAL. WELF. & INST'NS CODE § 634 (West 1966).

8. *Id.* Reimbursement is sought from responsible parents. *Id.* at § 903.1

9. CAL. PENAL CODE § 26 (West 1955).

10. *See generally* *People v. Nichols*, 88 Cal. App. 2d 221, 198 P.2d 538 (1948).

incidence of juvenile-police contact within the city of San Diego.

D. *National Junior High School*. This seventh-eighth-ninth grade school combines low income and bilingual elements. The school enrollment is 45 per cent Mexican-American. There were 11 boys and 13 girls, all Mexican-Americans, interviewed individually.

The institutions randomly selected all participants. No directions were given regarding sex, IQ, race or other factors. It was requested that the subjects range from ages 13 to 17, with emphasis on 14-year-olds. IQ scores were collected because IQ is a factor in the "totality of circumstances" test. The IQ scores collected were calculated through many so-called "standard" testing methods. No less than 12 different IQ testing methods were encountered. The weight to be given IQ as an element in the totality, therefore, is uncertain.

The total interview group sample from all four sites was divided equally between adjudicated delinquent juveniles and non-delinquent juveniles. Of the 90 juveniles interviewed, 41 were Caucasian, 37 were Mexican-American and 12 were Negro. There were 46 boys and 44 girls interviewed.

To create the mentally distracting atmosphere of police field interrogation, and to assure accurate results, strict security rules were followed. None of the juveniles interviewed knew in advance an interview or confrontation would occur. The interviewers revealed neither their identity nor purpose until after the interview. The interviews were conducted in rooms which provided privacy for the interviewer and the juvenile. Upon contact with each juvenile, the interviewer attempted to create and to convey the impression he was investigating the juvenile's suspected involvement in crime. Juveniles were brought from classes or work individually by routine institutional procedures, as if special targets of investigation. After the interview, each juvenile was segregated from potential further interviewees. All interviews were conducted exclusively by the authors.

To eliminate unconscious prosecution or defense-oriented bias, the interviewers alternated using the two warning forms. At the first site, Rancho Del Campo, the boy's detention facility, for example, one interviewer used solely the formal warning. At the next site, Las Colinas, the girl's detention facility, the same

interviewer used a different form, the simplified warning. This exchange also was made between the two non-delinquent group sites.

The interviewer read the warning form immediately upon contacting each juvenile. Frequently the youngster questioned what was happening. The interviewer replied that it would be discussed later, but first the law required reading the warning. After receiving a waiver, and upon learning the juvenile did not want anything explained or repeated and was willing to talk, the interviewer immediately asked, after the formal warning was given—"What do you understand your rights to be?" For the simplified warning, he asked—"What do you understand I just said to you about talking to me?"

To evaluate understanding objectively, the *Miranda* requirement was reduced to five elements:

1. the right to SILENCE
2. court USE of statements
3. the right to an ATTORNEY
4. the right to an ATTORNEY NOW during questioning
5. the appointment or COST OF AN ATTORNEY

After recording the juvenile's statement of what he understood his rights to be, the purpose of the interview was explained. The juvenile was then asked further questions generally regarding arrest information, police and attorney contacts.

From the beginning, the aim was to measure objectively, in arithmetic terms, the subjective understanding, both conscious and latent, of the juvenile interviewed. To accomplish this, each of the five *Miranda* elements was assigned a maximum score value of two points. The combined 5 elements total a maximum possible score of 10. After reading the warning and obtaining a waiver, the interviewer asked the juvenile to state what he understood his rights to be. The juvenile was scored two points for each element he was able to repeat and explain in his first response. A score of two, in other words, reflected conscious understanding.

To test latent understanding, after the juvenile exhausted his conscious ability to restate what he had just been told, the interviewer asked prompting questions. "Do you think you have to talk to me?" "Do you know how I can use what you tell me?" "Did I tell you anything about an attorney or lawyer?" "Did I say when you could have an attorney or lawyer?" "Did I tell you

what an attorney or lawyer would cost?" Substantive replies indicating understanding were scored one point. A zero was scored for no response or for a response not indicating understanding. No one was prompted more than once. Only surface latent understanding was tested. No attempt was made to "pry" an answer out of the juvenile.

## II. STATISTICAL RESULTS OF THE STUDY

Of the 90 juveniles interviewed, 5 youngsters achieved a perfect score of 10, that is a 2 on each *Miranda* element. The remainder scored less than 10. Four youngsters claimed their right to silence and refused to talk. Three were boys and one was a girl. Three of the four had been given the formal *Miranda* warning. Their IQs were 70, 71, 79, and 115. To gain cooperation, these four were informed of the interview purpose.

The following two charts are a tabulation of interview scores from Rancho Del Campo. Chart I represents 12 boys given the formal *Miranda* warning. Each vertical column represents one boy interviewed. The horizontal columns, in descending order, represent scores for the *Miranda* elements: SILENCE; USE; ATTORNEY; ATTORNEY NOW; COST OF ATTORNEY, and total. The seventh horizontal column represents the number of arrests (unverified); the eighth and ninth contain information regarding race and age. The last horizontal column reflects IQ.

At the extreme right of the chart are two vertical columns marked with one asterisk \* or two asterisks \*\* representing a numerical index of understanding for the entire group. For example, the figure 23/24 in the one asterisk column represents the total score over the total number of points possible. Simple division (rounded out to highest second decimal place) gives a decimal figure representing the entire groups' understanding of the element in the two asterisks column. The last figure in the horizontal column represents a decimal figure of understanding of all elements by the entire group. This figure is of use and interest when comparing groups: e.g. boy/girl; delinquent/non-delinquent, etc. The decimal figure is not a percentage.

CHART I  
MIRANDA WARNING—RANCHO DEL CAMPO (delinquent boys)

Silence	2	2	2	2	2	2	2	2	2	2	1	2	23/24	.96
Use	2	1	1	2	2	2	0	1	1	1	2	1	16/24	.67
Attorney	2	2	2	2	2	2	2	1	2	2	2	2	23/24	.96
Attorney Now	0	1	0	1	0	2	0	0	1	2	1	2	10/24	.42
Cost of Attorney	2	1	2	1	2	0	2	1	2	1	1	2	17/24	.71
Total	8	7	7	8	8	8	6	5	8	8	7	9	89/120	.74
Arrests	4	2	5	6	1	3	7	1	2	6	3	1		
Race <sup>1</sup>	C	N	N	C	N	M	M	C	C	M	M	C		
Age	15	15	16	15	15	16	13	15	15	16	15	16		
I. Q.	125	100	85	100	91	79	90	100	115	90	100	100		

<sup>1</sup>C-Caucasian M-Mexican-American N-Negro

Chart II represents 12 boys given the simplified warning. This chart was developed in exactly the same manner as Chart I.

CHART II  
SIMPLIFIED WARNING—RANCHO DEL CAMPO (delinquent boys)

Silence	2	2	2	2	2	2	2	2	2	2	2	1	23/24	.96
Use	1	1	2	2	2	2	1	1	1	2	2	1	18/24	.75
Attorney	2	2	1	2	2	2	2	2	2	2	1	1	21/24	.87
Attorney Now	1	0	0	0	0	2	2	0	2	0	0	0	7/24	.29
Cost of Attorney	2	0	0	0	0	0	2	1	1	2	1	0	9/24	.37
Total	8	5	5	6	6	8	9	6	8	8	6	3	78/120	.65
Arrests	2	5	7	1	4	2	2	3	7	3	4	9		
Race <sup>1</sup>	N	C	M	M	N	M	M	M	M	N	N	C		
Age	14	15	15	15	15	14	14	16	15	15	15	14		
I. Q.	100	90	115	100	80	115	92	100	110	93	70	110		

<sup>1</sup>C-Caucasian M-Mexican-American N-Negro

Perhaps the most striking comparison in the Rancho Del Campo charts regards the degree of understanding of each element of the warning. Significantly, the right to remain silent and the right to counsel are understood better than other elements. Understanding that the presence of an attorney can be demanded *now* scores lowest.

At Rancho Del Campo, the simplified warning prompted a higher understanding of statement use as evidence, but less understanding of the cost of an attorney, despite the word "free," and less understanding of the right to have an attorney now. To an extent, this may represent the adjudicated delinquent's familiarity with the *Miranda* warning. Several juveniles given the simplified warning responded in the language of the *Miranda* warning. Other correlations not shown here can be readily made from the chart regarding race, IQ, and number of arrests.

The following charts are from the other interview sites. They were developed in exactly the same manner as the preceding

charts, except that the number of arrests column is deleted from the Mildred Hale and National Junior High tabulations.

CHART III  
MIRANDA WARNING—LAS COLINAS (delinquent girls)

Silence	2	2	2	2	2	2	2	2	2	2	20/20	1.0
Use	2	2	2	1	2	2	2	0	2	2	17/20	.85
Attorney	2	2	1	2	2	2	2	2	2	2	19/20	.95
Attorney Now	1	0	0	0	0	0	0	0	0	0	1/20	.05
Cost of												
Attorney	1	2	1	0	0	2	1	0	2	2	11/20	.55
Total	8	8	6	5	6	8	7	4	8	8	68/100	.68
Arrests	2	5	3	3	3	4	4	4	4	3		
Race <sup>1</sup>	C	C	C	C	C	C	C	N	N	C		
Age	16	16	15	15	14	17	14	15	15	14		
I. Q.	150	88	85	90	105	110	110	71	91	85		

<sup>1</sup> C-Caucasian M-Mexican-American N-Negro

CHART IV  
SIMPLIFIED WARNING—LAS COLINAS (delinquent girls)

Silence	2	2	2	2	1	2	2	2	2	2	19/20	.95
Use	1	2	2	2	2	2	1	1	2	2	17/20	.85
Attorney	2	2	2	1	2	1	2	2	1	2	17/20	.85
Attorney Now	1	0	2	0	0	0	0	2	1	1	7/20	.35
Cost of												
Attorney	1	2	1	1	0	0	0	0	1	2	8/20	.40
Total	7	8	9	6	5	5	5	7	7	9	68/100	.68
Arrests	3	2	5	4	2	8	2	3	3	2		
Race <sup>1</sup>	M	C	C	M	C	N	C	N	N	M		
Age	13	14	13	13	15	15	14	15	13	15		
I. Q.	96	110	120	75	110	88	110	110	83	85		

<sup>1</sup> C-Caucasian M-Mexican-American N-Negro

CHART V  
MIRANDA WARNING—HALE JUNIOR HIGH

Silence	2	2	2	2	2	2	1	2	2	0	2	19/22	.86
Use	2	1	2	2	2	2	0	2	2	0	1	16/22	.73
Attorney	2	2	2	2	2	2	0	2	2	2	2	20/22	.91
Attorney Now	0	0	1	2	1	2	0	2	0	0	1	9/22	.41
Cost of													
Attorney	1	0	2	2	1	2	0	1	2	2	0	13/22	.59
Total	7	5	9	10	8	10	1	9	8	4	6	77/110	.70
Sex	M	F	M	M	M	M	F	F	F	F	M		
Age	15	14	14	13	13	14	14	14	14	14	12		
I. Q.	93	99	140	130	129	117	85	130	140	77	100		

CHART VI  
SIMPLIFIED WARNING—HALE JUNIOR HIGH

Silence	2	2	2	2	2	2	2	1	2	2	1	20/22	.91
Use	2	0	2	1	1	2	1	2	2	2	2	17/22	.77
Attorney	2	2	2	2	2	2	2	2	2	2	1	21/22	.95
Attorney Now	1	2	2	1	2	1	0	0	0	0	1	10/22	.45
Cost of													
Attorney	0	2	2	0	2	1	0	0	2	0	0	9/22	.41
Total	7	8	10	6	9	8	5	5	8	6	5	77/110	.70
Sex	M	M	M	F	F	M	M	F	F	F	M		
Age	15	14	13	13	14	13	14	15	19	14	14		
I. Q.	93	129	140	140	130	130	130	77	130	108	109		



CHART VII  
MIRANDA WARNING—NATIONAL JUNIOR HIGH

														*	**
Silence	1	2	2	2	0	1	2	2	2	2	2	2	0	20/26	.77
Use	1	1	1	2	0	0	0	1	0	1	2	1	1	11/26	.42
Attorney	1	2	2	2	0	0	1	2	1	2	2	1	1	17/26	.65
Attorney Now	0	0	1	2	0	0	0	1	0	1	0	0	0	5/26	.19
Cost of															
Attorney	1	2	2	2	0	0	0	1	1	0	0	2	1	12/26	.46
Total	4	7	8	10	0	1	3	7	4	6	6	6	3	65/130	.50
Sex	M	M	M	M	F	F	F	M	M	F	F	F	M		
Age	14	14	15	14	14	14	14	14	14	14	14	14	14		
I. Q.	82	87	137	91	90	87	111	109	102	121	116	101	94		

CHART VIII  
SIMPLIFIED WARNING — NATIONAL JUNIOR HIGH

														*	**
Silence	1	2	2	2	0	1	2	2	0	2	2			16/22	.73
Use	0	1	2	2	0	1	0	1	0	2	0			9/22	.41
Attorney	0	1	2	2	0	1	2	2	1	2	2			15/22	.68
Attorney Now	0	0	2	1	0	1	0	2	0	0	0			6/22	.27
Cost of															
Attorney	0	0	2	2	0	0	2	0	0	2	0			8/22	.36
Total	1	4	10	9	0	4	6	7	1	8	4			54/110	.49
Sex	M	M	F	M	F	F	F	M	F	F	F				
Age	14	14	14	14	15	14	14	14	14	14	14				
I. Q.	70	83	110	99	85	85	102	104	63	114	105				
Attorney Now	0	2	2	0	2	1	0	0	2	0	0			9/22	.41

III. GROUP RESULT EVALUATION AND COMPARISON

The following four tables reflect various comparisons within the entire sample of 90 youngsters. The first table indicates group understanding of the five elements on the basis of the particular warning used:

TABLE I

	Miranda					Simplified				
	Hale J. H.	National J. H.	Las Colinas	RDC	Average	Hale J. H.	National J. H.	Las Colinas	RDC	Average
Silence	.86	.77	1.0	.96	.90	.91	.73	.95	.96	.89
Use	.73	.42	.85	.67	.67	.77	.41	.85	.75	.70
Attorney	.91	.65	.95	.96	.89	.95	.68	.85	.87	.84
Attorney Now	.41	.19	.05	.42	.27	.45	.27	.35	.29	.34
Cost of Attorney	.59	.46	.68	.71	.61	.41	.36	.40	.37	.39

The averages presented by this table can be interpreted in terms of the California Supreme Court's recommendation in *In Re Dennis M.*: "[T]o avoid future conflicts on this issue we recommend that juvenile officers and police be prepared to give their compulsory *Miranda* warnings in terms that reflect the language and experience of today's juveniles."<sup>11</sup> A comparison of

the above averaged scores column for each form of admonishment is as follows:

TABLE II

	<i>Avg. Miranda</i>	<i>Avg. Simplified</i>	<i>Difference</i>
Silence	.90	.89	— .01
Use	.67	.70	+ .03
Attorney	.89	.84	— .05
Attorney Now	.27	.34	+ .07
Cost of Attorney	.61	.39	— .22

If the overall differences are significant, the most significant finding is that a warning indicating an attorney will be appointed is more readily understood than one indicating an attorney can be provided free. This apparent anomaly will be discussed later in terms of influencing factors. Aside from COST OF ATTORNEY, the differences are not marked. The simplified warning, however, appears generally to be less understood by the overall group. This result was not anticipated.

The following two tables compare adjudicated delinquents with non-delinquent juveniles on the basis of the warning given.

TABLE III MIRANDA FORM

	<i>Delinquent</i>	<i>Non-Delinquent</i>	<i>Difference</i>
Silence	.98	.82	+ .16
Use	.76	.58	+ .18
Attorney	.96	.78	+ .18
Attorney Now	.22	.30	— .08
Cost of Attorney	.70	.53	+ .17

Here the significant difference in the degree of understanding appears to be more predictable. The experience of the delinquent may account for the uniformly higher understanding of all elements, except the right to have an attorney present during interrogation. The following table compares adjudicated delinquents and non-delinquent juveniles warned with the simplified form.

TABLE IV SIMPLIFIED FORM

	<i>Delinquent</i>	<i>Non-Delinquent</i>	<i>Difference</i>
Silence	.96	.82	+ .14
Use	.80	.59	+ .21
Attorney	.86	.82	+ .04
Attorney Now	.32	.36	— .04
Cost of Attorney	.39	.39	...

As expected, the delinquents scored higher on a majority of the elements, especially the right to silence and knowledge that any statement made could be used in court. A possible explanation of

these differences may simply be exposure to warnings from police, probation, and judicial officers.

A. Fourteen Year Age Group Evaluation

As indicated previously, emphasis was placed on 14-year-olds. Of the 90 subjects tested, 44 were 14 years of age. The age spread of all subjects was as follows:

TABLE V

Age	Number Interviewed
12	1
13	11
14	44
15	27
16	7
17	1

In the next two charts and table, attention is directed to a comparison of results between the *Miranda* and simplified warnings among non-delinquent 14-year-olds. The delinquent 14-year-olds are deleted to obtain a pure sample, not influenced by exposure to the law enforcement process. The following charts reflect only 14-year-olds who, by their own statements, never have been admonished before becoming subject material for this study.

CHART IX

MIRANDA FORM—FOURTEEN-YEAR-OLD NON-DELINQUENTS

Silence	2	2	2	1	2	2	0	1	2	0	1	2	2	2	2	2	0	*	**
Use	1	2	2	0	2	2	0	1	1	0	0	0	1	0	1	2	1	27/36	.75
Attorney	2	2	2	0	2	2	2	1	2	0	0	1	2	1	2	2	1	17/36	.47
Attorney Now	0	1	2	0	2	0	0	0	0	0	0	0	1	0	1	0	0	25/36	.69
Cost of																			
Attorney	0	2	2	0	1	2	2	1	2	0	0	0	1	1	0	0	2	7/36	.19
Total	5	9	10	1	9	8	4	4	7	0	1	3	7	4	6	6	3	17/36	.47
I. Q.	99	140	117	85	130	140	77	82	87	90	87	111	109	102	121	116	101	93/130	.52

CHART X

SIMPLIFIED FORM—FOURTEEN-YEAR-OLD NON-DELINQUENTS

Silence	2	2	2	2	1	1	2	2	2	1	2	2	0	2	2	2	*	**
Use	0	1	1	2	2	0	1	2	2	1	0	1	0	2	0	2	27/32	.84
Attorney	2	2	2	2	1	0	1	2	2	1	2	2	1	2	2	2	17/32	.53
Attorney Now	2	2	0	0	1	0	0	2	1	1	0	2	0	0	0	0	26/32	.81
Cost of																		
Attorney	2	2	0	0	0	0	0	2	2	0	2	0	0	2	0	2	11/32	.34
Total	8	9	5	6	5	1	4	10	9	4	6	7	1	8	4	8	14/32	.44
I. Q.	129	130	130	108	109	70	83	110	99	85	102	104	83	114	105	130	95/160	.59

Charts IX and X readily show the similarity within the entire group with respect to comprehending the right to have an attorney present at the time of the interview. This element was consistently

the least understood. The right to silence and the right to an attorney are the best understood concepts by a significant margin. These charts also indicate the difference in overall understanding between the *Miranda* warning and the simplified warning. Among 14-year-old non-delinquent juveniles, the simplified warning was better understood. The average index of understanding of all elements of the formal *Miranda* warning was .52, while for the simplified form the average index was .59. The following table represents the composite comparison of each element of the *Miranda* warning and the simplified warning for the 14-year-old non-delinquent group:

TABLE VI

	<i>Miranda</i>	<i>Simplified</i>	<i>Difference</i>
Silence	.75	.84	+.09
Use	.47	.53	+.06
Attorney	.69	.81	+.12
Attorney Now	.19	.34	+.15
Cost of Attorney	.47	.44	-.03

The most significant observation appears to be that the non-delinquent juvenile who is unsophisticated with respect to law enforcement does, in fact, respond more positively to the simplified warning. An interesting indication is seen regarding the right to have an attorney present during questioning. While remaining the least understood of all elements, apparently the right to have an ATTORNEY NOW is more effectively conveyed and grasped by a potential subject when put into informal terms. The ATTORNEY NOW element results, .19 and .34, raise the question whether 14-year-old non-delinquents have sufficient knowledge upon which to base an intelligent waiver. Interestingly, even though the simple word "free" was used when referring to cost of an attorney, the measured understanding is still greater by a relatively small amount in favor of the formal language. Generally, however, it is clear that the simplified form is better understood by non-delinquent juveniles. The significance to be given to the difference between an index of .52 for the formal *Miranda* warning, and .59 for the simplified warning is open to interpretation.

#### B. *Related Inquiries of the Entire Sample*

Beyond assessing conscious and latent understanding, the interviewers examined factors possibly influencing waiver: predisposition, coercion, intoxication and language.

### 1. *Predisposition and Coercion*

Questions were designed to test whether the interviewed juvenile felt compelled to talk when confronted by authority in the person of a peace officer. The *delinquent* group was asked four questions, with these results:

- (a) At the time you were arrested, did you feel you had to talk to the policeman? Yes — 12 No — 30
- (b) When arrested, did you feel that it would go against you if you didn't talk? Yes — 25 No. — 17
- (c) When arrested, did you feel it would be better for you to talk? Yes — 31 No. — 11
- (d) When arrested, did the policeman tell you it would be better for you to talk? Yes — 23 No — 19

These results can be compared with the delinquent groups' index of understanding. With respect to SILENCE, delinquents scored an index of .98 when advised in *Miranda* terms and an index of .96 when advised by the simplified form. Generally, delinquents consciously know they have a right to remain silent. Nonetheless, 29% of the delinquents felt they had to talk to police when arrested (question a). Apparently knowledge is often subordinate to mental state at the time of arrest confrontation. Perhaps the difference between knowledge of the right to silence and subjective feeling of a necessity to talk is explained by the findings that 60% felt it would go against them if they remained silent (question b), 74% felt it would benefit them to talk (question c), and 55% were told by the arresting officer that it would be better for them to talk (question d).

To test predisposition uninfluenced by experience, *non-delinquents* were asked three questions, with these results:

- (a) If you were arrested, do you think you would have to talk to the policeman? Yes — 19 No — 25
- (b) If you were arrested, do you think it would go against you if you didn't talk? Yes — 28 No — 16
- (c) If you were arrested, do you think it would be better for you to talk? Yes — 40 No — 3

Non-delinquents scored a .82 index of understanding of the right to remain silent for both of the warnings. Forty-three per cent felt they would have to talk to an arresting policeman (question a). Evidently the non-delinquent's knowledge of his right to silence is subordinate to his predisposition to talk. Perhaps this is explained

in part by the findings that 64% felt it would go against them if they didn't talk (question b), and 93% felt it would be better to talk, indicating a positive expectation of benefit (question c).

## 2. *Intoxication*

Intoxication is necessarily a circumstance within the totality. Delinquents were asked during the interview, "Were you under the influence of anything at the time you were arrested and talked to the policeman?" There were 17 who replied yes, 25 no. The yes responses included both drugs and alcohol.

## 3. *Influence of Mass Media*

The interviewers were impressed that often a juvenile warned in the simplified manner responded in the terms of the formal *Miranda* warning. The mass media is evidently an influencing factor. All juveniles were asked whether they had heard the warning on television or in movies: 72 replied yes, 17 no; 69 mentioned television, naming "Adam-12," "Dragnet," and "FBI."

## 4. *Attorney/Lawyer*

The formal *Miranda* warning used the word "attorney." The simplified form uses both "attorney" and "lawyer." To learn which term juveniles preferred, results were tabulated in two ways. First, the interviewers observed the juvenile's speech and noted the term used. If a juvenile failed to use either term, he was simply asked which word he preferred. Of 87 juveniles responding, 79 or 91% preferred the word "lawyer." Some were completely unfamiliar with the term "attorney," especially Mexican-Americans.

## 5. *Language*

To explore the effect of bilingualism on understanding, the Mexican-American juveniles at National Junior High School were asked what language they used at home. No conclusions could be drawn from the small sample of this study. One interesting sidelight is worthy of mention at this juncture. Of the entire sample of juveniles interviewed only one youngster demonstrated an impressively thorough understanding of her rights.<sup>12</sup> She is a

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12. Four other youngsters achieved a perfect score of 10, but none of these were completely familiar with the concept of constitutional rights.

14-year-old non-delinquent, Spanish and English speaking girl, who indicated she received formal classroom instruction on the Bill of Rights including the substance of *Miranda* while a ninth grade student in Guam. Of the other juveniles interviewed, all of whom attended school solely within the continental United States, none indicated ever receiving any formal classroom instruction on these rights.

#### 6. *Honesty*

The sample group was asked if they told the truth or would tell the truth when arrested. Some ambivalent answers were received. If the 70 direct answers can be believed, 71% told or would tell the truth. There were 50 who answered yes, and 20 no.

#### 7. *Attorney Waiver*

All of the delinquents had been through the juvenile court process for offenses ranging from runaway to robbery. Each was asked if he had counsel or had requested counsel in Juvenile Court. There was 69%, or 29 of 42 subjects, indicated they neither requested nor desired the services of a lawyer for their juvenile court proceedings. When asked why, the answers most given were "I knew I was guilty and deserved to be punished" or "I was guilty and a lawyer couldn't do anything for me.

### IV. CONCLUSION

Under California law, a juvenile can knowingly and intelligently waive his constitutional rights. Implicit within the concept of waiver, however, must be a quantum of understanding below which a free and voluntary waiver cannot be said to be an intelligent relinquishment of a known right.

Within this project, 86 of 90 juveniles freely and voluntarily waived their constitutional rights. Of the 86 only 5 achieved an understanding-score of 10. In other words, 81 of the 86 by achieving scores of less than 10 did not consciously and fully understand their rights. Many scores of less than 10 reflect measurement of latent understanding only.

The reader is reminded the scores reported are not percentages. An individual score of 5 is not intended to mean the juvenile knew 50% of his rights, nor does it mean his

understanding was 50% of what is required for total understanding. The figure five is merely an index combining conscious and latent understanding.

The right to silence seems fairly well understood by the entire sample. The indices of understanding for the formal and simplified warnings are .90 and .89 respectively. The right to counsel before and during any questioning, however, was .27 (formal) and .34 (simplified). The cost of counsel rates .61 (formal) and .39 (simplified). These scores raise the question whether more emphasis should be placed on certain elements of the *Miranda* warning than others.

A conclusion to be drawn is that a small percentage of juveniles is capable of knowingly and intelligently waiving *Miranda* rights. The great majority should be advised and counseled carefully if they are to understand their rights competently. Prior to trial, counsel should study all circumstances surrounding an alleged waiver to determine whether to move the court to hold a special hearing to examine the validity of the waiver. Courts should exercise particular care before finding an intelligent and knowing waiver.

This project tested the difference, with respect to understanding between the formal *Miranda* warning and a simplified form. Generally speaking the result is not remarkable. Among non-delinquent 14-year-olds, the overall index of understanding for the formal *Miranda* form is .52 versus .59 for the simplified form. Under the simplified form ATTORNEY NOW (.34), COST OF ATTORNEY (.44) and USE (.53) scored low. Use of the simplified form failed to increase understanding significantly. The simplified form devised could be inadequate. Is it the form? Perhaps 14-year-olds as a group are not capable of knowingly and intelligently understanding their rights.

The pre-*Miranda* test of voluntariness is inseparable from the concept of waiver. If the intelligent relinquishment of a known right is the sole standard, 86 of the juveniles interviewed (96%) gave statements which could have been inadmissible at law. However, everyone of those 86 *voluntarily* waived their rights. Which is the true test? Should knowledge and voluntariness be weighted in some way?

What would happen if this project had been extended to adults? Is a score less than 10 enough?