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Note

*373 THE GHOST OF COLUMBINE AND THE MIRANDA DOCTRINE: STUDENT INTERROGATIONS IN A SCHOOL SETTING

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I. Introduction

Imagine that you are a fifteen year-old high school student sitting in a classroom. Suddenly, the principal's voice amplifies through the intercom, directing you to come to the office. Waiting in the office is a uniformed police officer who tells you, “There is a rumor floating around that there may be a gun on school grounds. I have been told that you are friends with someone who has threatened violence in the past. Do you mind if I ask you a few questions?” Without hesitation, you follow the police officer into an empty office and begin to answer his or her questions. Knowing that you do not possess a weapon of any sort, nor are you a part of a plot to hurt anyone, you are at first eager to assist the officer. When the questions become accusatory, however, you are suddenly frightened. Should you refuse to speak any further and ask the school to call your parent(s)? Can you get up and leave? Should you ask for an attorney?

Our nation's schools and courts today are grappling with serious situations just like the hypothetical above. Indeed, the innocence of the one-room schoolhouse has been replaced by echoes of gunfire and other acts of school violence. The worst of these tragedies occurred on April 20, 1999, at Columbine High School in Littleton, Colorado. [FN1] There, two students, brandishing semi-automatic weapons and homemade bombs, killed many of their peers in a horrific display of evil. [FN2] The shootings at Columbine brought home the ultimate realization: America's schools were not safe, and new precautionary measures were needed to ensure the safety and protection of students.

***374** In such a volatile environment, there may be situations such as rumors of a gun on school grounds that require immediate investigation. Accordingly, schools must learn to deal with the dilemma of maintaining school discipline and safety while continuing to protect the legal rights of students. This is a difficult task, for the duty of swift protection and immediate investigation will likely clash with certain constitutional rights of students. Since the Columbine disaster, many cases involving the investigative questioning of students have already emerged. [FN3] These cases foreshadow the courts' willingness to narrowly construe the requirements of the Miranda [FN4] doctrine in a school setting, thereby limiting students' constitutional rights. [FN5]

This note analyzes the constitutional implications the Miranda doctrine brings upon the interrogation of students at school. In Part II of this note, the history and evolution of the Miranda doctrine will be addressed. Subpart A defines “custodial interrogation” and includes a discussion of when questioning becomes custodial under

the Miranda doctrine. Subpart B addresses the context of Miranda in a school setting. Part III analyzes recent decisions involving the interrogation of students on school grounds, and follows the gradual restriction of students' Miranda rights. Part IV first examines the different constitutional standards that exist in the school setting, depending on whether the authority figure is a school official or a police officer. This includes aspects of students' Fourth, Fifth, Sixth, and Fourteenth Amendment rights. Then it also discusses why the requirements of Miranda should apply to situations where students are interrogated by police officers on school grounds. Part V concludes by proposing alternative ways in which schools can maintain safety while still protecting students' constitutional rights.

II. History and Background of the Miranda Doctrine

The interrogation of any individual, including those under the age of eighteen, for purposes of securing evidence during an investigation can produce many legal and constitutional issues. The simple questioning of a witness by a police officer could initiate the need for constitutional protections such as the Fourth Amendment's restraint on unreasonable searches and seizures, the Fifth and Fourteenth Amendments' privilege against compulsory self-incrimination, ***375** the Sixth Amendment's right to counsel, and the Fifth and Fourteenth Amendments' right to due process. Many cases have laid the foundation for protecting these constitutional rights in an adult setting. [FN6] As will be seen, these rights have been extended to protect juvenile delinquents as well. [FN7] However, once a minor is within the confines of the schoolhouse gate, and because of the "special need" to protect students in such settings, the United States Supreme Court and lower state courts have been increasingly unwilling to extend these constitutional rights any further. [FN8]

In the landmark decision Miranda v. Arizona, [FN9] the United States Supreme Court established the procedural safeguards law enforcement authorities must follow in order to protect the due process rights of those subjected to "custodial interrogation." [FN10] The primary purpose of the Miranda doctrine is to protect one's Fifth Amendment right against self-incrimination. [FN11] Under Miranda's mandate, the prosecution cannot use any statement, exculpatory or inculpatory, resulting from custodial interrogation unless the person has been advised of his or her right to remain silent, that any statement he or she makes can be used as evidence against him or her, and that he or she has the right to the presence of an attorney, either retained or appointed. [FN12] A defendant may waive these rights only if the waiver is made "voluntarily, knowingly and intelligently." [FN13] If the defendant indicates in any manner [FN14] that he or she does not wish to be interrogated, and even if he or she has already answered some initial questions, the questioning must immediately cease. [FN15]

***376** Miranda's protections are not limited to adult interrogations. [FN16] In In re Gault, decided just a year after Miranda, the United States Supreme Court held that Miranda's privilege against self-incrimination, including the specific waiver provisions, applied to juveniles, as well. [FN17] In the Gault decision, the Court stated:

> If counsel was not present for some permissible reason when an admission was obtained, the greatest care must be taken to assure that the admission was voluntary, in the sense not only that it was not coerced or suggested, but also that it was not the product of ignorance of rights or of adolescent fantasy, fright or despair. [FN18]

The Gault decision only added to the protections afforded to juveniles from an earlier Supreme Court case, Gallegos v. Colorado. [FN19] The Gallegos decision invalidated the confession of a youth who had not been allowed the protection of parental or attorney advice and support. [FN20]

Today, courts judge the validity of a juvenile's waiver of a Fifth Amendment Miranda right by a "totality of

the circumstances" analysis of the interrogation in each case. [FN21] These circumstances include factors such as the minor's age, intelligence, education, background, experience with the judicial system, capacity to understand the warnings given, the nature of the Fifth Amendment rights at issue, and the consequences of waiving those rights. [FN22] In addition to these protections, the Uniform Juvenile Court Act [FN23] provides that a child charged with a delinquent act need not be a witness against or otherwise incriminate himself, and any extra-judicial statements that are obtained in violation of the Uniform Act or the Constitution cannot be used against him. [FN24] Accordingly, most states have enacted statutes implementing the requirements of the Uniform Juvenile Court Act. [FN25]

***377** When Does Questioning Become "Custodial" under Miranda?

Miranda does not require police officers to give warnings to each person questioned about a crime or incident. [FN26] Rather, the doctrine applies to a "custodial interrogation," which is defined as "questioning initiated by law enforcement officers after a person has been taken into custody or otherwise deprived of his freedom of action in any significant way." [FN27] This includes not only express questioning, but also any words or actions on the part of police that the officer should have known were reasonably likely to elicit an incriminating response that could be used at trial. [FN28] This encompasses "any knowledge the police may have had concerning the unusual susceptibility of a defendant to a particular form of persuasion." [FN29]

If a person being questioned is not "in custody," he or she has the right to leave at any time. [FN30] Whether a person is in custody and therefore subject to Miranda's protections, however, is contingent upon the perception of the suspect and not on the intent of the police. [FN31] In other words, the question is how a reasonable person in the defendant's position would have perceived his or her freedom to leave. [FN32] If a court determines, by looking at the totality of circumstances, that a reasonable child in that position would have felt as if he or she were in custody and Miranda warnings were not given, any statements made cannot be used as evidence against that child. [FN33] However, any statements that are voluntarily made are admissible, whether Miranda warnings have been given or not. [FN34]

In determining the voluntariness of a confession or a waiver of a Miranda right by a minor, the child's age, experience, and the presence of his or her parent(s) or guardian(s) may be considered. [FN35] However, while the presence or absence of a parent or responsible adult during interrogation of a juvenile suspect may be a factor affecting the voluntariness of a confession, a child does ***378** not have a constitutional right to have his or her parent(s) present. [FN36] For example, the North Carolina Supreme Court held in State v. Gibson [FN37] that law enforcement officials are not required to inform a juvenile that either his parents or his attorney are present in the police station before taking his voluntary confession. [FN38] Accordingly, their failure to do so did not render the juvenile's confession involuntary as a matter of law, nor did it make it inadmissible. [FN39] On the other hand, the New Hampshire Supreme Court held that whenever a parent or guardian arrives at the site of custodial detention and requests to see a child, the police must immediately cease interrogation, notify the child that his or her parent is present at the station, and allow the parent into the interrogation room. [FN40]

In In re V.M.D., [FN41] the Texas Court of Appeals held that a juvenile's statements were given voluntarily and the requirements of Miranda did not apply. [FN42] In that case, the minor, who was not a suspect in the investigation, came to the police station voluntarily, was never handcuffed or restrained, and had her mother with her while being questioned. [FN43] Contrarily, a New York court used the totality of the circumstances test to determine that an interrogation involving an eight-year-old child was custodial for purposes of Miranda. [FN44]

In that matter, the court noted that the officer's conduct in asking the child if there was anything else the child had done, while telling the child that he was sitting in a “special chair” that beeped when children lied, would have led the child to believe he was in custody and was likely to elicit an incriminating response. [FN45]

***379** Miranda in a School Setting

The United States Supreme Court once stated that students do not “shed their constitutional rights to freedom of speech or expression at the schoolhouse gate.” [FN46] As will be seen throughout this note, however, courts have been unwilling to extend the protection of other constitutional rights to minors once that minor steps inside the schoolhouse gate. While courts have traditionally associated the Miranda doctrine with the protection of one's Fifth Amendment privilege against self-incrimination and his or her Sixth Amendment right to the presence of an attorney, the special nature of the school environment also brings up issues of a student's Fourth Amendment right against unreasonable searches and seizures. This is because, once inside the confines of the classroom, the student's freedom to leave is already restrained because he or she is under the control of the school.

This note will not address the implications Fourth Amendment freedoms may have upon searches of students at school; rather, it will focus on the application of such freedoms to the seizure of students at school. “Seizure” is defined as “taking hold of or possession of by force.” [FN47] Accordingly, most courts regard the interrogations of individuals as a type of “seizure.” [FN48] Therefore, this note will show that since the questioning of students constitutes a “seizure” protected under the Fourth Amendment, then the overlapping Fifth and Sixth Amendment protections encompassed by Miranda should also be extended to the school setting.

The special relationship between a school and its students was traditionally characterized by the common law doctrine of “in loco parentis.” [FN49] That is, school officials acted “in the place of” the parent when it came to the education and protection of children while at school. [FN50] However, this doctrine began to crumble in 1969 when the United States Supreme Court, in Tinker v. Des Moines Independent School District, [FN51] found that a student's First Amendment ***380** right to free speech was protected by the Constitution - even in the school environment. [FN52] Sixteen years later, the Court further limited the reach of the in loco parentis doctrine in New Jersey v. T.L.O., [FN53] when it held that Fourth Amendment protection against unreasonable searches and seizures applied to students in a school setting. [FN54]

The T.L.O. decision did, however, refer to the “special needs” that existed in the public school context. [FN55] Because of these needs, the Court reasoned that school administrators conducting searches or seizures on school grounds did not have to adhere to the strict warrant requirements that apply to police officers, whose searches or seizures must be based on probable cause. [FN56] Instead, a search and seizure initiated by a school official must be based upon the lesser standard of “reasonable suspicion.” [FN57] The Court stated that a probable cause requirement would undercut “the substantial need of teachers and administrators for freedom to maintain order in the schools.” [FN58]

It is what the Court did not address in its T.L.O. decision, however, that has caused substantial problems. Ever since, courts across the nation have been confused as to which standard applies when police officers, such as on-site school resource officers or officers acting on behalf of school authorities, conduct searches or seizures of students on school grounds. [FN59] Courts have had to determine whether police officers are to be considered as “school officials” and therefore allowed to conduct searches and seizures based upon the lesser standard of “reasonable suspicion.” [FN60] Accordingly, there are variations on the extent to which a police officer's pres-

ence is found in schools today. Larger schools usually have school resource officers who are employed on a full-time basis. [FN61] Smaller schools may use officers on a part-time basis or possess district-wide officers whose authority extends over all schools within that district. [FN62] Some schools do not have the official “presence” of a police officer ***381** at all, waiting instead for an incident to occur before contacting a local law enforcement agency. [FN63]

School resource officers and on-site security officers are assigned to public schools on a full-time basis and perform a variety of roles, including that of teacher, counselor, and law enforcement officer. [FN64] The functions performed by a school resource officer, however, are quite different than those performed by a traditional police officer. [FN65] This is because the school resource officer is considered to be a part of the school's “administrative team,” since he or she works with students on a daily basis. [FN66] The majority of courts have determined that school resource officers are “school officials” because they are not employed by an entity whose primary responsibility is law enforcement. [FN67] Therefore, in cases involving school resource officers, the majority of courts have held that the lesser standard of “reasonable suspicion” applies. [FN68]

The issue becomes complicated, however, when officers who do not work in a school on a full-time basis are involved, especially in cases where the police officer conducts questioning at a school official's urging. Courts have yet to address which standard applies to police officers in these situations. Instead, recent cases suggest that the officer's motivation in questioning the student and the extent of his or her relationship to the school is important to the determination of whether the officer is a “school official.” [FN69]

By the end of the twentieth century, a new Supreme Court decision, Vernonia School District 47J v. Acton, [FN70] seemed to signal the changes to come - particularly the restriction of students' Fourth Amendment freedoms. [FN71] In Vernonia, the school district required student athletes to submit to drug testing, for which the students' parents had to sign consent forms. [FN72] Respondents refused to sign the forms and filed suit on the grounds that the policy violated their Fourth and Fourteenth Amendment protections against unreasonable searches and seizures. [FN73] The Supreme Court held, however, that students are ***382** not entitled to full Fourth Amendment protections, concluding that the school's interest in preventing drug addiction among students outweighed student-athletes' expectation of privacy. [FN74] The Court reasoned that the nature of the State's power over schoolchildren is “custodial and tutelary, permitting a degree of supervision and control that could not be exercised over free adults.” [FN75] Further, the Court expanded T.L.O's “special needs” analysis, stating that “Fourth Amendment rights . . . are different in public schools than elsewhere; the ‘reasonableness' inquiry cannot disregard the schools' . . . responsibility for children.” [FN76]

Though the Court did not expressly rely on the theory of in loco parentis to support its holding, the philosophy of the doctrine certainly underlies the reasoning behind the Court's decision. [FN77] The Vernonia decision, still in its youth, has thus paved the way for future Fourth Amendment restrictions, particularly in the wake of Columbine and other tragic acts of school violence.

III. The Application of Miranda to Student Interrogations: Recent Case Analyses

As the sounds of gunfire and other acts of school violence continue to echo in the nation's mind, cases have already emerged addressing the issue of student interrogations at school, many of them relying upon the Supreme Court's “special needs” reasoning in T.L.O. and Vernonia. In Milligan v. City of Slidell, [FN78] the Fifth Circuit encountered a case involving the disciplinary questioning of students at school. [FN79] Defendant police officers called plaintiff students out of class for ten to fifteen minutes in order to question them about a rumored

after-school fight. [FN80] Through their parents, plaintiffs filed suit alleging violation of the Fourth Amendment's restraint on unreasonable seizures. [FN81] One student testified that he felt physically intimidated by the officer and did not feel free to leave the questioning. [FN82] The district court held that the rights of the students had been violated by the questioning, but the Fifth Circuit reversed, ***383** holding that a Vernonia analysis was appropriate and concluding that the school's actions were reasonable in light of its custodial responsibility for the students. [FN83]

In a recent Texas case, plaintiff students brought suit against the school district, alleging Fourth and Fourteenth Amendment violations for detention and questioning by police officers. [FN84] Fourteen students, including plaintiffs, were frisked, handcuffed, led out of school by police officers, and taken to the local municipal court without a warrant. [FN85] Once the students arrived at the municipal building, their parents were contacted. [FN86] After all parents had arrived, the police and the school's principal then lectured the students and their parents before allowing them all to leave. [FN87] Only one of the plaintiffs was even questioned by the police. [FN88]

The detention of the students occurred after school authorities found a threatening letter on school property. [FN89] Suspecting one of the plaintiffs was involved, the school had everyone with whom the student associated detained. [FN90] All of this transpired three days after the Columbine shootings. [FN91] Using Vernonia's reasonableness inquiry, the Texas court held that the school's interest in preventing possible violence (in light of the Columbine tragedy) outweighed the students' constitutional rights, given the nature and immediacy of the threat. [FN92] The Court did note, however, that less intrusive means should have been used to assemble the students, although the Fourth Amendment does not require that a search or seizure be conducted using the least restrictive means available. [FN93]

Finally, two other courts have recently held that school officials' seizures did not violate the Fourth Amendment rights of students and Miranda warnings were not required because the seizures were conducted by school officials and not law enforcement authorities. [FN94] In In re L.A., [FN95] the plaintiff was a sixteen-***384** year-old student suspected of marijuana possession. [FN96] The student was called to the office and questioned by the school security guard, who did not advise the student of his Miranda rights. [FN97] After contacting the student's mother and asking her permission to search the student, a small bottle of Valium and marijuana were found in his possession. [FN98] The student admitted the items were his. [FN99] At trial, the student contended that the statements should be suppressed because his Miranda rights had not been given to him by the school security guard. [FN100] The Supreme Court of Kansas rejected this notion, holding that because the school security officer was not employed by an entity whose primary responsibility was law enforcement, the officer was not required to give the student Miranda warnings. [FN101]

Similarly, in In re V.P., [FN102] a student was suspected by a school resource officer of possessing a weapon on school grounds. [FN103] After escorting the student to the office, the resource officer left the room while the assistant principal interrogated the student. [FN104] The student asked to speak with his mother and to contact a lawyer, but the assistant principal contacted neither at that time. [FN105] Eventually, the student admitted having a gun. [FN106] Immediately, the school resource officer returned to the room, handcuffed the student, and read him his Miranda rights before taking him to a juvenile center. [FN107]

The student alleged that he was in custody from the point he was taken into the office and questioned by the assistant principal, whom the student asserted was acting as the school resource officer's agent. [FN108] Therefore, the student argued, the assistant principal had violated his rights by not ceasing questioning when the stu-

dent asked to speak to his lawyer, [FN109] and thus, his confession and ***385** the gun could not be used as evidence against him. [FN110] The Court rejected this argument, holding that Miranda did not apply because the student had been questioned by a school official and not a law enforcement officer. [FN111]

It is evident from the cases discussed above that courts have been quite reluctant to extend the protections of Miranda to students in a school environment. There is, however, a distinct pattern in the majority of these recent decisions. That is, courts are asking whether the questioning was initiated and/or directed by a school official or an officer of the law. The distinction between the two authority figures, mentioned previously in this note, has become very important in the courts' decision-making process. Accordingly, the next section of this note discusses how future decisions addressing student interrogations may be affected by the differing legal responsibilities of school officials versus those of police officers.

Resolution

In its T.L.O. decision, the United States Supreme Court reiterated that school officials who carry out searches and other disciplinary functions act as representatives of the State and not as surrogates for parents. [FN112] Thus, school officials cannot claim parental immunity “from the strictures of the Fourth Amendment.” [FN113] However, the role of school officials in maintaining discipline has been found to be a “special needs” situation by the Supreme Court, thereby mandating a lesser standard of “reasonable suspicion” for searches and seizures made by school officials. [FN114] Lower courts have interpreted this to also mean that the questioning of students by a school principal or other school official does not require the reading of the student's Miranda rights. [FN115]

The halls of our nation's schools are no longer patrolled by educators alone. In light of recent school violence and increasing drug use, most schools today have on-site school resource officers, contracts with local law enforcement agencies to have a uniformed police officer patrol the halls on a part-time basis, or agreements by which an officer of the law is contacted immediately upon any ***386** discipline concerns. [FN116] With the pervasiveness of drugs and violence in schools, there is a fundamental assumption that matters criminal in nature should be handled by officers of the law, not school officials.

The involvement of police officers in school matters, however, brings up a multitude of constitutional dilemmas. First, a student suspected of committing a criminal act often needs to be questioned immediately in order to maintain the safety and security of the school population. This questioning is usually done by school officials who are likely to know the student personally, making it easier to obtain the necessary information. But what if this questioning is done by a part-time school resource officer or by an outside officer at the behest of a school official?

Second, the questioning itself may lead to further constitutional issues. The student might confess to a crime or consent to a search that reveals evidence of a crime. If these actions are the result of an interrogation conducted by a school official, there are no constitutional standards to apply. On the other hand, what if the student's actions result from a police officer's questioning?

Finally, if a student is being questioned by a police officer, do the same requirements that extend to juveniles outside of school apply to those who are in the school setting? Thus, does the school have the duty to contact the student's parents and obtain their permission before initiating questioning? Does the student have the right to remain silent or to contact an attorney before answering any questions?

Because of the increasing occurrences of violence and drug use in schools, there have been a number of recent cases dealing with these very issues. [FN117] It would seem that the almost epidemic proportions of such violence and drug use would lead our nation's courts to squarely address these questions and answer them conclusively. However, as courts have been unwilling to determine whether “probable cause” or “reasonable suspicion” should apply to police officers in a school setting, there is yet another issue they have avoided. That is, to what extent do the constitutional protections against self-incrimination, the right to an attorney, and due process of law apply to students in a school setting?

This note proposes that determining the extent by which the rights themselves should be given to students is not immediately necessary. However, ***387** the notification that these rights do exist, inherent in the concept and purpose of the Miranda doctrine, is imminently essential. We no longer live in our parents' world: our nation today is newly plagued by unspeakable school tragedies. Adapting to this changing world requires swift action by school officials and law enforcement agencies. Accordingly, the roles that these individuals play in keeping schools safe should never be underestimated or forsaken. Neither the immediacy of concern for safety, nor a history of tragedy, should dictate societal notions on personal freedoms.

The idealistic purpose of the Miranda decision was to advise the uninformed of their Fifth, Sixth, and Fourteenth Amendment rights. At this period in time, the members of our society who need to understand their Miranda rights most are our nation's children. This note maintains that students who are interrogated by police officers at school are within the realm of Miranda's primary purpose - to notify that silence is permitted to avoid self-incrimination, to remind that an attorney's presence is authorized, and most importantly, to inform that any statements can be used as prosecutorial evidence. Consider the following hypotheticals:

Facts:

Student is suspected of drug possession on school grounds. Student is called into the office by Principal. Since drug possession is a criminal offense, the involvement of law enforcement, whether on-site or on-call, is inevitable. Principal has no duty to read the student his or her rights at any time.

Scenario A:

Student is questioned at length by Principal about possessing the drugs. Student denies having the drugs, but acts suspicious. Because of Student's strange behavior, the Principal then has the appropriate reasonable suspicion to search the student. While Principal is conducting search, Student voluntarily confesses that he or she has drugs. Principal finds drugs on Student and contacts Police Officer. Police Officer has appropriate probable cause and arrests Student.

Would Miranda have assisted Student in this situation? No. Miranda's protections would not have aided Student because Principal solitarily performed the questioning, obtained the confession, and carried out the search and seizure. As set forth in T.L.O. and Vernonia, there is a “special needs” exemption for ***388** school officials acting in their official school capacities. [FN118] Since the requirements of Miranda can be carried out only by officers of the law, [FN119] the Principal has no duty to inform Student of his or her rights. Thus, the Principal's primary responsibility is to make sure that the seizure and the subsequent search were based upon reasonable suspicion.

Scenario B:

Principal contacts Police Officer, who is on contract with the school district as a part-time school resource officer, about his suspicions. Police Officer arrives at the school and, unaccompanied by Principal, questions Student based on Principal's reasonable suspicion and at Principal's request. Police Officer does not inform Student of his or her rights. Student confesses that drugs are in his or her backpack. Police Officer obtains the drugs from the backpack to use as evidence in a criminal proceeding against Student.

Would Miranda have assisted Student in this situation? Possibly. The officer acted at the Principal's behest and was not employed by the school on a full-time basis. Student's voluntary confession was incriminating because it led to the procurement of evidence that could be used against Student. If Student was "in custody" at the time of interrogation, and Student's Miranda rights were not read, the confession might be thrown out. [FN120] Also, had Student been informed of his or her rights, he or she might have decided to remain silent.

On the other hand, had the scenario described the officer as an on-site school resource officer, the answer would likely be different. A school resource officer working full-time in a school setting is usually considered as a "school official" and is therefore subject to the lesser standard of "reasonable suspicion." [FN121] Thus, so long as the seizure and resulting search were based upon reasonable suspicion, the confession and the evidence obtained would be admissible and Miranda would not come into play.

Scenario C:

Principal contacts Police Officer, who is on contract with the school district as a part-time school resource officer, about his suspicions. Police Officer arrives at the school and both he and Principal question Student, based upon ***389** Principal's reasonable suspicion. Police Officer does not inform Student of his or her rights. Student voluntarily answers their initial questions, but after revealing a self-incriminating fact, Student refuses to answer any more questions. Student then asks for his or her parents to be contacted, as well as the family's attorney. Principal and Police Officer refuse to contact the requested parties and threaten to suspend Student if he or she does not cooperate.

Would Miranda have assisted Student in this situation? Yes. Obviously this Student was aware of his or her rights regardless of whether Miranda's requirements had been met. If it can be shown that Student was subjected to "custodial interrogation," his or her refusal to answer further questions and the request for an attorney were indications of Student's intent to cease questioning. [FN122] Under Miranda, Principal and Police Officer would have been required to stop questioning student at that point. [FN123]

As the above scenarios show, the Miranda doctrine could be beneficial to the interests of students in interrogative situations. Simply asserting that students' interests are at the heart of Miranda's design, however, does not prove that Miranda applies to interrogations of students by police officers. In order for Miranda's requirements to be extended to students in such situations, it would have to be shown that students are "in custody" and that a police officer's questioning is "interrogative." [FN124]

As previously discussed, the Miranda doctrine applies to a "custodial interrogation," defined as "questioning initiated by law enforcement officers after a person has been taken into custody or otherwise deprived of his freedom of action in any significant way." [FN125] A person's susceptibility to a certain form of persuasion is part of this analysis, [FN126] as is his or her own perception as to whether he or she was "in custody." [FN127]

In cases involving the questioning of children, the test is whether a reasonable child in ***390** that position would have felt as if he or she were in custody. [FN128] If it can be shown that a reasonable child in that position would have felt that his or her "freedom of action" was deprived in "any significant way," [FN129] then the Miranda doctrine would apply.

The extension of the Miranda requirements to include student interrogations by police officers requires showing that school children are "in custody" when questioned by a police officer at school. School attendance is not a voluntary act. In fact, most states have compulsory attendance laws and truant statutes to ensure that children have no choice in obtaining an education, at least until the student reaches a certain age. [FN130] Further, a child's classroom, though an educational Mecca, also serves as his or her prison. A child cannot leave the classroom and roam about the halls as he or she pleases. Usually he or she cannot even go to the restroom without obtaining permission first. Thus, teachers and school officials play the role of prison warden, deciding who may come and go and where he or she may go. Such authority is provided by and supplemented by district discipline codes and state statutes. Accordingly, a child's movements are already somewhat diminished as soon as he or she passes through the schoolhouse gate.

The Supreme Court has reinforced this belief through its "special needs" exemption for schools. [FN131] Though the Court did extend Miranda's rights to juveniles in interrogative settings in In re Gault [FN132] and Gallegos, [FN133] the "special needs" loophole found in T.L.O. and Vernonia has served to restrict rights given to juvenile delinquents from crossing over into the local schoolyard. [FN134] And though the Supreme Court in Tinker and T.L.O. did chip away at some of the common law's in loco parentis doctrine, [FN135] the Court's "special needs" exemption shows that the philosophy behind the doctrine remains. That is, a school has the parental-like power to determine the "best" interests of its students.

Since a school's authority over its students can be clearly established, there must be a logical assumption that students then see the school, managed by school officials, as a "parental" figure of sorts. This makes sense, for even the ***391** most rebellious student sees "the school" as the overseeing entity against which he or she must retaliate. In addition, a student's actions are not entirely up to him or her. An announcement directing a student to come to the office is complied with; questions initiated by a teacher or other school official are answered; discipline imposed is accepted.

It is within this framework that a police officer enters the scene. Whether he or she works at the school on a full or part-time basis, there is a sense of accepted authority that resonates from those who wear a police officer's uniform. Even for adults, the mere sight of blue and red flashing lights on an interstate causes the unanimous braking of tires and collective sighs of relief at not being the driver caught speeding. Imagine the internal perception of a student being questioned by a police officer while at school. Is it realistic to believe that such a student would not feel that his or her "freedom of action" was deprived in "any significant way?" [FN136] How many students would feel that they could get up and walk out of the room while being questioned by a police officer? [FN137]

Even a student knowledgeable of his or her rights in such situations would not feel comfortable leaving. The student is already under the guided authority of the school once he or she enters its doors. When police questioning is then directed and sanctioned by the very authority the student has submitted to, any reasonable child in the student's position would feel as if he or she were in "custody" as defined by Miranda.

The second Miranda requirement is that the questioning be "interrogative." [FN138] In addition to the ask-

ing of questions, “interrogation” includes any words or actions on the officer's part that the officer should have known were reasonably likely to elicit an incriminating response that could be used at trial. [FN139] A suspect child's susceptibility to persuasion can also be taken into account when determining whether the questions were interrogative. [FN140]

It can be effectively argued that any questioning by a police officer in such a setting should be considered “interrogative.” This is because the student, rendered unable to leave the location of questioning out of fear, is already ***392** within the “custody” of the officer and school officials. He or she is then more than susceptible to the officer's persuasive inquiries. Especially in criminal matters involving students, most police officers do not enter the scene until the school official has met his or her “reasonable suspicion” standard. Therefore, it seems elementary to assume that the police officer's motivation from that point forward is to elicit an incriminating response and to gain incriminating evidence. To assume otherwise, is to believe that school officials can handle all disciplinary matters on their own and that a police officer's presence is futile. Since it can be shown that students are “in custody” as defined by Miranda and an officer's questioning constitutes an “interrogation,” the mandates of the Miranda doctrine should apply to the interrogations of students by police officers.

Conclusion

Miranda's objective intent was to educate citizens of their rights under the United States Constitution. This note does not suggest the extent by which the rights read under the Miranda doctrine should be extended to schoolchildren. Instead, it merely argues that students are the very individuals who could benefit from the doctrine's purpose the most. Unlike the juvenile setting, pupils are without the guidance of their parents or other guardians while at school. Though the school's primary responsibility is to its students, once safety and discipline are involved, the school and its law enforcement “arm” become the very entities accusing the child. As criminality increasingly seeps through the schoolhouse gate, these authorities cannot possibly play the role of guardian and accuser. Therefore, a student should be informed that he or she possesses certain rights, especially if what the student is about to say or do could be used to his or her disadvantage.

There are a number of ways in which school officials and their law enforcement partners can effectively balance school safety with students' rights:

If possible, the initial questioning of students should be performed solely by a school official. This alleviates any constitutional concerns from the beginning. Once the student has provided enough voluntary information to constitute probable cause, the duties of law enforcement can be enabled.

Extensive records, possibly even audio or video recordings, should be kept out of such questioning. If warranted, such records could be used in subsequent criminal proceedings.

***393** Whether the individual asking the questions is a school official or a police officer, there should be an attempt made to contact a student's parents and ask their permission before initiating questioning.

There may be situations in which an exception to the parental permission requirement is warranted. For example, having to obtain parental permission in cases involving an immediate safety concern could be detrimental or even deadly. Therefore, exceptions to the requirement should be laid out in the school's discipline handbook and a copy provided to all students and parents.

Finally, if parental permission cannot be obtained in situations not involving an immediate threat to safety, the school official or police officer should inform the student that he or she is not under arrest and questioning can cease at any time. A verbatim recitation of Miranda rights is not necessarily warranted, so long as the student understands that he or she is not required to answer all questions.

Collectively, the above suggestions would preserve the purpose of Miranda without compromising the responsibility of school officials to maintain safety and discipline within schools. It is understood that the maintenance of this responsibility is growing more difficult as violence and drug use plague the nation's schools. Accordingly, the presence of police officers within schools has become necessary and understandable. However, something would seem amiss in American jurisprudence if the traditional constitutional and civil standards placed upon police officers were curtailed simply because the officer stepped inside the schoolhouse gate. In fact, it makes inherent sense that school children, mandated to attend school, should be afforded the same protections received by juvenile delinquents in the criminal justice system. Unfortunately, such is not the case.

The simple recitation of Miranda rights may not benefit all students interrogated at school. At its heart, however, the doctrine serves as a gentle reminder that all citizens' rights stem from the Constitution. When faced with cases involving the interrogation of students by police officers, our nation's courts should also be reminded that the proverbial “schoolhouse gate” cannot be the boundary by which children's constitutional rights are examined. Inside or outside the schoolhouse gate, officers of the law should be held to the same constitutional limitations when interrogating children. Therefore, when questioned by police officers, regardless of the nature of the officer's relationship with the school, students should be informed of their basic rights as required by the Miranda doctrine.

[FN1]. See Columbine: A Year of Pain and Politics (CBS news broadcast, Nov. 27, 2001), available at http://www.cbsnews.com/now/story/0,1597,184065-412,00.html.

[FN2]. See id.

[FN3]. See, e.g., Milligan v. City of Slidell, 226 F.3d 652 (5th Cir. 2000). See also Stockton v. City of Freeport, 147 F. Supp. 2d 642 (S.D. Tex. 2001).

[FN4]. See Miranda v. Arizona, 384 U.S. 436 (1966).

[FN5]. See Milligan, 226 F.3d at 653. See also Stockton, 147 F. Supp. 2d at 647-48.

[FN6]. See, e.g., Miranda, 384 U.S. at 467-70.

[FN7]. See Fare v. Michael C., 442 U.S. 707, 717-18 (1979).

[FN8]. See New Jersey v. T.L.O., 469 U.S. 325, 340-41 (1985). See also Vernonia Sch. Dist. 47J v. Acton, 515 U.S. 646, 656 (1995).

[FN9]. 384 U.S. at 444-45.

[FN10]. Id.

[FN11]. See id. at 467.

[FN12]. See id. at 444-45.

[FN13]. Id. at 444.

[FN14]. According to the Miranda court, the defendant's request for an attorney at any stage of the interrogation is an indication that questioning must also cease until the defendant has the chance to consult with his or her attorney. See id. at 445. See also Edwards v. Arizona, 451 U.S. 477, 487 (1981) (holding that the use of defendant's confession against him violated his Fifth and Fourteenth Amendment rights because police continued questioning and obtained the confession after defendant had requested counsel).

[FN15]. See Miranda, 384 U.S. at 444-45.

[FN16]. See In re Gault, 387 U.S. 1, 55 (1967).

[FN17]. See id. at 41-42.

[FN18]. Id. at 55.

[FN19]. Gallegos v. Colorado, 370 U.S. 49, 54-55 (1962).

[FN20]. See id.

[FN21]. See Fare v. Michael C., 442 U.S. 707, 728 (1979).

[FN22]. See id. at 725.

[FN23]. Uniform Juvenile Court Act § 27(b) (1968).

[FN24]. See id. at § 27(b).

[FN25]. See N.Y. Fam. Ct. Act § 305.2(7). See also Ky. Rev. Stat. Ann. § 610.060 (Michie 1994); N.H. Rev. Stat. Ann. § 594:15 (2002).

[FN26]. See Miranda, 384 U.S. at 444-45.

[FN27]. Id. at 444.

[FN28]. See Rhode Island v. Innis, 446 U.S. 291, 301-02 (1980).

[FN29]. Id. at 302 n.8.

[FN30]. See Stansbury v. California, 511 U.S. 318, 325 (1994).

[FN31]. See Innis, 446 U.S. at 301.

[FN32]. See Stansbury, 511 U.S. at 325.

[FN33]. See id. (NOTE: The inquiry is the same for minors: i.e. would a reasonable child of the same age, experience, intelligence, etc. have believed that his or her freedom was curtailed to the point of custodial interrogation to require Miranda protection).

[FN34]. See Miranda, 384 U.S. at 478.

[FN35]. See Fare v. Michael C., 442 U.S. 707, 725 (1979).

[FN36]. See State v. Young, 552 P.2d 905 (Kan. 1976) (holding that a juvenile's request to call his father, prior to interrogation by custodial officers, did not per se constitute an assertion of his right against self-incrimination). See also Hayden v. Commonwealth, 563 S.W.2d 720, 722 (Ky. 1978), overruled in part on other grounds by Thompson v. Commonwealth, 50 S.W.3d 204 (Ky. 2001).

[FN37]. See 463 S.E.2d 193, 197-98 (N.C. 1995).

[FN38]. See id.

[FN39]. See id.

[FN40]. See State v. Farrell, 766 A.2d 1057 (N.H. 2001).

[FN41]. 974 S.W.2d 332, 346 (Tex. App. 1998).

[FN42]. See id.

[FN43]. See id.

[FN44]. See In re Ojore F., 176 Misc. 2d 796, 802 (N.Y. Fam. Ct. 1998).

[FN45]. See id.

[FN46]. Tinker v. Des Moines Indep. Cmty. Sch. Dist., 393 U.S. 503, 506 (1969) (holding that the First Amendment's freedom of speech applied to students in a school setting).

[FN47]. Merriam-Webster Dictionary 659 (New ed. 1994).

[FN48]. See Edward v. Rees, 883 F.2d 882, 884 (10th Cir. 1989). See also Stockton v. City of Freeport, 147 F. Supp. 2d 642, 647 (S.D. Tex. 2001).

[FN49]. See, e.g., Bethel Sch. Dist. v. Fraser, 478 U.S. 675, 684 (1986). See also Hoff v. Vacaville Unified Sch. Dist., 968 P.2d 522, 528 (Cal. 1998); Hallberg v. State, 1994 Fla. LEXIS 1961, at *8-9 (Fla. 1994); Casey Co. Bd. of Educ. v. Luster, 282 S.W.2d 333, 334 (Ky. 1955).

[FN50]. See Casey Co. Bd. Of Educ., 282 S.W.2d at 334.

[FN51]. See 393 U.S. at 504.

[FN52]. See id. at 506.

[FN53]. See New Jersey v. T.L.O., 469 U.S. 325, 327 (1985).

[FN54]. See id. at 333.

[FN55]. Id. at 340-41.

[FN56]. See id.

[FN57]. See id.

[FN58]. Id. at 341.

[FN59]. See Andrea G. Bough, Searches and Seizures in Schools: Should Reasonable Suspicion or Probable Cause Apply to School Resource/Liaison Officers?, 67 UMKC L. Rev. 543 (1999).

[FN60]. See id. at 546-47.

[FN61]. See id. at 545-47.

[FN62]. See id. at 548.

[FN63]. See id.

[FN64]. See id. at 545.

[FN65]. See id. at 547.

[FN66]. See id. 546-47.

[FN67]. For example, see In re L.A., 21 P.3d 952, 960-61 (Kan. 2001).

[FN68]. See Bough, supra note 59, at 555.

[FN69]. Id. at 555-56.

[FN70]. 515 U.S. at 648.

[FN71]. See id. at 664-65.

[FN72]. See id. at 650.

[FN73]. See id. at 651-52.

[FN74]. See id. at 660.

[FN75]. Id. at 655.

[FN76]. Id. at 656.

[FN77]. See id. at 655.

[FN78]. 226 F.3d 652, 653-54 (5th Cir. 2000)

[FN79]. See id. at 653.

[FN80]. See id.

[FN81]. See id.

[FN82]. See id.

[FN83]. See id. at 656.

[FN84]. See Stockton v. City of Freeport, 147 F. Supp. 2d 642, 645 (S.D. Tex. 2001).

[FN85]. See id. at 643.

[FN86]. See id. at 644.

[FN87]. See id.

[FN88]. See id.

[FN89]. See id.

[FN90]. See id.

[FN91]. See id.

[FN92]. See id. at 647-48.

[FN93]. See id. at 648.

[FN94]. See In re L.A., 21 P.3d 952, 961 (Kan. 2001). See also In re V.P., 55 S.W.3d 25, 32 (Tex. App. 2001).

[FN95]. 21 P.3d at 955.

[FN96]. See id.

[FN97]. See id.

[FN98]. See id. at 995-96.

[FN99]. See id. at 956.

[FN100]. See id. at 959.

[FN101]. See id. at 960-61.

[FN102]. In re V.P., 55 S.W.3d at 27 (Tex. App. 2001).

[FN103]. See id.

[FN104]. See id.

[FN105]. See id.

[FN106]. See id. at 28.

[FN107]. See id.

[FN108]. See id. at 32.

[FN109]. See id.

[FN110]. See id.

[FN111]. See id. at 33.

[FN112]. See 469 U.S. at 336.

[FN113]. Id. at 336-37.

[FN114]. See id. at 340-41. See also Vernonia Sch. Dist. 47J v. Acton, 515 U.S. 646, 656 (1995).

[FN115]. See, e.g., In re L.A., 21 P.3d 952, 960-61 (Kan. 2001).

[FN116]. See Bough, supra note 59, at 545-48.

[FN117]. See, e.g., In re L.A., 21 P.3d at 960-61. See also In re Randy G., 28 P.3d 239, 241 (Cal. 2001).

[FN118]. See T.L.O, 469 U.S. at 340-41. See also Vernonia, 515 U.S. at 653.

[FN119]. See 384 U.S. at 444.

[FN120]. See id. at 444-45.

[FN121]. See Bough, supra note 59, at 555.

[FN122]. See supra note 14 and accompanying text.

[FN123]. See supra note 14 and accompanying text.

[FN124]. See Miranda, 384 U.S. at 444-45.

[FN125]. Id. at 444 (emphasis added).

[FN126]. See Rhode Island v. Innis, 446 U.S. 291, 302 n.8 (1980).

[FN127]. See id. at 301.

[FN128]. See Stansbury v. California, 511 U.S. 318, 325 (1994).

[FN129]. See Miranda, 384 U.S. at 444.

[FN130]. See New Jersey v. T.L.O., 469 U.S. 325, 336 (1985). For an example of such a statute, see Ky. Rev. Stat. Ann § 159.010 (Michie 1994 & Supp 1998).

[FN131]. See T.L.O., 469 U.S. at 340-41. See also Vernonia Sch. Dist. 47J v. Acton, 515 U.S. 646, 653 (1995).

[FN132]. See In re Gault, 387 U.S. 1, 55 (1967).

[FN133]. See Gallegos v. Colorado, 370 U.S. 49, 55 (1962).

[FN134]. See T.L.O, 469 U.S. at 340-41. See also Vernonia, 515 U.S. at 653.

[FN135]. See Tinker v. Des Moines Indep. Cmty. Sch. Dist., 393 U.S. 503, 506 (1969) See also T.L.O., 469 U.S. at 336-37.

[FN136]. Miranda v. Arizona, 384 U.S. 436, 444 (1966).

[FN137]. For a thoughtful analysis of this issue, see the dissent by Chief Justice Larry Starcher of the West Virginia Supreme Court in In re James L.P., 516 S.E.2d 15, 29-30 (W. Va. 1999) (Starcher, J., dissenting).

[FN138]. See Miranda, 384 U.S. at 444.

[FN139]. See Rhode Island v. Innis, 446 U.S. 291, 301-02 (1980)(emphasis added).

[FN140]. See id. at 302 n.8.
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