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Custody of the Confined: Consideration of the School Setting in *J.D.B. v. North Carolina*, 131 S. Ct. 2394 (2011)

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Note*

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I. INTRODUCTION

The recent United States Supreme Court decision in *J.D.B. v. North Carolina*[1] illustrates the Court's continuing efforts to clarify when *Miranda* warnings are necessary. The *Miranda* framework requires courts to decide whether, under the circumstances of the interrogation, a reasonable person would have felt free to end the interrogation and leave.[2] This usual framework cannot properly be

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1. J.D.B. v. North Carolina, 131 S. Ct. 2394 (2011).
2. *Id.* at 2402.

applied to interrogations of suspects taking place in the K–12 school setting because a reasonable person in those circumstances would not feel free to leave even without the police presence. In this setting, where the suspect is already confined, a special rule is necessary. However, the Court in *J.D.B.* did not adopt such a rule because it brushed over the setting issue, focusing instead on the questions of whether and how to consider age in applying a reasonable person standard.

The Court framed the question to be decided as "whether the *Miranda* custody analysis includes consideration of a juvenile suspect's age."[3] Acknowledging the "commonsense reality" that youth will often feel more compelled to answer a police officer's questions than an adult in the same situation would,[4] the Court held a suspect's age is relevant to the custody analysis.[5] Although Justice Alito's vigorous dissent suggests the Court's decision portends a dramatic expansion of the current custody determination,[6] this Note argues that the decision to consider age is not a significant departure from prior holdings, and the Court missed the opportunity to address the need to alter the custody analysis for interrogations taking place in the school setting.

Part II first discusses the history of *Miranda* protections for juveniles leading up to the Court's decision in *J.D.B.*, then considers the relationship between the voluntariness frameworks of the Fourth[7] and Fifth[8] Amendments, and finally discusses Fourth Amendment cases in which the Court has held a special rule necessary because the suspect was confined independent of the police presence. Part III provides a brief discussion of consideration of youth in the law and argues that a special rule is needed for the Court to properly apply the custody analysis in the school setting. Finally, Part IV will speculate how cases like *J.D.B.* may turn out differently if trial courts apply a special rule that properly considers the setting.

II. BACKGROUND

A. Evolution of *Miranda* Protections for Juveniles

Prior to *Miranda v. Arizona*,[9] the Supreme Court evaluated admissibility of a suspect's confession under a "voluntariness" test, which had its roots in English and early American common law.[10] Eventually, this voluntariness requirement became closely tied to both the

3. *Id.* at 2401.
4. *Id.* at 2398–99.
5. *Id.* at 2399.
6. *Id.* at 2408 (Alito, J., dissenting).
7. U.S. CONST. amend. IV.
8. U.S. CONST. amend. V.
9. Miranda v. Arizona, 384 U.S. 436 (1966).
10. Dickerson v. United States, 530 U.S. 428, 433 (2000).

Self-Incrimination Clause[11] of the Fifth Amendment and the Due Process Clause[12] of the Fourteenth Amendment.[13] For several decades, prior to holding the Self-Incrimination Clause applicable to the states,[14] the Court focused on Due Process when deciding cases involving coerced confessions.[15] These cases eventually refined the test to "whether the defendant's will was overborne"[16] considering the totality of "all of the attendant circumstances,"[17] including both the characteristics of the accused and the details of the interrogation.[18]

Age was certainly considered under this "voluntariness" test. In *Haley v. Ohio*, the Court found the methods used in obtaining a juvenile suspect's confession violated his due process rights under the Fourteenth Amendment.[19] In arriving at its holding, the Court acknowledged: "That which would leave a man cold and unimpressed can overawe and overwhelm a lad in his early teens."[20]

Haley involved a fifteen-year-old boy accused of standing lookout while two friends robbed a candy store and shot the store owner.[21] The defendant was arrested in the middle of the night at his home, taken to the police station, and interrogated for hours on end without the opportunity to have counsel or a parent present.[22] The Court described the suspect as a "mere child—an easy victim of the law,"[23] and said, "[W]e cannot believe that a lad of tender years is a match for the police in such a contest. He needs counsel and support if he is not to become the victim first of fear, then of panic."[24] Eventually, after being shown confessions of the other youth involved, the boy confessed.[25] Before signing his typed confession, the boy was read a statement informing him of his constitutional rights, but the Supreme Court found this to be insufficient, suggesting that to find otherwise would be to assume "that a boy of fifteen, without aid of counsel, would have a full appreciation of that advice."[26]

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11. "No person shall . . . be compelled in any criminal case to be a witness against himself . . . ." U.S. CONST. amend. V.
12. "No state shall . . . deprive any person of life, liberty, or property, without due process of law . . . ." U.S. CONST. amend. XIV.
13. *See* Bram v. United States, 168 U.S. 532, 543 (1897); Brown v. Mississippi, 297 U.S. 278, 279 (1936).
14. *See* Malloy v. Hogan, 378 U.S. 1, 14 (1964).
15. *Dickerson*, 530 U.S. at 433–34.
16. Haynes v. Washington, 373 U.S. 503, 513 (1963).
17. *Id.*
18. *Dickerson*, 530 U.S. at 434.
19. Haley v. Ohio, 332 U.S. 596, 599 (1948).
20. *Id.*
21. *Id.* at 597.
22. *Id.* at 597–98.
23. *Id.* at 599.
24. *Id.* at 599–600.
25. *Id.* at 598.
26. *Id.* at 601.

The Court came to a similar decision when applying the voluntariness test in *Gallegos v. Colorado*.[27] *Gallegos* involved a fourteen-year-old's confession to assault and robbery resulting in the death of an elderly man.[28] The suspect was held in police custody for five days without access to a parent or counsel.[29] The State argued the boy had been told of his right to an attorney, but the Court was unmoved, stating, "[W]e deal with a person who is not equal to the police in knowledge and understanding of the consequences of the questions and answers being recorded and who is unable to know how to protect his own interests or how to get the benefits of his constitutional rights."[30]

Although these cases reflect the Court's enhanced concern about police intimidation in cases involving juvenile defendants, the age of the defendant was simply one factor in the "totality of the circumstances" considered in the Court's voluntariness analysis.[31] The same underlying concern about the need to protect individuals from potential violations of their Constitutional rights during police interrogations arose in cases involving adult suspects as well.[32]

The shift toward a focus on the Fifth Amendment began when the Court decided *Malloy v. Hogan*.[33] In *Malloy*, the Court held the Fourteenth Amendment guarantees witnesses' Fifth Amendment privilege against self-incrimination even in a state court proceeding.[34] A week after issuing its opinion in *Malloy*, the Court decided *Escobedo v. Illinois*, which held a suspect's confession inadmissible where he had not been informed of his rights to remain silent and to have an attorney present in violation of the Sixth Amendment.[35] The *Escobedo* decision caused a great deal of debate in the legal community, and the Court sought to clarify its holding when it decided *Miranda*.[36] *Miranda* involved an adult defendant suspected of kidnapping and rape who confessed after being picked out of a police lineup by his accuser.[37] The defendant was informed of some of his rights, but not specifically the right to have counsel present.[38]

27. Gallegos v. Colorado, 370 U.S. 49 (1962).
28. *Id.* at 49–50.
29. *Id.* at 50.
30. *Id.* at 54.
31. *See* Dickerson v. United States, 530 U.S. 428, 434 (2000).
32. *See, e.g.*, Brown v. Mississippi, 297 U.S. 278 (1936) (finding a violation of due process where a confession was obtained through brutality).
33. Malloy v. Hogan, 378 U.S. 1 (1964).
34. *Id.* at 6.
35. Escobedo v. Illinois, 378 U.S. 478 (1964). The dissenting Justices criticized the majority for interpreting the Sixth Amendment as "amend[ing] or supersed[ing]" the self-incrimination clause of the Fifth Amendment. *Id*. at 497 (White, J., dissenting).
36. Miranda v. Arizona, 384 U.S. 436, 441–42 (1966).
37. *See* State v. Miranda, 401 P.2d 721 (Ariz. 1965), *rev'd*, 384 U.S. 434 (1966).
38. *Id.*

In arriving at its *Miranda* decision, the Court reiterated the historically recognized principle that a custodial police interrogation is inherently coercive and therefore heightens the risk that a suspect's right against self-incrimination may be violated.[39] To protect against this risk, the Court provided the specific, infamous warnings for law enforcement agencies' use to ensure admissibility of suspect statements. The Court required: "Prior to any questioning, the person must be warned that he has a right to remain silent, that any statement he does make may be used as evidence against him, and that he has a right to the presence of an attorney, either retained or appointed."[40] These "procedural safeguards" were deemed necessary when a suspect is questioned after having been "taken into custody or otherwise deprived of his freedom of action in any significant way" and without them, the prosecution could not use any statements stemming from the interrogation.[41]

Since *Miranda*, the Supreme Court has decided numerous cases that clarify uncertainties related to *Miranda* warnings. One such issue considered by the Court is what is required for suspects to assert their *Miranda* rights.[42] Another major issue considered has been how to determine when *Miranda* warnings are required.[43] Within this question, the Court has considered what is relevant to the "circumstances" element of the inquiry.[44]

The Court had faced the issue of whether a suspect's youth should be considered in the *Miranda* analysis before its decision in *J.D.B.*, however, its ability to clarify the *Miranda* decision was limited by the standard of review in the case. *Yarborough v. Alvarado* involved a seventeen-year-old suspect brought to the police station to be inter-

39. *Miranda*, 384 U.S. at 439, 448.

40. *Id.* at 444.

41. *Id.*

42. *See* Berghuis v. Thompkins, 130 S. Ct. 2250, 2262 (2010) ("Where the prosecution shows that a *Miranda* warning was given and that it was understood by the accused, an accused's uncoerced statement establishes an implied waiver of the right to remain silent.").

43. *See* Oregon v. Mathiason, 429 U.S. 492, 495 (1977) ("*Miranda* warnings are required only where there has been such a restriction on a person's freedom as to render him 'in custody.'"); *see also* Thompson v. Keohane, 516 U.S. 99, 112 (1995) ("Two discrete inquiries are essential to the determination: first, what were the circumstances surrounding the interrogation; and second, given those circumstances, would a reasonable person have felt he or she was not at liberty to terminate the interrogation and leave."); California v. Beheler, 463 U.S. 1121, 1125 (1983) (quoting *Mathiason*, 429 U.S. at 495) ("the ultimate inquiry is simply whether there is a 'formal arrest or restraint on freedom of movement' of the degree associated with a formal arrest").

44. *See* Stansbury v. California, 511 U.S. 318, 319 (1994) ("[A]n officer's subjective and undisclosed view concerning whether the person being interrogated is a suspect is irrelevant to the assessment whether the person is in custody.").

viewed about a robbery-homicide.[45] Alvarado was taken to the station by his parents at law enforcement's request.[46] He was questioned for about two hours without being given the *Miranda* warnings and eventually confessed to assisting in the crime.[47] Alvarado thereafter filed a writ of habeas corpus.[48] The District Court held Alvarado had not been in custody for *Miranda* purposes, but the Court of Appeals reversed, suggesting the suspect was entitled to enhanced protections due to his youth.[49] Upon review, the Supreme Court acknowledged that "fairminded [sic] jurists could disagree over whether Alvarado was in custody,"[50] but pointed out that it had never specifically stated that age was relevant to the *Miranda* custody analysis.[51] It therefore held that "[t]he state court's failure to consider [defendant's] age and inexperience does not provide a proper basis for finding that the state court's decision was an unreasonable application of clearly established law."[52] The question of whether the suspect's age is relevant remained unanswered.

B. The Supreme Court's Decision in *J.D.B. v. North Carolina*

The Court's recent decision in *J.D.B.* does not conflict with its prior holding in *Alvarado*, because, as noted in the majority opinion, the standard of review applicable to *Alvarado* neither required nor permitted the Court to reach a conclusion about whether the lower court's decision not to consider age was correct.[53] *J.D.B.* allowed the court to address this issue head on, and that was the question on which the Court focused.

In *J.D.B.*, police stopped and questioned seventh-grader J.D.B. after seeing him near the site of two home break-ins.[54] Five days later, after the school resource officer reported that a camera matching one of the stolen items was in J.D.B.'s possession at school, an investigator went to the school.[55] The uniformed officer working at the school escorted thirteen-year-old J.D.B. from his social studies class to a closed-door conference room, where police and school administrators ques-

45. Yarborough v. Alvarado, 541 U.S. 652, 652 (2004).
46. *Id.*
47. *Id.*
48. *Id.*
49. Alvarado v. Hickman, 316 F.3d 841, 844 (9th Cir. 2002), *rev'd*, 541 U.S. 652 (2004).
50. *Avarado*, 541 U.S. at 653.
51. *Id.* at 666.
52. *Id.* at 654.
53. J.D.B. v. North Carolina, 131 S. Ct. 2394, 2405 (2011).
54. *Id.* at 2399.
55. *Id.*

tioned him for at least thirty minutes.[56] Neither the police nor the school officials told J.D.B. he was free to leave the room.[57] They did not read J.D.B. the Miranda warnings or give him the opportunity to call his guardian.[58] J.D.B. eventually confessed, after which the investigator informed him he could refuse to answer questions and was free to leave.[59] J.D.B. nodded that he understood and provided further details of the crimes, including a written statement.[60] When the bell rang, J.D.B. was allowed to take the bus home.[61] Two juvenile petitions were filed against J.D.B., alleging breaking and entering and larceny.[62]

J.D.B.'s attorney moved to suppress his statements and any evidence derived therefrom, arguing J.D.B. had been interrogated in a custodial setting without being afforded *Miranda* warnings and his statements were involuntary.[63] The trial court denied the motion and adjudicated J.D.B. delinquent.[64] The North Carolina Court of Appeals and Supreme Court affirmed, declining to find age relevant to the determination of whether J.D.B. was in police custody and holding that a reasonable person would not have believed herself to be in custody under the circumstances in which J.D.B. confessed.[65]

The United States Supreme Court granted certiorari to determine whether the *Miranda* custody analysis includes consideration of a juvenile suspect's age.[66] The Court reversed the state court and remanded to consider all relevant circumstances, including age, in determining whether J.D.B. was in custody when interrogated.[67] In its 5-to-4 opinion, the Court found it commonsense that "a reasonable child subjected to police questioning will sometimes feel pressured to submit when a reasonable adult would feel free to go."[68] It emphasized that the law should—and does, in other areas—reflect that reality.[69]

The Court specifically pointed out that its decision was not inconsistent with its prior holding in *Alvarado*, because the question in that case was whether the state court's analysis was "objectively unreasonable under the deferential standard of review set forth by the Antiter-

56. *Id.*
57. *Id.*
58. *Id.*
59. *Id.* at 2400.
60. *Id.*
61. *Id.*
62. *Id.*
63. *Id.*
64. *Id.*
65. *Id.*
66. *Id.* at 2401.
67. *Id.* at 2408.
68. *Id.* at 2403.
69. *Id.* at 2404.

rorism and Effective Death Penalty Act of 1996."[70] The Court further pointed out that Justice O'Connor's concurring opinion in *Alvarado* explained a suspect's age may be relevant to the custody inquiry.[71]

The Court dismissed the State's argument that considering age would make it difficult for police to determine when *Miranda* warnings were required. It argued that ignoring a juvenile's age, when known, would "make the inquiry more artificial . . . and thus only add confusion."[72] Emphasizing that it requires no "imaginative powers, knowledge of developmental psychology, training in cognitive science, or expertise in social and cultural anthropology to account for a child's age,"[73] the Court declared courts can acknowledge that children are different from adults without damaging the objective nature of the custody analysis.[74]

In his dissenting opinion, Justice Alito suggested the majority's decision would undermine the clarity that was so fundamental to the basis of the *Miranda* decision,[75] and unnecessarily expanded the custody analysis used by courts in applying it.[76] He emphasized that individual susceptibility to coercion has no place in a "one-size-fits-all reasonable-person test"[77] and questioned the arbitrary distinction between a suspect's age and other personal characteristics that influence his susceptibility to coercive pressures, such as intelligence, education, occupation, or experience with law enforcement.[78] In addition to arguing that the Court's "makeover" of *Miranda* was inappropriate, Justice Alito provides three reasons why it was unnecessary: many juvenile suspects are just shy of the age of majority; many of the difficulties in applying *Miranda* arose solely because the interrogation took place in a school setting; and a vulnerable defendant could always turn to the prohibition of actual coercion based on the Due Process Clause of the Fourteenth Amendment.[79]

Part III of this Note will argue that the Court's decision was not the radical departure from objectivity that Justice Alito claims, while agreeing with his assertion that the setting of the interrogation should have been the focus, rather than the defendant's age. First, however, it is necessary to discuss another area of the law, the history of which—though seemingly distinct—runs parallel to Fifth Amendment confession cases in many critical ways.

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70. *Id.* at 2405.
71. *Id.*
72. *Id.* at 2407.
73. *Id.*
74. *Id.* at 2403.
75. *Id.* at 2408.
76. *Id.* at 2412.
77. *Id.* at 2409.
78. *Id.*
79. *Id.*

C. Relationship Between Fourth and Fifth Amendment Frameworks

According to Timothy O'Neill, had *Miranda* been decided just a year or two later (after the Court had recognized that listening to a person's words could constitute a seizure in wiretapping cases) it likely would have been considered under a Fourth Amendment inquiry instead of the Fifth Amendment.[80] Even without accepting O'Neill's assertions that "*Miranda* is a Fourth Amendment case dressed up in Fifth Amendment clothes,"[81] and "interrogation is nothing less than an attempt to 'search' a person's mind,"[82] the similarities between cases decided under the two amendments are striking. Under the requirements of either amendment, where the police lack probable cause sufficient for warrant or a subpoena, they generally need a suspect's consent before obtaining evidence from him, and where the false authority of the police has coerced a suspect into cooperation, his consent is invalid.[83]

One way of looking at an interrogation as a type of search is by adopting the theory that a person has a reasonable expectation of privacy as to the thoughts in his head, just as he does over the items in his home.[84] Under O'Neill's justification of *Miranda*, before police interrogate a suspect in custody, they need to provide warnings so the suspect understands that, contrary to appearances, the police do not have the authority to force the suspect to give them information.[85]

Considering *Miranda* under the Fourth Amendment instead of, or in addition, to the Fifth Amendment is not difficult, in part because the custody analysis under *Miranda* is nearly identical to the framework faced by courts in questions of consent arising under Fourth Amendment protection against unreasonable searches and seizures. In *Schneckloth v. Bustamonte*, the Supreme Court held that when a suspect is not in custody, to avoid exclusion of the fruits of a warrantless search, the State must demonstrate that consent was voluntarily given and "not the result of duress or coercion, express or implied."[86] In arriving at its holding, the Court looked to the same Due Process, "voluntariness" body of case law which formed the basis for the *Miranda* holding.[87] The Court noted that determining "whether a defendant's will was overborne" in these cases required assessing the

80. Timothy P. O'Neill, *Rethinking* Miranda*: Custodial Interrogation as a Fourth Amendment Search and Seizure*, 37 U.C. DAVIS L. REV. 1109, 1116–17 (2004).
81. *Id.* at 1114.
82. *Id.*
83. *See id.* at 1114–15, 1124.
84. *Id.* at 1124–25.
85. *Id.*
86. Schneckloth v. Bustamonte, 412 U.S. 218, 248 (1973).
87. *Id.* at 223–27.

totality of the circumstances—both the characteristics of the accused and the details of the interrogation.[88] The Court declined to hold that *Miranda*-like warnings of the right to refuse consent to search were necessary,[89] pointing out that the *Miranda* Court had found custodial interrogations inherently coercive and this factor did not necessarily apply in a search-and-seizure case.[90] The Court noted that *Miranda* aimed to protect a defendant's right not to testify against himself at trial whereas the Fourth Amendment protects an individual's much broader privacy interest.[91] Aside from the requirement that police explicitly inform the suspect of her rights, cases involving a question of voluntariness (of either consent to a search or a confession) result in extraordinarily similar analyses by courts.

D. Courts' Handling of Cases Where the Suspect was Otherwise Confined

The similarity between Fourth Amendment consent to search cases and Fifth Amendment voluntariness of confession cases is relevant in part because the Supreme Court has frequently considered the issue of how to account for an already-custodial setting under the Fourth Amendment framework.

The Supreme Court has said that police officers can approach individuals at random in airport lobbies and other public places, and can question them and ask permission to search their luggage without violating the Fourth Amendment, so long as a reasonable person would understand that he or she could refuse to cooperate.[92] In *Florida v. Bostick*, two officers boarded the bus on which the defendant was a passenger while it was making a scheduled stop.[93] Although the officers lacked articulable suspicion, they questioned the defendant and asked to search his luggage.[94] The search uncovered illegal narcotics and, at trial, the Defendant moved to suppress the drugs as evidence, arguing it had been seized in violation of his Fourth Amendment rights.[95] The Florida Supreme Court held that the defendant had been seized because a reasonable passenger in his situation would not

88. *Id.* at 226.
89. *Id.* at 232.
90. *Id.* at 240.
91. *Id.* at 240, 242, 246–47.
92. *See* United States v. Mendenhall, 446 U.S. 544, 555 (1980) ("[N]othing in the record suggests that the respondent had any objective reason to believe that she was not free to end the conversation in the concourse and proceed on her way, and for that reason we conclude that the agents' initial approach to her was not a seizure.").
93. Florida v. Bostick, 501 U.S. 429, 431 (1991).
94. *Id.*
95. *Id.* at 432.

have felt free to leave the bus to avoid questioning by the police.[96] The state court therefore found that searches performed at random on buses during scheduled stops were categorically impermissible.[97]

In its review, the Supreme Court pointed out that had the facts of the case been slightly different—if defendant was approached while in the bus terminal, for example—it would not have amounted to a seizure under Fourth Amendment jurisprudence.[98] The Court acknowledged that the traditional seizure question of whether a reasonable person would have felt free to leave could not properly be applied under the circumstances of the case.[99] In addition to the physical confinement associated with being approached while seated on a bus, a passenger likely would not have wished to leave the bus and would have been stranded and forced to abandon his luggage if he had. As the Court put it, "He would not have felt free to leave the bus even if the police had not been present."[100] Suggesting it was necessary to consider the principle behind the "free to leave" language,[101] the Court found the case analytically indistinguishable from a prior case, *INS v. Delgado*.[102]

In *Delgado*, the practice in question was random visits by Immigration and Naturalization Service (INS) officers to factories to question employees about their citizenship.[103] Finding that the employees were not "detained" for purposes of the Fourth Amendment, the Court noted, "Ordinarily, when people are at work their freedom to move about has been meaningfully restricted, not by the actions of law enforcement officials, but by the workers' voluntary obligations to their employers."[104] The Court remanded *Bostick* to the lower court, holding in these types of circumstances, where the "free to leave" analysis is inapplicable, "the appropriate inquiry is whether a reasonable person would feel free to decline the officers' requests or otherwise terminate the encounter."[105]

The Fourth Amendment cases are illustrative, but difficulties with the "free to leave" analysis have arisen in *Miranda* cases as well. One notable setting in which courts found the analysis difficult to apply is when law enforcement questions an inmate of a prison or detention center. In *Mathis v. United States*, decided just two years after *Mi-*

96. Bostick v. State of Florida, 554 So. 2d 1153, 1157 (Fla. 1989), *rev'd*, 501 U.S. 429 (1991).
97. *Id.* at 1156.
98. *Bostick*, 501 U.S. at 434.
99. *Id.* at 436.
100. *Id.*
101. *Id.* at 435.
102. *Id.* at 436 (citing *INS v. Delgado*, 466 U.S. 210 (1984)).
103. *Delgado*, 466 U.S. at 212.
104. *Id.* at 218.
105. *Bostick*, 501 U.S. at 436.

randa, the Supreme Court held that prisoners subjected to interrogation were entitled to *Miranda* warnings regardless of the reason for their confinement.[106] The Court held that to apply *Miranda* only where the suspect is in custody in connection with the case being investigated would go "against the whole purpose of the Miranda decision."[107] The *Mathis* opinion has been called into question somewhat by another recent Supreme Court case, *Howes v. Fields*.[108]

In *Fields*, the Court of Appeals for the Sixth Circuit held that a prisoner was in custody for Miranda purposes when officers removed him from his cell, took him to a conference room, and questioned him for several hours about an alleged offense unrelated to the one for which he was serving time.[109] Officers repeatedly told the suspect he was free to go back to his cell if he did not wish to cooperate.[110] The defendant was interviewed about allegations of sexual contact between him and a minor.[111] Although the defendant did not ask for his attorney or for permission to go back to his cell, he repeatedly told officers he did not wish to speak to them any longer.[112] As the interview continued, the defendant eventually admitted to some contact.[113] The trial judge denied the defendant's motion to suppress his statements and convicted him of two counts of third-degree criminal sexual conduct.[114] The District Court granted the defendant's writ of habeas corpus, finding the state court had improperly applied *Mathis*.[115] The Court of Appeals affirmed.[116] The Supreme Court granted certiorari and reversed.[117]

The Supreme Court emphasized that it had "repeatedly declined to adopt any categorical rule with respect to whether the questioning of a prison inmate is custodial."[118] The Court suggested that a prison interrogation did not involve the coerciveness imagined by *Miranda* because: 1) a person already serving a prison term does not encounter the same shock associated with an arrest; 2) an inmate is unlikely to be lured into confessing by the longing for a quick release; and 3) an inmate knows that the officer questioning him lacks the authority to affect the duration of his sentence.[119] For those reasons, the Court

106. Mathis v. United States, 391 U.S. 1 (1968).
107. *Id.* at 4.
108. Howes v. Fields, 132 S. Ct. 1181 (2012).
109. Fields v. Howes, 617 F.3d 813 (6th Cir. 2010), *rev'd,* 132 S. Ct. 1181 (2012).
110. *Id.* at 815.
111. *Id.*
112. *Id.*
113. *Id.*
114. *Id.* at 815–16.
115. *Id.* at 815.
116. *Id.*
117. Howes v. Fields, 132 S. Ct. 1181, 1185 (2012).
118. *Id.* at 1187.
119. *Id.* at 1191.

held that imprisonment alone is not sufficient to constitute *Miranda* custody.[120] Although the Court acknowledged that Fields was "not free to leave the conference room,"[121] it nevertheless found that he had not been in custody for purposes of *Miranda*.[122] The Court focused on the totality of the circumstances, holding, "When a prisoner is questioned, the determination of custody should focus on all of the features of the interrogation. These include the language that is used in summoning the prisoner to the interview and the manner in which the interrogation is conducted."[123]

The bus, the workplace, and the prison share a key element: a suspect found in any one of these settings is subject to a sense of confinement independent of any police presence. The method by which courts have addressed this factor is remarkably similar regardless of whether the case raises the issue of consent to a search under the Fourth Amendment or voluntariness of a confession under the Fifth.

III. ANALYSIS

The Court's opinion in *J.D.B.* focused on the issue of the suspect's age, rather than the setting of the interrogation. Consideration of an actor's youth, while significant, is not novel or particularly helpful in circumstances such as those that surrounded J.D.B.'s interrogation. In focusing on this question, the Court missed a prime opportunity to adopt and apply a special rule for applying the custody analysis to interrogations that take place in the school setting.

A. Significance of Youth

Considering an actor's youth is not a new legal concept. As reflected in the majority opinion in *J.D.B.*, "[t]he law has historically reflected the . . . assumption that children characteristically lack the capacity to exercise mature judgment and possess only an incomplete ability to understand the world around them."[124] One way this assumption is reflected is in legal limitations that apply to youth. Minimum ages apply to a wide range of activities including the right to vote,[125] the ability to contract,[126] motor vehicle operation,[127] and alco-

120. *Id.*
121. *Id.* at 1193.
122. *Id.* at 1194.
123. *Id.* at 1192.
124. J.D.B. v. North Carolina, 131 S. Ct. 2394, 2403 (2011).
125. U.S. CONST. amend. XXVI, § 1 (right to vote for persons age eighteen or older).
126. *See, e.g.*, NEB. REV. STAT. § 43-2101 (Cum. Supp. 2012) (stating that a person over the age of eighteen may enter into a binding contract or lease).
127. *See, e.g.*, ALASKA STAT. § 28.15.057 (2004) (imposing restrictions on driver's license issued to a person under eighteen years of age).

hol consumption.[128] Additionally, several recent Supreme Court cases have demonstrated the Court's willingness to distinguish between adult and juvenile criminal suspects and offenders.[129]

The question of age likely arose in cases involving the *Miranda* custody analysis because it reflects a "reasonable person" standard. In many areas of the law, courts and scholars have grappled with proper application of the reasonable person standard, particularly where actors may reasonably interpret a situation differently because they possess some recognizable character trait that is beyond their control.[130] Youth is one such characteristic. It is one of the most widely recognized exceptions to the reasonable person standard in negligence law,[131] and the Court acknowledged this in its *J.D.B.* decision.[132] The dissent pointed out that the reasonable person standard in negligence law is a question for a jury and involves a *post hoc* determination.[133] The significance of this distinction is beyond the scope of this Note, but clearly both opinions acknowledged the prevalence of the youth dilemma in the law.

Though the differences between adults and youth are well-acknowledged, the law accommodates these realities with great inconsistency. As Tamar Birckhead suggests, "In some contexts within the

128. *See, e.g.*, ARIZ. REV. STAT. ANN. § 4-244(41) (2011) (West) (forbidding a person under twenty-one from having alcohol in their system).

129. *See, e.g.*, Graham v. Florida, 130 S. Ct. 2011 (2010) (holding the Eighth Amendment prohibits imposition of a life-without-parole sentence on a juvenile who did not commit homicide); Safford Unified Sch. Dist. #1 v. Redding, 129 S. Ct. 2633 (2009) (holding a thirteen-year-old student's age relevant in determining that her Fourth Amendment rights were violated when school officials strip-searched her on suspicion that she was hiding illicit prescription drugs).

130. *See, e.g.*, Kristin Harlow, *Applying the Reasonable Person Standard to Psychosis: How Tort Law Unfairly Burdens Adults with Mental Illness*, 68 OHIO ST. L.J. 1733 (2007) (discussing application of the reasonable person standard in negligence law to adults with mental illness); Debra A. Profio, Ellison v. Brady*: Finally, a Woman's Perspective*, 2 UCLA WOMEN'S L.J. 249, 250 (1992) (discussing use of a "reasonable woman standard" in sexual harassment cases); Colleen M. Samples, Recent Decision, *The Growing Trend Regarding the Doctrine of Informed Consent*, Harnish v. Children's Hospital Medical Center, *387 Mass. 152, 439 N.E.2d 240 (1982)*, 14 CUMB. L. REV. 237, 238 (1983–1984) (discussing the patient-oriented standard of disclosure defined as "what a reasonable person in similar circumstances would recognize as material information in making an informed decision whether they should give or withhold consent to a medical or surgical procedure").

131. In a negligence case involving a child actor, the majority of jurisdictions use the following standard of care: "a reasonable person of like age, intelligence, and experience under like circumstances." *See* RESTATEMENT (SECOND) OF TORTS § 283A (1965); RESTATEMENT (THIRD) OF TORTS: LIABILITY FOR PHYSICAL AND EMOTIONAL HARM § 10 (2010); Cleveland Rolling-Mill Co. v. Corrigan, 20 N.E. 466 (Ohio 1889).

132. J.D.B. v. North Carolina, 131 S. Ct. 2394, 2404 (2011).

133. *Id.* at 2416.

legal system, [juveniles] are considered to be vulnerable, incompetent, and needing of protection, while in others they are the equivalent of adults, requiring no such safeguards."[134] This inconsistency exists not only between different areas of the law, but also between jurisdictions. State statutory protections for juvenile suspects being questioned by law enforcement are one example of such a disparity.

In light of research arguing that reciting the *Miranda* warnings to juvenile suspects is not enough to protect the rights of juveniles because they are often incapable of fully comprehending the warnings,[135] some states have provided enhanced statutory protections for juvenile suspects. For example, in some states, police must notify the parent or guardian of an accused juvenile before questioning.[136] In some, a parent or an attorney must be present for questioning.[137] A few states require videotaping of interrogations.[138] Recognition of the vulnerability of juvenile suspects is also evident in a federal statute that requires a federal law enforcement agent taking a juvenile into custody to "immediately advise such juvenile of his legal rights, in language comprehensi[ble] to a juvenile, and . . . immediately notify . . . the juvenile's parents, guardian, or custodian."[139] The triggering age in statutes designed to provide additional protections for juvenile suspects varies by jurisdiction.[140]

Varying statutory protections, along with the permeation of youth-related issues throughout the law, demonstrate that the issue of how to address age is well-recognized, but muddled. The Court's opinion in *J.D.B.* suggested that treading through the muck—or adding to it—was the Court's agenda; however, as Justice Alito's dissent suggested, this approach was unnecessary. The circumstances of J.D.B.'s interro-

134. Tamar R. Birckhead, *The Age of the Child: Interrogating Juveniles After* Roper v. Simmons, 65 WASH. & LEE L. REV. 385, 450 (2008).

135. *See* Thomas Grisso, *Juveniles' Capacities to Waive* Miranda *Rights: An Empirical Analysis*, 68 CALIF. L. REV. 1134 (1980); Barry C. Feld, *Juveniles' Competence to Exercise* Miranda *Rights: An Empirical Study of Policy and Practice*, 91 MINN. L. REV. 26 (2006).

136. *See, e.g.*, KAN. STAT. ANN. § 38-2333(a) (West 2011) (requiring officers to contact the parent or attorney of a suspect under age fourteen when the juvenile is taken into custody and before the juvenile is interrogated).

137. *See, e.g.*, N.C. GEN. STAT. ANN. § 7B-2101(b) (West 2011) ("When the juvenile is less than 14 years of age, no in-custody admission or confession resulting from interrogation may be admitted into evidence unless the confession or admission was made in the presence of the juvenile's parent, guardian, custodian, or attorney.").

138. *See, e.g.*, WIS. STAT. ANN. § 938.195 (West 2011) (requiring an audio or audio and visual recording of the custodial interrogation of a juvenile).

139. 18 U.S.C. § 5033 (2006).

140. *Compare* N.C. GEN. STAT. ANN. § 7B-2101(b) (West 2011) (applying to juveniles under fourteen years of age) *with* COLO. REV. STAT. ANN. § 19-2-511 (West 2011) (applying to juveniles under eighteen years of age).

gation were troubling, but it is not the suspect's age which made them so—it is the setting in which the interrogation took place.

B. Inapplicability of the Traditional *Miranda* Custody Analysis

As Justice Alito's dissent points out, "The *Miranda* custody rule has always taken into account the setting in which the questioning occurs,"[141] yet the public school setting in *J.D.B.* was only briefly mentioned in the Court's decision. Responding to Justice Alito's suggestion in the dissent that consideration of age is unnecessary, in part because the same effect could be achieved by consideration of the circumstances of school interrogations, Justice Sotomayor pointed out that "the effect of the schoolhouse setting cannot be disentangled from the identity of the person questioned."[142] She noted that the "coercive effect of the schoolhouse setting" depends on whether the suspect is a minor—required to attend school and subject to disciplinary action for disobedience—or an adult visiting the school voluntarily.[143]

It seems arguable that age could, indeed, be separated from the context, so long as the voluntariness of the context was considered. In the prison context, for example, the Court has not felt it necessary to point out that questioning an individual visiting an inmate at a prison, or a delivery-driver bringing towels to the prison, would not likely result in the same analysis as where the questioning is directed toward a prisoner, yet the difference in the risk of coercion seems apparent. Regardless of whether consideration of age would be rendered irrelevant, adoption of a new rule for the school context is necessary for the same reasons as the rule adopted in Fourth Amendment cases involving confinement unrelated to the police presence: you cannot ask whether a suspect is made to not feel "free to leave" by police when the suspect already did not feel free to leave.

C. Applying a Special Rule to the School Setting

Although *J.D.B.* did not present a Fourth Amendment question, the circumstances are akin to those in *Bostick* and *Delgado* in that factors independent of the police presence prevented the defendant from feeling "free to leave." In *J.D.B.*, these external factors related to the school setting. Perhaps most obviously similar to the circumstances of *Bostick*, a middle school student who relies on bus transportation has no reasonable means of leaving the school building in the middle of the day. But the student is not only confined to the building. A reasonable youth, subject to school rules and their accompanying

141. J.D.B. v. North Carolina, 131 S. Ct. 2394, 2418 (Alito, J., dissenting).
142. *Id.* at 2405.
143. *Id.*

sanctions, as well as compulsory education laws,[144] would undoubtedly not feel free to leave any room at the school where he was specifically instructed to be.

Like in the Fourth Amendment cases, this sense of confinement is independent of the police presence, but is not the result of a voluntary decision to ride the bus like in *Bostick* or to work in a particular factory like in *Delgado*. Rather, the confinement is compelled by law independent of the law enforcement presence. In this sense, the confinement is similar to that experienced by persons in a detention facility or prison. A prisoner is certainly not at liberty to leave the building and, unless being told so, is probably not at liberty to walk out of a particular room at the facility either. While it may be a stretch to analogize the two settings too closely—and in fact, the Court has said it is "not yet ready to hold that the schools and the prisons need be equated"[145]—the "free to leave" analysis is equally inapplicable in either.

If a "free to terminate the encounter" test is applied to the context of a juvenile being questioned at a public school, the court should frequently find that the student did not have such liberty and a reasonable student would not perceive such a liberty. A student in a school is in an inherently subordinate position. Everything about the situation suggests to the student that he or she must comply, cooperate, and respect the authority of adults.

Additionally, while the school setting is similar to other confining settings like the bus and the workplace, a case involving interrogation in the school setting will often be distinguishable in a key aspect: neither Bostick's bus driver nor Delgado's employer were involved in the interrogation. In *J.D.B.*, the police investigator, school resource officer, and two school administrators were present, observing and participating in the suspect's questioning. This distinction is crucial because, had the bus driver or the employer taken an adverse role alongside police in the interrogation, the suspect would have been forced to choose between answering the questions and potentially giving up something of great value: a job or a necessary means of transportation.

When faced with the messy question of police interrogations that take place in schools, courts have tended to not consider school admin-

144. In Florida, education is compulsory from age six to age sixteen. FLA. STAT. ANN. § 1003.21 (West 2011). Education is compulsory in all states, however, the age range varies. *See Age range for compulsory school attendance and special education services, and policies on year-round schools and kindergarten programs, by state: Selected years, 1997 through 2008*, NATIONAL CENTER FOR EDUCATION STATISTICS, http://nces.ed.gov/programs/digest/d08/tables/dt08_165.asp (last visited Nov. 5, 2012).

145. New Jersey v. T.L.O., 469 U.S. 325, 339 (1985).

istrator involvement to weigh in favor of requiring *Miranda* warnings. In determining whether *Miranda* warnings are necessary, Peter Price described four categories of schoolhouse interrogations: (1) situations where school officials initiate the interrogation or police involvement is minimal; (2) situations where police or liaison officers are acting on their own authority; (3) situations where police officers initiate the interrogation; and (4) situations where school resource officers or outside officers are heavily involved at the behest of school officials.[146] Price describes the categorization as boiling down to two questions: who began the investigation and who conducted the investigation? Where school officials initiated or conducted the investigation, courts lean toward finding no obligation to give *Miranda* warnings. This trend follows case law based on other constitutional claims of students, which suggest the interest in maintaining a proper learning environment requires that school administrators be granted more leeway than other state actors.[147] However, in cases where administrators and law enforcement work together to elicit a confession from a student, it is precisely the act of collaboration which supports the necessity of a special rule.

While the investigator asked questions, the assistant principal encouraged J.D.B. to cooperate.[148] J.D.B.'s choice amounted to more than simply whether or not to cooperate with the investigator. He was forced to decide whether or not to obey school officials. Such circumstances amount to precisely the kind of duress that *Miranda* sought to avoid, and under this analysis, irrelevant of his age, J.D.B. was in custody for *Miranda* purposes and was entitled to be read his rights.

IV. CONCLUSION

At the heart of the Fifth Amendment's Self-Incrimination Clause and the Supreme Court's *Miranda* decision is the fundamental need to balance society's desire to prosecute criminals against the risks to individual rights inherent in police investigations.[149] Frequently, the

146. Peter Price, *When is a Police Officer an Officer of the Law?: The Status of Police Officers in Schools*, 99 J. CRIM. L. & CRIMINOLOGY 541, 550–51 (2008–2009).

147. *See* New Jersey v. T.L.O., 469 U.S. 325 (1985) (holding that the Fourth Amendment applies to searches conducted by school officials, and students have an expectation of privacy in school, but declaring the warrant and probable cause requirements inapplicable and finding reasonableness sufficient); Goss v. Lopez, 419 U.S. 565 (1975) (relaxing the notice and hearing requirements of the Due Process Clause for student disciplinary actions); Tinker v. Des Moines Indep. Cmty. Sch. Dist., 393 U.S. 503 (1969) (finding a student entitled to their First Amendment free speech rights except where school authorities reasonably anticipate a material and substantial disruption to the school's operation).

148. Brief for the State at 6, *In re* J.B., 644 S.E.2d 270 (N.C. Ct. App. 2008) (No. COA08-499), 2008 WL 4574765.

149. *See* Miranda v. Arizona, 384 U.S. 436, 445–61 (1966).

suspect's age will be less significant in determining the risk to constitutional rights than the setting of the interrogation. Had the Court adopted a bright-line rule in *Miranda* that required the warnings only when the suspect had been formally arrested, police would have been able to circumvent the law by interrogating suspects without first placing them under formal arrest. This concern demands a special rule that properly accounts for the already-confined nature of the public K–12 setting. Such a rule is necessary to prevent law enforcement from abusing the setting knowing that there exists a tendency to relax Constitutional obligations when the state actors are school officials. Rather than a "free to leave" analysis, suspects interrogated in a school setting should be informed of their *Miranda* rights unless a reasonable person would, under the circumstances, feel free to terminate the conversation and go about their normal activities.

In cases like *J.D.B.*, where school officials and law enforcement are collaborating in an interrogation of a student, and the interrogation is taking place in school, during school hours, courts should find that students are "in custody" for the purposes of *Miranda*, because a reasonable student would not feel free to terminate the conversation and ignore the requests of school officials. Under this rule, police would be required to advise students like J.D.B. of their *Miranda* rights before questioning. Where, as in *J.D.B.*, *Miranda* warnings were not given, the student's statements should be inadmissible in a subsequent prosecution. This approach is necessary to avoid the constitutional problem of putting students at heightened risk of coerced self-incrimination in violation of the Fifth Amendment.

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