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Removing *Miranda* from School Interrogations

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I. INTRODUCTION

In *Miranda v. Arizona*,[1] the United States Supreme Court held that statements obtained from suspects subjected to "custodial interrogation"[2] are inadmissible in criminal proceedings unless the interrogators issue warnings of the rights to remain silent and to have counsel present during interrogations.[3] The Court clarified that custodial interrogation can occur outside the police station. The Court declared: "Today, then, there can be no doubt that the Fifth Amendment privilege is available outside of criminal court proceedings and serves to protect persons in all settings in which their freedom of action is curtailed in any significant way from being compelled to incriminate themselves."[4]

One context "outside criminal court proceedings" that is particularly problematic is the school setting when juvenile students are questioned at school.[5] As will be shown, courts consistently hold that students are not in custody when questioned solely by school administrators. In such situations, students need not be read *Miranda* warnings, even when the fruits of such questioning are ultimately used in juvenile or criminal court proceedings.[6] It is a different story when questioning involves school resource officers (SROs) or police officers. Some courts find that students subjected to such interrogation are in custody and officers must give *Miranda* warnings. Other courts find the situation to be non-custodial.[7] One court described such inconsis-

1. 384 U.S. 436 (1966).
2. The Court concluded that custodial interrogation is "inherently coercive." *See infra* section II.C.
3. *Miranda*, 384 U.S. at 467.
4. *Id.*
5. *See generally* Paul Holland, *Schooling* Miranda*: Policing Interrogation in the Twenty-First Century Schoolhouse*, 52 LOY. L. REV. 39 (2006); cases discussed *infra* notes 81–94 and accompanying text.
6. Kerrin C. Wolf, *Assessing Students' Civil Rights Claims Against School Resource Officers*, 38 PACE L. REV. 215, 233 (2018); *see also infra* notes 88–89 (providing state cases where courts have held that students who are questioned by school administrators are not in custody for purposes of *Miranda*).
7. *See* Wolf, *supra* note 6, at 235–36; D.Z. v. State, 100 N.E.3d 246 (Ind. 2018).

tency as "messy,"[8] while a leading commentator observed that courts "issue rulings on custody which appear to be utterly irreconcilable."[9]

This Article attempts to provide resolution to the confused law governing school interrogations by arguing that students are not in custody for *Miranda* purposes when school administrators conduct interrogations or are present when SROs or police officers question students. This conclusion is justified by emerging social science evidence that *Miranda* warnings are largely ineffective in informing students of the substance of their rights. Even after being warned, students seldom assert their right to remain silent and routinely confess.[10] Thus, requiring *Miranda* warnings is largely an exercise in futility that, as will be shown, sometimes has the perverse result of excluding voluntary incriminating statements obtained through *Miranda* violations. Moreover, this Article argues that when school authorities participate in informing students of *Miranda* rights, the school is teaching students the morally questionable lesson that failing to be forthcoming in telling the truth is acceptable. Finally, it will be shown that school interrogations present a unique context justifying withholding *Miranda* applicability.

While participation by school authorities in interrogations should remove *Miranda* requirements, statements by unwarned students will not automatically be admissible in juvenile or criminal proceedings against the students. The traditional coerced confession doctrine will still apply,[11] rendering inadmissible any statement coerced under the totality of the circumstances.

This Article proceeds by discussing in Part II *Miranda* and its progeny defining the meaning of "custodial interrogation." Part III discusses the current case law addressing the applicability of *Miranda* to juveniles while at school. Part IV considers social science evidence identifying differences between juveniles and adults that demonstrates the ineffectiveness of *Miranda* warnings given to juveniles. Finally, Part V argues that school students are not considered in custody for *Miranda* purposes when school authorities participate in student interrogations. While such a conclusion requires the Supreme Court to rethink its decision in *J.D.B. v. North Carolina*,[12] this Article argues that overruling *J.D.B.* is at home with other existing Supreme Court case law.

8. B.A. v. State, 100 N.E.3d 225, 232 (Ind. 2018).
9. Paul Marcus, *The* Miranda *Custody Requirement and Juveniles*, 85 TENN. L. REV. 251, 287 (2017).
10. *See infra* Part IV.
11. *See infra* section II.A.
12. *See infra* notes 48–70 and accompanying text.

II. *MIRANDA* AND ITS PROGENY

A. Pre-*Miranda* Coerced Confession Doctrine

Until *Miranda* v. *Arizona*, states regulated police interrogations[13] entirely by due process principles that precluded governmental use of coerced confessions.[14] The due process doctrine embraced a subjective focus on the will of the suspect and denied the use of confessions that were "involuntary" in light of the "totality of the circumstances."[15]

The perceived inadequacy of the due process approach as the sole constitutional check on police interrogation is well documented.[16] The vagueness of the voluntariness standard left the police with little guidance in conducting interrogations so as to assure the admissibility of confessions resulting therefrom.[17] Such uncertainty resulted from the process of case-by-case judicial assessments of whether the particular suspect's will was overborne,[18] an issue hardly susceptible to objective

13. Confessions obtained from interrogations by federal authorities were subject early on to the rigors of the Fifth Amendment privilege against self-incrimination. Bram v. United States, 168 U.S. 532 (1897).

14. *See generally* WAYNE R. LAFAVE & JEROLD H. ISRAEL, CRIMINAL PROCEDURE 291–99 (2d ed. 1992) (discussing the pre-*Miranda* due process era).

15. *See, e.g.*, Culombe v. Connecticut, 367 U.S. 568, 620–21 (1961) (holding defendant's confession was not voluntary when defendant had a mental age of nine years and police detained and questioned defendant for four nights and five days); Fikes v. Alabama, 352 U.S. 191, 197–98 (1957) (reversing conviction on due process grounds because police questioned a defendant who was of "low mentality or mentally ill" over a two-week period while in custody).

16. *See, e.g.*, YALE KAMISAR, POLICE INTERROGATION AND CONFESSIONS: ESSAYS IN LAW AND POLICY 1–76 (1980) (arguing that the "voluntariness" test preceding *Miranda* was unworkable and ineffective); Joseph D. Grano, *Voluntariness, Free Will, and the Law of Confessions*, 65 VA. L. REV. 859 (1979) (defending a revitalized due process doctrine proposed as the sole basis for regulating police interrogations); Stephen J. Schulhofer, *Confessions and the Court*, 79 MICH. L. REV. 865, 867–78 (1981) (outlining six defects in the due process voluntariness test).

17. Schulhofer, *supra* note 16, at 869.

18. *Id.* at 869–70. Some commentators expressed the inadequacy of the voluntariness test in this way:

> Judicial decisions speak in terms of the "voluntariness" of a confession, but the term itself provides little guidance. To the extent "voluntariness" has made a determination of the state of an individual's will the crucial question, it has not assisted analysis. Except where a person is unconscious or drugged or otherwise lacks capacity for conscious choice, all incriminating statements—even those made under brutal treatment—are "voluntary" in the sense of representing a choice of alternatives. On the other hand, if "voluntariness" incorporates notions of "but-for" cause, the question should be whether the statement would have been made even absent inquiry or other official action. Under such a test, virtually no statement would be voluntary because very few people give incriminating statements in the absence of official action of some kind.

Paul M. Bator & James Vorenberg, *Arrest, Detention, Interrogation and the Right to Counsel: Basic Problems and Possible Legislative Solutions*, 66 COLUM. L. REV. 62, 72–73 (1966).

analysis.[19] Moreover, because station house interrogation had always been conducted in secret,[20] defendants routinely experienced difficulty recreating the interrogation process resulting in an inevitable "swearing contest" generally won by the police.[21] Such a police-dominated atmosphere creates the obvious risk of undue pressure being exerted upon suspects by zealous interrogators bent on solving crime. *Miranda* was the Supreme Court's black letter rule response to the shortcomings of the due process doctrine.

B. *Miranda v. Arizona*

Miranda v. Arizona considered the admissibility of statements obtained from suspects subjected to custodial police interrogation without the presence of counsel or warnings of constitutional rights. The Court held that admitting these statements would violate the suspect's Fifth Amendment right not to "be compelled in any criminal case to be a witness against himself."[22] The Court found that the atmosphere of custodial interrogation was inherently coercive[23] and thus "exacts a heavy toll on individual liberty and trades on the weakness of individuals" in inducing their confessions.[24] Therefore, "[u]nless adequate protective devices are employed to dispel the compulsion inherent in custodial surroundings, no statement obtained from the defendant can truly be the product of his free choice."[25]

The "protective devices" articulated by the Court are the now-famous warnings: informing suspects that they have a right to remain silent, that any statement they make may be used as evidence against them, and that they have a right to counsel during interrogation at State expense if they are indigent.[26] The Court found that without such warnings prior to interrogation, the privilege against self-incrimination, long cherished as a protection of defendants' rights in judicial proceedings,[27] degenerates into a "form of words" effectively overrid-

19. *See* Schulhofer, *supra* note 16, at 869–70. The flexibility of the due process test reduces certainty and predictability resulting in difficulty "for law enforcement officers to conform to, and for courts to apply [the test] in a consistent manner." J.D.B. v. North Carolina, 564 U.S. 261, 285 (2011) (Alito, J., dissenting) (quoting Dickerson v. United States, 530 U.S. 428, 444 (2002)).
20. KAMISAR, *supra* note 16, at 27–32.
21. YALE KAMISAR ET AL., MODERN CRIMINAL PROCEDURE 427 (7th ed. 1990).
22. U.S. CONST. amend. V.
23. Miranda v. Arizona, 384 U.S. 436, 467 (1966).
24. *Id.* at 455.
25. *Id.* at 458.
26. *Id.* at 444–45.
27. The Fifth Amendment is linked historically to the English struggle, as fought in the church courts and the Star Chamber, to obtain freedom of religion and of speech. Historically, the privilege was intended to bar pretrial examination by magistrates. *See generally* LEONARD W. LEVY, ORIGINS OF THE FIFTH AMENDMENT: THE RIGHT AGAINST SELF-INCRIMINATION (1968).

den by police practices aimed at inducing statements from suspects held incommunicado in the station house.[28] If this is true, central constitutional interests aimed at promoting government respect for human dignity, maintaining a "fair state-individual balance," and assuring an accusatorial system of criminal justice are compromised.[29]

While suspicious of police practices,[30] the *Miranda* Court did not prohibit station house interrogation as a legitimate law enforcement tool.[31] The police may still freely interrogate suspects so long as they provide adequate warnings. Any statement or confession obtained is admissible in evidence, provided suspects "knowingly and intelligently" waive their right to silence or to the presence of counsel during interrogation.[32]

C. "Custodial Interrogation"

In elaborating on the meaning of "custodial interrogation," the *Miranda* Court stated that suspects must be warned when "questioning [is] 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."[33] In subsequent cases, the Court made clear that custody is not limited to the police station but may include a suspect's bedroom,[34] her presence in a police car after apprehension,[35] or on-the-scene questions asked by an officer immediately after arrest.[36]

While location does not necessarily define whether interrogation is custodial, neither is the intention of the interrogator decisive. Rather, "the only relevant inquiry is how a reasonable man in the suspect's position would have understood his situation."[37] In *Illinois v. Perkins*,

28. *Miranda*, 384 U.S. at 444 (quoting Silverthorne Lumber Co. v. United States, 251 U.S. 385, 392 (1920)).
29. *Id.* at 460.
30. The *Miranda* Court extensively reviewed police manuals and other sources documenting interrogation practices and concluded that widespread police misconduct, or at least its risk, existed nationwide. *Id.* at 455–58.
31. *Id.* at 474–78.
32. *Id.* at 478–79. Voluntary confessions by persons not in police custody remain admissible. *Id.* at 477–78.
33. *Id.* at 444.
34. *See, e.g.*, Orozco v. Texas, 394 U.S. 324 (1969) (holding *Miranda* was applicable where four police officers entered suspect's bedroom at 4 a.m. to question the suspect about a shooting).
35. *See, e.g.*, Oregon v. Bradshaw, 462 U.S. 1039 (1983) (considering whether a suspect "initiated" a *Miranda* interrogation by asking police a question while police transported the suspect to jail in a squad car).
36. *See, e.g.*, New York v. Quarles, 467 U.S. 649, 657–59 (1984) (holding *Miranda* warnings inapplicable where the whereabouts of a gun were unknown and police questioned the suspect in a supermarket minutes after suspect's arrest).
37. Berkemer v. McCarty, 468 U.S. 420, 442 (1984) (holding that the roadside questioning by police of person stopped for a traffic offense is not custodial interrogation for *Miranda* purposes).

the Court made it clear suspects must have subjective awareness that police are subjecting them to custodial interrogation—holding *Miranda* warnings were not required when an undercover law enforcement officer, posing as a fellow inmate, interrogated an incarcerated suspect.[38]

The Court has offered a two-pronged definition of what constitutes "interrogation" for *Miranda* purposes. Express questioning qualifies as do "words or actions on the part of the police . . . that the police should know are reasonably likely to elicit an incriminating response from the suspect."[39] The definition of interrogation "focuses primarily upon the perceptions of the suspect, rather than the intent of the police" because the *Miranda* rules are meant to protect suspects from coercion "without regard to objective proof of the underlying intent of the police."[40]

III. *MIRANDA* AND JUVENILE INTERROGATION

In the context of the Fourth Amendment,[41] the Supreme Court has held that the Constitution protects school students against "unreasonable searches and seizures,"[42] although to a lesser extent than adults.[43] In light of the "special need" for school authorities to protect schools from such evils as weapons and drugs,[44] the Court relaxed the usual "probable cause" threshold for reasonable searches and seizures

38. 496 U.S. 292 (1990). The Court explained:

> Conversations between suspects and undercover agents do not implicate the concerns underlying *Miranda*. The essential ingredients of a "police-dominated atmosphere" and compulsion are not present when an incarcerated person speaks freely to someone whom he believes to be a fellow inmate. Coercion is determined from the perspective of the suspect. When a suspect considers himself in the company of cellmates and not officers, the coercive atmosphere is lacking. . . .
>
> It is the premise of *Miranda* that the danger of coercion results from the interaction of custody and official interrogation. . . . Questioning by captors, who appear to control the suspect's fate, may create mutually reinforcing pressures that the Court has assumed will weaken the suspect's will, but where a suspect does not know that he is conversing with a government agent, these pressures do not exist.

Id. at 296–97 (citations omitted).

39. Rhode Island v. Innis, 446 U.S. 291, 301 (1980) (footnote omitted).
40. *Id.*
41. U.S. CONST. amend. IV.
42. New Jersey v. T.L.O., 469 U.S. 325 (1985). For a discussion of *T.L.O.*, see generally Martin R. Gardner, *Student Privacy in the Wake of* T.L.O.*: An Appeal for an Individualized Suspicion Requirement for Valid Searches and Seizures in the Schools*, 22 GA. L. REV. 897 (1988).
43. *See* Martin R. Gardner, *The Fourth Amendment and the Public Schools: Observations on an Unsettled State of Search and Seizure Law*, 36 CRIM. L. BULL. 373, 378–80 (2000).
44. The *T.L.O.* Court identified a "major social problem" created by a recent plague of drug use and violent crime in the schools. *T.L.O.*, 469 U.S. at 339.

to a "reasonable suspicion" standard. This allows educators flexibility in performing their "custodial and tutelary" responsibilities over students.[45]

The applicability of the Fifth Amendment in the school is another matter. In the context of delinquency adjudications, the Supreme Court has held the Fifth Amendment privilege against self-incrimination and its attendant *Miranda* jurisprudence applicable to juveniles.[46] However, the Court has never decided a case addressing the applicability of *Miranda* in school interrogations conducted solely by school authorities.[47]

A. Supreme Court Cases

1. J.D.B. v. North Carolina

In *J.D.B. v. North Carolina*,[48] the Court addressed *Miranda* requirements in the context of school interrogations conducted by school authorities and police officers. J.D.B. was a thirteen-year-old student in seventh grade suspected of being involved in two home break-ins.[49] A police investigator (DiCostanzo) entered J.D.B.'s school and informed the school's uniformed police officer (the school's SRO) and two school administrators that he intended to question J.D.B. regarding the break-ins.[50] The SRO removed J.D.B. from class and escorted him to a school conference room occupied by DiCostanzo and the two administrators.[51]

DiCostanzo and one of the administrators participated in a thirty- to forty-five-minute interrogation.[52] DiCostanzo led the interrogation

45. Vernonia Sch. Dist. 47J v. Acton, 515 U.S. 646, 655 (1995) (describing the role of educators as "custodial and tutelary").

46. *In re* Gault, 387 U.S. 1, 55 (1967) (applying the privilege against self-incrimination to delinquency adjudications). "Since the *Gault* decision, virtually all of the courts that have passed on the question of the applicability of the *Miranda* safeguards to the juvenile process have concluded that the safeguards do apply." SAMUEL M. DAVIS, RIGHTS OF JUVENILES: THE JUVENILE JUSTICE SYSTEM 176 (2d ed. 2019). Prior to the *Miranda* and *Gault* decisions, the Supreme Court applied the due process voluntariness standard in assessing the admissibility of statements made by juveniles to the police. *See* Gallegos v. Colorado, 370 U.S. 49 (1962); Haley v. Ohio, 332 U.S. 596 (1948). The Court indicated that special attention be given to the age of the suspect when evaluating the voluntariness of statements given to the police by juveniles. *Haley*, 332 U.S. at 599–600.

47. Kristi North, *Recess is Over: Granting* Miranda *Rights to Students Interrogated Inside School Walls*, 62 EMORY L.J. 441, 443 (2012). As made clear by the text in section III.A., the Court has held *Miranda* applicable to school interrogations conducted by law enforcement agents with school officials present.

48. 564 U.S. 261 (2011).

49. *Id.* at 265.

50. *Id.*

51. *Id.* at 265–66.

52. *Id.* at 266.

and informed J.D.B. of the seriousness of the matter, telling him that even if he returned the stolen property "this thing is going to court" with the possibility that J.D.B. might be held in secure custody prior to adjudication if DiCostanzo believed he might commit further offenses.[53] The administrator said little apart from urging J.D.B. to "do the right thing," warning that "the truth always comes out in the end."[54]

J.D.B. confessed to involvement in the break-ins and the state court adjudicated J.D.B. as a delinquent.[55] Neither the police nor the SRO issued *Miranda* warnings prior to the confession.[56] Two lower courts, seeing the interrogation as non-custodial, affirmed the delinquency adjudication finding *Miranda* inapplicable.[57] The Supreme Court granted certiorari to determine whether the *Miranda* custody analysis requires consideration of a juvenile suspect's age.[58]

The Court ultimately held that courts and police must factor the age of a juvenile suspect into the custody determination. The Court observed that while any police interview has "coercive aspects to it,"[59] only those interrogations that occur while a suspect is in "police custody"[60] entail the "inherently compelling pressure" addressed in *Miranda*.[61] "[W]hether a suspect is 'in custody' is an objective inquiry . . . 'designed to give clear guidance to the police.'"[62] The inquiry focuses on the circumstances of the interrogation and whether "a reasonable person [would] have felt he or she was at liberty to terminate the interrogation and leave."[63] Thus, the subjective views of either the interrogator or the one being interrogated are irrelevant.

Juvenile interrogations raise special concerns. Drawing from social science recognized in earlier cases,[64] the *J.D.B.* Court reiterated that children are generally less mature and responsible than adults and are more vulnerable to outside pressures than adults.[65] The Court acknowledged empirical studies demonstrating a heightened risk of false confessions from youth,[66] concluding that police cannot compare

53. *Id.*
54. *Id.*
55. *Id.* at 268.
56. *Id.* at 266.
57. *Id.* at 268.
58. *Id.*
59. *Id*. (quoting Oregon v. Mathiason, 429 U.S. 492, 495 (1977)).
60. *Id*.
61. *Id.* at 269 (quoting Miranda v. Arizona, 384 U.S. 436, 467 (1966)).
62. *Id*. at 270–71 (quoting Yarborough v. Alvarado, 541 U.S. 652, 668 (2004)).
63. *Id.* at 270 (quoting Thompson v. Keohane, 516 U.S. 99, 112 (1995)).
64. *See, e.g.*, Graham v. Florida, 560 U.S. 48, 71–72 (2010); Roper v. Simmons, 543 U.S. 551, 569–70 (2005).
65. *J.D.B.*, 564 U.S. at 272.
66. *Id.* at 269.

juveniles to adults when being interrogated.[67] Thus, courts must take the age of the child into account, yielding a standard defined in terms of whether a reasonable child of that age would feel that they were in custody.[68]

The fact that J.D.B.'s interrogation took place in school did not necessarily render it non-custodial. The Court explained that "the effect of the schoolhouse setting cannot be disentangled from the identity of the person questioned. A student—whose presence at school is compulsory and whose disobedience at school is cause for disciplinary action—is in a far different position than . . . [others] on school grounds."[69] With these considerations in mind, the Court remanded to the state courts to determine whether J.D.B. was in custody when the police interrogated him.[70]

It is worth noting that the Court did not find that the police-dominated nature of J.D.B.'s interrogation necessarily rendered it custodial. The custody issue is not determined by who conducts the interrogation, but instead, by whether a reasonable person of the interrogated student's age would, under the totality of the circumstances, feel at liberty to leave the interrogation.

2. Fare v. Michael C.

Fare v. Michael C.[71] is not a school interrogation case, as it involves the interrogation of a sixteen-year-old suspect at a police station. However, the *Fare* Court's holding—that waivers of *Miranda* rights by juveniles are to be assessed by the same test as applied to adults[72]—has important implications for school interrogations.

Suspecting Michael of involvement in a murder, the police took him into custody and issued *Miranda* warnings.[73] Michael requested

67. *Id.* at 272–73.

68. *Id.* at 279. In an earlier case, *Yarborough v. Alvarado*, 541 U.S. 652 (2004), the Court addressed whether courts must consider a juvenile's age in deciding whether a young person is "in custody" for *Miranda* purposes. The Court rejected the lower court's conclusion that courts must account for the age and inexperience, where present, of particular juveniles questioned by police when deciding whether they were in custody for *Miranda* purposes. *Id.* at 667–68. Instead, the Court specified that the custody issue was an "objective" one satisfied when "a reasonable person would [feel] at liberty to leave," *id.* at 659, 664–65, without requiring courts in all cases to factor in the person's age or experience with the legal system in making custody determinations, *id.* at 667–68.

69. *J.D.B.*, 564 U.S. at 276.

70. *Id.* at 281.

71. 442 U.S. 707 (1979).

72. *See infra* notes 78–79 and accompanying text.

73. *Fare*, 442 U.S. at 710.

to see his probation officer.[74] The police denied the request and continued to interrogate Michael, who eventually confessed.[75]

The Supreme Court held that Michael's request to see his probation officer neither constituted an assertion of his right to remain silent nor his right to counsel.[76] The Court found that Michael had voluntarily waived his *Miranda* rights resulting in the admissibility of his confession.[77] In assessing the validity of the waiver, the Court afforded no special protections for juveniles waiving *Miranda* rights, holding that the test applicable to adults applied equally to juveniles. Waivers are valid if done "knowingly and intelligently" under the "totality of the circumstances," taking into account the age, experience, and intelligence of the juvenile.[78] The Court explained:

> There is no reason to assume that . . . courts—especially juvenile courts, with their special expertise in this area—will be unable to apply the totality-of-the-circumstances analysis so as to take into account those special concerns that are present when young persons, often with limited experience and education and with immature judgment, are involved.[79]

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74. *Id.*
75. *Id.* at 710–11.
76. *Id.* at 721–24.
77. *Id.* at 726.
78. *Id.* at 724–25.
79. *Id.* at 725. As the *Fare* case makes clear, juveniles are deemed capable of waiving *Miranda* without having a parent, a lawyer, or other interested adult present. On their own initiative, some states have added special protections for juveniles either through statute or state constitution. *See* DAVIS, *supra* note 46, at 198–208. A North Carolina statute is a representative example of a legislative response:

> (a) Any juvenile in custody must be advised prior to questioning:
>
> (1) That the juvenile has a right to remain silent;
>
> (2) That any statement the juvenile does make can be and may be used against the juvenile;
>
> (3) That the juvenile has a right to have a parent, guardian, or custodian present during questioning; and
>
> (4) That the juvenile has a right to consult with an attorney and that one will be appointed for the juvenile if the juvenile is not represented and wants representation.
>
> (b) When the juvenile is less than 16 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. If an attorney is not present, the parent, guardian, or custodian as well as the juvenile must be advised of the juvenile's rights as set out in subsection (a) of this section; however, a parent, guardian, or custodian may not waive any right on behalf of the juvenile.
>
> (c) If the juvenile indicates in any manner and at any stage of questioning pursuant to this section that the juvenile does not wish to be questioned further, the officer shall cease questioning.
>
> (d) Before admitting into evidence any statement resulting from custodial interrogation, the court shall find that the juvenile knowingly, willingly, and understandingly waived the juvenile's rights.

N.C. GEN. STAT. § 7B-2101 (2015).

The *J.D.B.* and *Fare* cases thus reveal two levels of totality-of-the-circumstances inquiry: (1) whether a suspect is in custody as a predicate for *Miranda* applicability, and (2) whether *Miranda* rights have been waived. The following discussion will reveal a largely incoherent body of case law demonstrating that lower courts inconsistently apply the totality of circumstances test in determining whether students are in *Miranda* custody when interrogated at school.

B. Lower Court Cases

1. Interrogations Solely by School Officials

As one commentator notes, "one can argue strongly that courts should consider a school official's questioning of a student about criminal misconduct to be 'custodial' interrogation, particularly when the student is questioned in the principal's office and feels that his or her freedom to leave at will has been curtailed."[80] The courts have, nevertheless, routinely rejected such arguments. *D.Z. v. State*[81] provides an example. Officials suspected seventeen-year-old student D.Z. of defacing the walls of a school restroom with sexual graffiti.[82] Assistant Principal Dowler accused D.Z. of the offense after calling D.Z. into his office for a closed-door discussion.[83] Without receiving *Miranda* warnings, D.Z. immediately responded to Dowler's accusation by confessing.[84] Dowler then relayed the confession to officer Flynn, a school SRO, who went into Dowler's office to talk to D.Z. who again con-

80. Robert J. Goodwin, *The Fifth Amendment in Public Schools: A Rationale for Its Application in Investigations and Disciplinary Proceedings*, 28 WM. & MARY L. REV. 683, 706 n.115 (1987). For a rare case finding custodial interrogation where a school official was the sole interrogator, see *State v. Heirtzler*, 789 A.2d 634 (N.H. 2001); *accord* D.Z. v. State, 96 N.E.3d 595, 602 (Ind. Ct. App. 2018), *vacated*, 100 N.E.3d 246 (Ind. 2018). In finding that a student, D.Z., was in custody when questioned by assistant principal, Dowler, the Indiana Court of Appeals observed:

> The assistant principal questioned D.Z. in his office with the door closed. No reasonable student would have believed that he was at liberty to leave the office—it is undeniable that juveniles are susceptible to the influence of authority figures and the constraining effect of being in a controlled setting of a school, where "disobedience [can be] cause for disciplinary action." As such, the circumstances of a school setting—where a refusal to comply with the request or command of school officials can have far-reaching consequences, including potential criminal charges—have become inherently more coercive recently than ever before in the past.

Id. (alteration in original) (citation omitted) (quoting J.D.B. v. North Carolina, 564 U.S. 261, 276 (2011)). The case overruling the court of appeals' opinion in *D.Z.* is discussed in subsection III.B.i.

81. 100 N.E.3d 246.
82. *Id.* at 247.
83. *Id.*
84. *Id.*

fessed.[85] The school suspended D.Z. for five days, and the court adjudicated D.Z. as a delinquent for committing criminal mischief.[86] At no point did D.Z. receive *Miranda* warnings.[87]

On appeal, D.Z. argued that the school and SRO subjected him to custodial interrogation without receiving *Miranda* warnings. The Indiana Supreme Court rejected D.Z.'s argument finding that "when school officials alone meet with students, a clear rule governs: *Miranda* warnings are not required."[88] When police officers are not present, this clear rule applies "unless school officials are acting as agents of the police."[89]

The court focused on the intent of the interrogation in finding that Dowler was not acting as a police agent. When Dowler shared D.Z.'s confession with Flynn, "the focus was not on criminal charges but on finding out who was doing the graffiti."[90] Nor did an agency relationship exist. Dowler's interrogation was not a "pretextual priming" for Flynn's subsequent law enforcement questioning.[91]

Relying on *Perkins*,[92] the *D.Z.* court speculated that even if Dowler had been acting as a police agent, the interrogation would have remained non-custodial if D.Z. was unaware of the agency relationship. Since *Miranda* custody and its attendant coercion "'is determined from the perspective of the suspect,' an agency relationship implicates *Miranda* only if the suspect is aware enough of the underlying police

85. *Id.*
86. *Id.*
87. *Id.*
88. *Id.*
89. *Id.* at 248 (citing B.A. v. State, 100 N.E.3d 225 (Ind. 2018)); *accord* People v. Pankhurst, 848 N.E.2d 628, 633–34 (Ill. App. Ct. 2006); State *ex rel.* A.J., 2014-0595 (La.App. 4 Cir. 10/1/14); 151 So. 3d 659, 667; Commonwealth v. Ira I., 791 N.E.2d 894, 901 (Mass. 2003). When determining whether a school official is acting as an "agent" of the police, one court observed:

> The term "agency" denotes a consensual relationship which exists between two persons or parties where one of them is acting for or on behalf of the other. "The law does not, however, presume an agency relationship." "The person alleging such a relationship has the burden of proving it." In determining whether this burden of proof has been satisfied, "courts must examine the entire record." Factors to consider in the analysis include whether the police were present during the interview; whether the police provided instructions to the interviewer on what questions to ask; whether the questions asked by the interviewer were "aimed at gaining information and evidence for a criminal prosecution" or were "related to some other goal"; and whether the defendant believed that he was speaking with a law-enforcement agent during the interview.

In re C.R.M., No. 03-14-00814-CV, 2016 WL 4272115, at *3 (Tex. App. Aug. 10, 2016) (footnotes omitted) (quoting Wilkerson v. State, 173 S.W.3d 521, 529–31 (Tex. Crim. App. 2005)).
90. *D.Z.*, 100 N.E.3d at 249.
91. *Id.*
92. 496 U.S. 292 (1990); *supra* note 38 and accompanying text.

involvement to create a 'coercive atmosphere.'"[93] A coercive atmosphere is absent when a "suspect 'speaks freely to someone whom he believes is not [a police] officer.'"[94] This was true of D.Z., who had no knowledge that Dowler had talked to Flynn.

Such reliance on *Perkins* is not totally convincing. The suspect in *Perkins* had no idea that he was speaking to a government official when he spoke with the undercover police officer posing as a fellow inmate.[95] On the other hand, when he spoke with Dowler, D.Z. clearly knew he was speaking to an authoritative figure with the power to discipline him. Arguably, D.Z. also knew that any incriminating statement made to Dowler would likely be turned over to the police.[96] It is difficult to see why the situation would be more "custodial" if Flynn rather than Dowler had interrogated D.Z. From a reasonable student's perspective, there is little reason to believe the student would feel more able and free to terminate the interrogation and leave the principal's office when the principal is the interrogator rather than an SRO.[97]

Nevertheless, the *D.Z.* court is correct in stating that the rule is clear: interrogations conducted solely by school officials are not custodial.[98] The courts resolve the cases simply by identifying the interro-

93. *D.Z.*, 100 N.E.3d at 249 (quoting *Perkins*, 496 U.S. at 292). For a case holding that an agency relationship between the police and school officials is sufficient to trigger the requirement to give *Miranda* warnings, even though a school official solely conducts an interrogation and the student is unaware that the official is acting as an agent of the police, see State v. Heirtzler, 789 A.2d 634 (N.H. 2001). In *Heirtzler*, the court observed:

> If school officials agree to take on the mantle of criminal investigation and enforcement, however, they assume an understanding of constitutional criminal law equal to that of a law enforcement officer. In such circumstances, even if school officials *claim* their actions fall within the ambit of their administrative authority, they should be charged with abiding by the constitutional protections required in criminal investigations.

Id. at 640.

94. *D.Z.*, 100 N.E.3d at 249 (quoting Ritchie v. State, 875 N.E.2d 706, 717 (Ind. 2007)).

95. *See supra* note 38 and accompanying text.

96. In the words of one court, "Even if there was evidence in the record that the school's policy was to *provide* information in its possession to the police, that alone is insufficient to transform school officials into agents of the police." Commonwealth v. Ira I., 791 N.E.2d 894, 901 (Mass. 2003). "[M]odern laws require the reporting of certain types of criminal activity to law enforcement." North, *supra* note 47, at 470.

97. *See supra* text accompanying notes 63, 69.

98. *See, e.g.*, *In re* V.P., 55 S.W.3d 25, 33 (Tex. App. 2001). In *In re V.P.*, the SRO removed the student from class, briefly questioned him, took him to an assistant principal's office, and left while the assistant principal questioned the student. The court stated: "Even assuming [the student] was in custody as he walked with [the SRO] from his classroom to [the] office . . . [the student] was no longer in custody as [the assistant principal] questioned him." *Id.*

gator. If there is no law enforcement involvement, then there is no custody and no *Miranda* applicability.

Educational policy concerns are reflected in the "clear rule." In performing their "custodial and tutelary" functions,[99] the Supreme Court has granted schools broad authority to take measures to assure a safe and orderly educational environment with minimal oversight from the courts.[100] As the court in *Commonwealth v. Ira I.*[101] put the matter:

> A trip to the principal's office for an interview is not a "formal arrest," nor does it suggest to the student that he or she faces such an arrest. It is unrealistic to expect school officials who are responsible for addressing student behavioral issues to refrain from investigating allegations of students' harming each other, and the mere fact that such officials are in positions of authority over students does not transform every interview of a student into a custodial interrogation.[102]

The *Ira I.* court based its decision on the fact that interrogations by school authorities are per se non-custodial. Nevertheless, the court, in dicta, outlined factors relevant in cases where SROs or police officers are involved in school interrogations.[103]

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99. *See supra* note 45 and accompanying text.

100. For discussion of limited Fourth Amendment protection of students, see generally Gardner, *supra* note 43. Similarly, in the First Amendment context, the Supreme Court has recognized that school students have minimal free speech rights. Bethel Sch. Dist. No. 403 v. Fraser, 478 U.S. 675 (1986) (holding that school could discipline student for giving sexually implicit speech during a school assembly). In discussing *Fraser*, a leading commentator observed: "It was appropriate for the school to disassociate itself from Fraser's actions by punishing him for the lewd speech. Significantly, the Court recognized that children in school have First Amendment rights, but indicated that these rights are less extensive than those of adults in public places." SAMUEL M. DAVIS, CHILDREN'S RIGHTS UNDER THE LAW 48 (2011).

101. 791 N.E.2d 894.

102. *Id.* at 902.

103. The court stated:

> In determining whether there was custodial interrogation we look at "how a reasonable person in the juvenile's position would have understood his situation." The court considers the following factors: where the interrogation took place; "whether the officers have conveyed to the person being questioned any belief or opinion that the person is a suspect"; the tone and nature of the questioning; and "whether, at the time the incriminating statement was made, the person was free to end the interview by leaving the locus of the interrogation or by asking the interrogator to leave, as evidenced by whether the interview terminated with an arrest."
>
> *Id.* (citations omitted) (first quoting Commonwealth v. A Juvenile, 521 N.E.2d 1368, 1370 (Mass. 1988); then quoting Commonwealth v. Brum, 777 N.E.2d 1238, 1246–47 (Mass. 2002)).

2. SRO Involvement in Interrogations by School Officials

While a clear rule exists for interrogations solely by school officials, involvement of SROs[104] results in a decidedly unclear picture across jurisdictions. Some courts find that SRO participation triggers the requirement to give *Miranda* warnings[105] while others, as will be shown, find interrogations to be non-custodial when SROs are involved.

a. Miranda *Warnings Required*

In *N.C. v. Commonwealth*,[106] the Kentucky Supreme Court addressed a situation where an assistant principal and the SRO took a student (N.C.) out of class to the assistant principal's office. After closing the office door, the assistant principal asked N.C. if he knew why they had brought N.C. to the office.[107] N.C. said he did not know.[108] The assistant principal informed N.C., with the SRO observing, that they had received information that N.C. had given away hydrocodone pills at school.[109] N.C. immediately confessed to distributing the pills.[110] The assistant principal then informed N.C. that he was subject to school discipline.[111]

104. SROs are certified law enforcement officers, usually employed by a school district, who serve under the direction of the school principal. *See* 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, 561–63 (2009) (providing a sample of jurisdictions declaring SROs as school employees). Some SROs are employed by law enforcement agencies and assigned by such agencies to a particular school on either a permanent or rotating basis. *See, e.g.*, N.C. v. Commonwealth, 396 S.W.3d 852, 867–68 (Ky. 2013) (Cunningham, J., dissenting). SROs can function in three roles: teacher, counselor, and law enforcement agent. Holland, *supra* note 5, at 74–75. Some schools embrace all three roles for their SROs, while in others, one role dominates. *Id.* at 75–76.

105. *See, e.g.*, B.A. v. State, 100 N.E.3d 225 (Ind. 2018) (finding *Miranda* applicable when three SROs were present while vice principal led fifteen-minute interrogation of thirteen-year-old student who confessed to making a bomb threat). In *B.A.*, the court found the situation to be "police overshadowed," as evidenced by officers being situated between the student and the door of the vice-principal's office where the interrogation took place. *Id.* at 233–34. Moreover, the officers were strangers to the student. *Id.* at 233. Finally, taking into consideration the Supreme Court's requirement in *J.D.B.*, that the age of the student be factored into the custody analysis, the *B.A.* court concluded: "The officers were aware, though, that B.A. was a young middle-schooler. So they knew that a reasonable person in B.A.'s shoes would be 'more vulnerable or susceptible to . . . outside pressures' than would adults or older teenagers." *Id.* at 233–34 (quoting J.D.B. v. North Carolina, 564 U.S. 261, 272 (2011)).

106. 396 S.W.3d 852.

107. *Id.* at 854.

108. *Id.*

109. *Id.*

110. *Id.*

111. *Id.*

After receiving the confession, the assistant principal asked N.C. how many pills he had brought to school.[112] When told that three pills were brought, the assistant principal left the office to attempt to secure the pills.[113] The SRO, armed with a gun and wearing clothing identifying him with the "Sheriff's Office," then informed N.C. that he would be charged with a crime.[114] N.C. was subsequently expelled from school.[115] He pled guilty in criminal court to possessing and dispensing a controlled substance, a class D felony, for which he was sentenced to forty-five days in jail and thirty hours of community service.[116]

The *N.C.* court concluded that N.C. had been subjected to custodial interrogation without receiving *Miranda* warnings, thereby rendering his confession inadmissible in the criminal court proceedings.[117] The court was concerned that the assistant principal and the SRO had a "loose routine" they followed when questioning students.[118] The assistant principal, with knowledge of "how the SRO operated in criminal investigations," would question the student.[119] If the assistant principal received a confession admitting commission of a crime, the SRO, who was passively observing, would then inform the student of future actions the SRO would take against him and issue a citation on the spot.[120] The fact that the assistant principal was acting "in concert" with the SRO was sufficient to characterize the situation as "law enforcement" questioning, bringing *Miranda* into play.[121] In applying the Supreme Court's *J.D.B.* rubric,[122] the court found the instant interrogation custodial, thus triggering the necessity for *Miranda* warnings:

> The facts of this case demonstrate that Appellant was in custody under the "all relevant factors" test set forth in *J.D.B.* He was taken from his classroom by a law enforcement officer, who was clearly identified as such, and who wore a gun. He was seated in the assistant principal's office, and the door was shut. The law enforcement officer sat down right beside him, across from the assistant principal. The assistant principal testified that he *expected* Appellant to stay put, which was no doubt conveyed by his demeanor.
>
> Neither the officer nor the assistant principal told N.C. that he was free to leave. . . . He was initially questioned by the assistant principal instead of the officer, thereby leading him to believe this was only a school discipline matter. . . .

112. *Id.*
113. *Id.*
114. *Id.*
115. *Id.*
116. *Id.* at 854–55.
117. *Id.* at 863–65.
118. *Id.* at 854.
119. *Id.*
120. *Id.* at 855.
121. *Id.* at 863.
122. *See supra* note 68 and accompanying text.

> . . . It was not until the questioning was over and the confession made that the law enforcement officer told N.C. that he was placing felony criminal charges against him.
>
> The assistant principal admitted that this was a process that he and the officer had done in tandem several times before.[123]
>
> . . . .
>
> . . . Because the assistant principal was acting in concert with the SRO, and they had established a process for cases involving interrogations of this kind, this conduct and the SRO's presence make this state action by law enforcement for *Miranda* purposes . . . even if the confession came in response to questions from the assistant principal rather than the SRO.[124]

The court granted that the assistant principal and the SRO carried out "a necessary function" in removing "a highly addictive narcotic" from the school.[125] "But when [N.C.] was questioned with more than school discipline in mind, there was a confluence of the student's rights and the needs of the school. This is more than mere school discipline situations which do not involve criminal activity."[126] The motive of the interrogator and the possible consequences of a confession emerging from the interrogation were thus the relevant, albeit inappropriate, factors the *N.C.* court used when determining the custody issue.[127]

While the SRO involvement in *N.C.* was virtually non-existent, other courts have found interrogations to be custodial when SROs played a more dominant role.[128] On the other hand, as discussed immediately below, courts have also found interrogations to be non-custodial where significant SRO participation occurred.

b. Miranda *Warnings Not Required*

A recent California case, *People v. Kay*,[129] presents an interesting contrast to the *N.C.* case. The school principal, Jordan, called a student, Kay, into his office for questioning, suspecting Kay was involved in an off-campus pellet gun shooting of two fellow students. Two other school administrators were present along with Officer Jenkins, a city police officer assigned as the school SRO who was in full police uniform with a duty belt that included a firearm.[130] Jordan sat at his desk with Kay seated facing him while Jenkins and the two other

123. *N.C.*, 396 S.W.3d at 862.
124. *Id.* at 863.
125. *Id.*
126. *Id.*
127. Such analysis is seriously at odds with *Miranda* doctrine, which defines custody in terms of the perceptions of a reasonable person in the suspect's situation, see *supra* notes 37–38, 63 and accompanying text, rather than in light of the intent or motives of the interrogators. The state of mind of the interrogator is decidedly irrelevant.
128. *See supra* note 105.
129. No. A145381, 2018 WL 636215 (Cal. Ct. App. Jan. 31, 2018).
130. *Id.* at *3–4.

school administrators sat at a table behind Kay.[131] Jordan began the interview by informing Kay that he (Jordan) believed Kay had shot the two students based on tips received from students.[132] Kay immediately admitted shooting the students.[133] Jordan requested a written statement to be used as evidence in possible future expulsion proceedings.[134] Jenkins then briefly questioned Kay, placed him under arrest, and handcuffed him.[135] With his confession used as evidence, the court subsequently convicted Kay of misdemeanor assault for "shooting a BB device in a grossly negligent manner."[136]

The court found that Kay had not been subjected to custodial interrogation, emphasizing that Jordan was not acting as Jenkins's agent even though Jenkins purposely remained passive during the interrogation in hopes of obtaining a confession which could be used in criminal proceedings.[137] Jenkins and Jordan had a prior understanding that Jordan would lead the interrogation. Jenkins told Jordan before the questioning that Jordan should "ask the questions and the questioning 'would be from the school, not from law enforcement.'"[138]

Notwithstanding the cooperation between Jordan and Jenkins, the court found that the school and the police were involved in "'parallel investigation[s]' . . . with the school interested in 'bringing normalcy back to the school' and the police interested in the 'criminal aspect of it.'"[139] As in the *N.C.* case above, the *Kay* court saw the motive of the interrogator and the possible consequences of the interrogation as the

131. *Id*. at *3.

132. *Id*. at *1.

133. *Id*.

134. *Id*.

135. *Id.*

136. *Id*. at *2.

137. *Id*. at *5. Prior to sitting in on the questioning of Kay, Jenkins had consulted with Detective Harpham, a fellow member of the police department. *Id.* at *4. The court explained:

> Detective Harpham testified [at Kay's trial] that he was the lead investigator on the shooting. Before Principal Jordan interviewed Kay about the shooting, Harpham told Officer Jenkins to "let the school do what they have to do" regarding questioning Kay. He told Jenkins "to be a fly on the wall" during the interview and "to only involve himself if there's a confession, only to involve himself then after . . . a *Miranda* [admonishment]."
>
> The defense attorney asked Harpham whether he believed a *Miranda* advisement would be required if Jenkins asked questions of Kay. He responded, "Yeah, clearly. I was uncomfortable with that—with that taking place, yes."

Id. (footnote omitted).

138. *Id*.

139. *Id.* at *6 (alternation in original).

relevant factors in determining whether or not the interrogation was custodial.[140]

c. Critique of the Agency Approach

The *N.C.* and *Kay* cases are indistinguishable. The "loose routine" establishing police/school agency in *N.C.* seems every bit as present in *Kay*, where the court found there was no such agency relationship.[141] Even if courts consistently identified the presence of school/police agency relationships, the focus on such is misguided, especially in cases like *N.C.* and *Kay*, where the courts are indifferent to whether or not the interrogated student is aware of the agency relationship.[142] If the student is unaware of a school/police agency relationship, this relationship cannot add to the coerciveness of the interrogation situation given that *Miranda* custody is determined from the perspective of the student.[143]

It is difficult to see why the interrogation necessarily becomes "custodial" if the student is aware that an interrogating school official is acting as an agent of the police. It would not be custodial if the student knows that the school official is acting independently of an SRO. The SRO will gain access to a confession in either case by being present during the student's interrogation, as evidenced in *N.C.* and *Kay*. The

140. In *In re* R.B.L., 776 S.E.2d 363 (N.C. Ct. App. 2015), the court determined whether a joint principal/SRO interrogation of a student sufficiently met the "law enforcement" requirement necessary to trigger *Miranda* applicability. As in the *D.Z.* and *Kay* cases, school officials dominated the interrogation, with the SRO merely observing and asking only a few questions. The court concluded:

> Although Richard [the student] emphasizes *voir dire* testimony from Principal Stephans about how school administrators are required to report drug offenses to the police and consequently SRO Hayes routinely assists in related investigations including questioning sessions, the record here clearly demonstrates that SRO Hayes was minimally involved in questioning Richard while Principal Stephans and Assistant Principal Nebrig took charge and focused on potential violations of school rules rather than collecting evidence for a criminal prosecution. We therefore conclude that . . . Richard was not in custody for *Miranda* purposes.

Id. at *8.

141. *See supra* note 118 and accompanying text.

142. For a definition of agency which considers whether students are aware that they are speaking to a law enforcement officer, see *supra* note 89. However, courts routinely decide cases on the basis of a police/school agency relationship without requiring that the interrogated student be aware of the agency. *See, e.g.*, People v. Pankhurst, 848 N.E.2d 628, 633–34 (Ill. App. Ct. 2006); State *ex rel.* A.J., 2014-0595 (La.App. 4 Cir. 10/1/14); 151 So. 3d 659, 667 ("there is no bright line rule for determining whether one is acting as an agent of law enforcement"). For a rare case recognizing student awareness of an agency relationship as relevant in determining whether or not an interrogation by a school official is custodial, see *In re* C.R.M., No. 03-14-00814-CV, 2016 WL 4272115, at *3 (Tex. App. Aug. 10, 2016).

143. *See supra* notes 92–93 and accompanying text.

situation is not different if the interviewing school official is an agent of the police and the student is aware of the agency. The interviewer is still the school official, a person likely familiar to the student. That the goal of the interrogation is to gather evidence of both a school rule and a criminal law violation would not necessarily add to the student's perception of whether or not she was in custody. After all, school officials are obligated to turn over incriminating evidence to the police when acting solely as school officials. A "reasonable student" may be aware of this obligation.[144] If so, the motivation of the interrogator to gather criminal evidence is irrelevant.[145]

The judicial focus on the presence or absence of an agency relationship between school officials and police is decidedly unhelpful and should be abandoned in determining custodial interrogation. The presence of school/police agency is the primary basis for those courts who find interrogations dominated by school officials to be custodial. Eliminating agency inquiries would mean that such interrogations are non-custodial, thus rendering *Miranda* inapplicable.

A possible objection to this conclusion is that it allows the police to purposely orchestrate school interrogations, as in *N.C.* and *Kay*, to obtain confessions without requiring *Miranda* warnings.[146] While such a situation may suggest inappropriate behavior contrary to the spirit of *Miranda,* it is in fact constitutionally permissible. The police use of an undercover agent in *Perkins* constituted an attempt to circumvent the requirement to give *Miranda* warnings to a suspect but was never-

144. *See supra* note 103.

145. As understood by at least some courts, *N.C.* and *Kay* for example, the presence of an agency relationship is defined by the motive behind the interrogation (school or law enforcement purposes) rather than the student's perception of custody. Such a view is praised by some, as evidenced by the following proposed test for determining the requirement for *Miranda* warnings when non-law enforcement interrogators question students:

> [W]hen non-law enforcement actors are collecting evidence with the intent to assist law enforcement, constitutional rights are implicated and constitutional warnings are necessary to prevent any violations of these rights. To help determine the intent of the actor, courts consider two factors: whether the evidence collected is turned over to police for criminal sanctions or only used for internal sanctions, and whether the actors had a general crime control motive when they acted (an ultimate or immediate goal analysis).

Eleftheria Keans, Note, *Student Interrogations by School Officials: Out with Agency Law and in with Constitutional Warnings*, 27 B.C. THIRD WORLD L.J. 375, 383 (2007) (citations omitted); *see also* Meg Penrose, *Miranda, Please Report to the Principal's Office*, 33 FORDHAM URB. L. J. 775, 785 (2006) ("Where the purpose of the interview, even remotely, is to elicit evidence intended for use in criminal proceedings, the dynamic of the exchange transforms immediately into a setting where the Fifth Amendment and its full protections should be afforded and honored.").

146. *See supra* note 137 and accompanying text.

theless permissible.[147] Similarly, in the context of waiver of *Miranda* rights, the United States Supreme Court has held it permissible for the police to purposely fail to inform a suspect being held in custody that a lawyer was seeking to consult him in order to increase the likelihood of obtaining a confession from the suspect.[148] The Court reasoned that "[e]vents occurring outside of the presence of the suspect and entirely unknown to him surely can have no bearing on the capacity to comprehend and knowingly relinquish a constitutional right."[149] By the same token, such events can have no bearing on whether a reasonable student would feel that they were in custody.

Eliminating *Miranda* from interrogations by school officials would not mean that all confessions given by students to a school official would necessarily be admissible. Confessions would still be required to be "voluntary" under traditional due process coerced confession doctrine with the age of the student being part of the totality-of-the-circumstances inquiry.

3. Interrogations Dominated by SROs with School Officials Present

There is little case law addressing situations where SROs conduct interrogations while school officials act as relatively passive observers. The few reported cases reflect the view that even though the student is aware that she is being interrogated by a law enforcement officer, often for purposes of investigating criminal activity, the interrogation is not necessarily custodial. Some cases require *Miranda* warnings while others do not depending on the perceived underlying coerciveness of the circumstances.

In *R.D.S. v. State*,[150] Vice Principal Brown and an SRO, Deputy Lambert, suspected a student, R.D.S., of possessing illegal drugs in his truck parked in the school parking lot.[151] Lambert and Brown found R.D.S. in the school commons area.[152] Lambert had decided to search R.D.S.'s truck and requested R.D.S. accompany her and Brown to the parking lot.[153] R.D.S. agreed, and while the three were walking to the parking lot, Lambert twice asked R.D.S. if there was anything

147. *See supra* note 38 and accompanying text.
148. Moran v. Burbine, 475 U.S. 412 (1986).
149. *Id.* at 422. In *Moran*, the police not only failed to inform the suspect of the lawyer's attempts to consult with him but also falsely told the lawyer that they would not be interrogating the suspect. *Id.* at 417. Although "highly inappropriate," such deception "could not possibly affect a suspect's decision to waive his *Miranda* rights unless he were at least aware of the incident." *Id.* at 423.
150. 245 S.W.3d 356 (Tenn. 2008).
151. *Id.* at 360.
152. *Id.*
153. *Id.*

in his truck that should not be there.[154] R.D.S. twice answered no.[155] Lambert opened the unlocked truck door and discovered a plastic bag containing marijuana.[156] Lambert asked R.D.S. where he had been that morning, and R.D.S. confessed to leaving school and smoking marijuana.[157] R.D.S. remained at school pending a special education hearing after which Lambert took R.D.S. to a juvenile detention center.[158] After failing to have his incriminating statements suppressed for want of *Miranda* warnings, the court found R.D.S. delinquent for violating drug laws.[159]

The Tennessee Supreme Court found that R.D.S. was not in custody when he made the incriminating statements, thus eliminating the need for *Miranda* warnings.[160] The court listed numerous factors relevant in determining the custody issue.[161] Ultimately, the court concluded that despite R.D.S.'s claim that Lambert had commanded him to accompany her to the parking lot, Lambert had merely requested that he go with her since it was his truck that would be searched.[162] Under such circumstances, "a reasonable person in [R.D.S.'s] circumstances would not have considered his freedom limited to the degree [necessary to constitute being held in custody]."[163]

In contrast to *R.D.S.*, a Florida court, in *State v. J.H.*, found *Miranda* warnings necessary.[164] An SRO informed the school dean of his suspicion that a student, J.H., possessed marijuana. The dean asked J.H. to step out of class whereupon the SRO "asked J.H. if he had anything improper on him."[165] In response, J.H. reached into his

154. *Id.*
155. *Id.*
156. *Id.* at 360–62.
157. *Id.* at 361.
158. *Id.*
159. *Id.*
160. *Id.*
161. The court considered a variety of factors, including the following:

> [T]he time and location of the interrogation; the duration and character of the questioning; the officer's tone of voice and general demeanor; the suspect's method of transportation to the place of questioning; the number of police officers present; any limitation on movement or other form of restraint imposed on the suspect during the interrogation; any interactions between the officer and the suspect, including the words spoken by the officer to the suspect, and the suspect's verbal or nonverbal responses; the extent to which the suspect is confronted with the law enforcement officer's suspicions of guilt or evidence of guilt; and finally, the extent to which the suspect is made aware that he or she is free to refrain from answering questions or to end the interview at will.

Id. at 364 (quoting State v. Anderson, 937 S.W.2d 851, 855 (Tenn. 1996)).
162. *Id.*
163. *Id.*
164. 898 So. 2d 240 (Fla. Dist. Ct. App. 2005).
165. *Id.* at 240.

pocket and handed the officer a quantity of marijuana.[166] In a subsequent delinquency proceeding, J.H. moved to suppress the marijuana as the fruit of a custodial interrogation without *Miranda* warnings.[167] The trial court agreed that J.H. had been subjected to custodial interrogation as did the *J.H.* court on appeal.[168]

There is little to distinguish the *R.D.S.* and *J.H.* cases. Why was J.H. in custody when asked a single question by a SRO in a school hallway, but R.D.S. was not in custody when a SRO twice asked him incriminating questions while walking to a parking lot?

4. Police Dominated Interrogations

It might appear that courts would readily find school interrogations dominated by local police (non-SROs) to be custodial given that the interrogation obviously concerns a law enforcement matter rather than a mere breach of a school rule. Reasonable students in such circumstances, whatever their age, would seemingly not feel "at liberty to terminate the interrogation and leave"[169] unless explicitly informed of such freedom. Yet in *J.D.B.*, where a local police officer not associated with the school caused the student to be taken from class to a conference room, the Court remanded the case for a lower court determination of custody.[170] The officer interrogated the student for up to forty-five minutes, informing him that the matter was "going to court" with the possibility of the student being held in pre-adjudication detention.[171] If such a situation is not custodial, it is hard to see what

166. *Id.*

167. *Id.*

168. *Id.* at 241. The *J.H.* court found, however, that even though the trial court "may well have been correct" in concluding that J.H. was in custody, the marijuana was nevertheless admissible as it "would have been discovered inevitably without interrogation." *Id.* Similarly, an Oregon court held that a junior high student was subjected to custodial interrogation when the school principal summoned the student to his office and a uniformed police officer questioned the student in the presence of the school official. *In re* Killitz, 651 P.2d 1382 (Or. Ct. App. 1982). The court based its custody conclusion on the fact that the interrogation took place at school where the student's "movements were controlled to a great extent by school personnel" and his interrogation was by a "uniformed police officer" who "did [nothing] to dispel the clear impression . . . that [the student] was not free to leave." *Id.* at 1383–84. Moreover, the student was aware that he was being questioned as a suspect of a crime and "[h]e would likely have been subject to the usual school disciplinary procedures had he not complied with the principal's request that he come to the office." *Id.* at 1384.

169. J.D.B. v. North Carolina, 564 U.S. 261, 270 (2011) (quoting Thompson v. Keohane, 516 U.S. 99, 112 (1995)).

170. *Id.* at 281.

171. *Id.* at 265–66.

would be custodial short of physically restraining the student from leaving the room.[172]

Unsurprisingly, some courts have found interrogations custodial where local police (non-SROs) interrogate students at school. In *State v. D.R.*, a plainclothes police officer, Detective Matney, interrogated fourteen-year-old student, D.R., in the principal's office, suspecting D.R. of committing incest with his sister.[173] Matney showed D.R. his badge but told the student he was not required to answer questions.[174] Matney then told D.R., "We know you've been havin' sexual intercourse with your sister."[175] D.R. subsequently confessed.

In finding that the confession should have been suppressed in D.R.'s eventual trial, the court noted: "We . . . conclude that D.R. was in custody, in light of Detective Matney's failure to inform him he was free to leave, D.R.'s youth, the naturally coercive nature of the school and principal's office environment for children of his age, and the obviously accusatory nature of the interrogation."[176]

As with the other scenarios discussed above, the courts in police dominated school interrogations reach seemingly inconsistent conclusions. It is puzzling that the student in *D.R.* was deemed to be in custody while J.D.B. was not, at least in the eyes of the lower courts deciding the case before it reached the Supreme Court.

There is little doubt that the case law deciding the custody issue in school interrogations is incoherent and manifests a failure of the *J.D.B.* Court's promise to provide an "objective custody test . . . 'designed to give clear guidance'" to those deciding whether or not *Miranda* warnings are required.[177] Given this chaotic situation, I will suggest a way forward in Part V. Any such recommendation should, however, be informed by the relevant social science addressing juve-

172. For a case of police dominated interrogation held not to be custodial, see State v. Polanco, 658 So. 2d 1123 (Fla. Dist. Ct. App. 1995). Two North Miami detectives in plain clothes requested school officials to bring student Polanco from class to a conference room for interrogation. *Id.* at 1123–24. With no school officials present, the detectives informed Polanco that they were conducting an investigation and that his name had come to their attention. *Id.* at 1125. The interrogation focused entirely on the question of Polanco's whereabouts on the night of the homicide they were investigating without informing Polanco of the nature of the investigation. *Id.* The *Polanco* court does not reveal the length of the interrogation, but it led to the detectives requesting that Polanco accompany them to a nearby police station where Polanco subsequently confessed to the murder. *Id.* at 1124. The court found "no basis on which to rule that [Polanco] was in custody for *Miranda* purposes during the school interview." *Id.* at 1125.

173. 930 P.2d 350, 351–52 (Wash. Ct. App. 1997).

174. *Id.*

175. *Id.* at 352.

176. *Id.* at 353.

177. J.D.B. v. North Carolina, 564 U.S. 261, 279 (2011) (quoting Yarborough v. Alvarado, 541 U.S. 652, 668 (2004)).

nile interrogations. The following section attends to the research in this area.

IV. SOCIAL SCIENCE AND JUVENILE INTERROGATIONS

As noted above in the discussion of the *J.D.B.* case, the Supreme Court has relied on empirical studies demonstrating ways that differences between young people and adults may impact juvenile interrogation law.[178] The discussion hereafter will pay special attention to a body of research specifically addressing the effectiveness of *Miranda* warnings when presented to young people as well as data identifying interrogations that create a risk of false confessions. It must be noted that the existing body of social science research does not address the dynamics of school interrogations. That context presents "virtually uncharted research territory."[179]

A. Neurological Differences Between Adolescents and Adults

Neuroscience researchers consistently find that adolescents make decisions differently than adults.[180] These differences are partly caused by developmental changes occurring during adolescence.[181] "During adolescence, the brain is not actually growing, but rather changing in subtle but important ways."[182] Sections of the brain mature at different rates which results in uneven functioning.[183] This means that parts of the brain may function at an adult level while other parts of the brain are not yet fully developed.[184] Notably, the frontal lobe, "which regulates decision-making, planning, judgement, and impulse control," is the last section of the brain to develop in the

178. *See supra* notes 64–68 and accompanying text.
179. Hayley M. D. Cleary, *Applying the Lessons of Developmental Psychology to the Study of Juvenile Interrogations: New Directions for Research, Policy, and Practice*, 23 PSYCHOL. PUB. POL'Y & L. 118, 125 (2017).
180. *See generally* Naomi E. S. Goldstein et al., *Waving Good-Bye to Waiver: A Developmental Argument Against Youths' Waiver of Miranda Rights*, 21 N.Y.U. J. LEGIS. & PUB. POL'Y 1, 18 (2018).
181. *Id.*
182. Thomas Grisso, *Adolescents' Decision Making: A Developmental Perspective on Constitutional Provisions in Delinquency Cases*, 32 NEW ENG. J. ON CRIM. & CIV. CONFINEMENT 3, 8 (2006) [hereinafter Grisso, *Adolescents' Decision Making*].
183. Lily N. Katz, *Tailoring Entrapment to the Adolescent Mind*, 18 U.C. DAVIS J. JUV. L. & POL'Y 94, 133 (2014).
184. *Id.* at 133–34. For a detailed description of juveniles' development, see Khushboo Shah, *What's in an Age? Consider the Neuroscience Dimension of Juvenile Law*, 26 S. CAL. INTERDISC. L.J. 167, 171–76 (2016) (noting the back to front development of the brain, specific neurological systems affected, and how juvenile thought processes and behaviors differ compared to those of fully-developed adults).

late teens.[185] These functions permit abstract reasoning, which is particularly important to comprehension of *Miranda* rights as later discussed.[186]

Dopamine production also significantly shifts during adolescence, causing risky behavior.[187] Adolescents are found to "value impulsivity, fun-seeking, and peer approval more than adults."[188] This finding is affirmed by the fact that incidents caused by risk-taking behavior, such as accidental drownings and driver deaths, most frequently occur during adolescence.[189] Cognitive abilities fully develop by approximately age sixteen, at which time adolescents become "quite capable of making mature, rational decisions."[190] However, psychosocial maturity continues to develop after age sixteen.[191]

The perception of a given risk, not solely the knowledge of the existence of the risk, is what differentiates adolescents from adults.[192] Some adolescents may be able to identify and weigh risks under normal daily conditions but most struggle with assessing risks when they are emotionally charged.[193] When adolescents are emotionally charged, they tend to focus less on negative consequences and more on potential rewards than do adults.[194] This is because neurological and chemical changes cause juveniles to be less future-oriented and focus on immediate rewards.[195] "[J]uveniles respond to situations 'more

185. Albert G. Mendoza, Comment, "*Do You Understand These Rights?" A Juvenile Perspective of* Miranda, 49 McGeorge L. Rev. 235, 244 (2017).

186. Sara Cressey, *Overawed and Overwhelmed: Juvenile* Miranda *Incomprehension*, 70 Me. L. Rev. 87, 98 (2017).

187. Mendoza, *supra* note 185.

188. Katz, *supra* note 183, at 134 (quoting Brief for American Psychological Ass'n and Missouri Psychological Ass'n as Amici Curiae Supporting Respondent at 7, Roper v. Simmons, 543 U.S. 551 (2005) (No. 03-633), 2004 WL 1636447, at 7).

189. Elizabeth Cauffman et al., *How Developmental Science Influences Juvenile Justice Reform*, 8 UC Irvine L. Rev. 21, 26 (2018).

190. *Id.* at 23.

191. Psychosocial maturity involves "more complex processes such as *responsibility* (e.g., susceptibility to peer influence), *perspective* (e.g., placing one's actions in the broader social and temporal contexts), and *temperance* (e.g., suppressing impulsive behavior and thinking before acting)." *Id.* Literature tends to define the key differences between adolescents and adults in the following areas: "how much they consider the consequences of their actions, how sensitive they are to rewards, how susceptible they are to peer influence, and how much they are able to regulate their impulsive behavior." *Id.* Thus, both a fourteen- or fifteen-year-old and an adult can identify risks—the difference is in how they weigh those risks. Grisso, *Adolescents' Decision Making*, *supra* note 182, at 9.

192. Grisso, *Adolescents' Decision Making*, *supra* note 182, at 9.

193. Goldstein et al., *supra* note 180, at 22.

194. *Id.* at 23–24.

195. Jennifer Alberts, *Interrogation of Juveniles: Are Parents the Best Defenders of Juveniles' Right to Remain Silent?*, 19 New Crim. L. Rev. 109, 112–13 (2016).

strongly with gut response than they do with evaluating the consequences of what they're doing.'"[196]

MRI studies verify that juveniles are less able to perceive emotional cues from others.[197] Researchers studying juvenile and adult interpretation of facial expressions found that all of the adult participants were able to identify the expression of fear.[198] However, many teenagers were unable to do so.[199] Teenagers relied on their limbic system instead of their prefrontal cortex in this exercise.[200] Thus, juveniles are likely to make poor decisions when peers are present, when the stakes are high, and when they must make a decision at that precise moment.[201]

B. *Miranda* Comprehension

Dr. Thomas Grisso published a study in 1980 on juveniles' capacities related to *Miranda* warnings.[202] Grisso found that juveniles have a weak understanding of their *Miranda* rights.[203] The study more specifically found that "younger age, lower intelligence, lower academic achievement, lower socioeconomic status, and greater interrogative suggestibility predict poorer *Miranda* comprehension, with large numbers of juveniles having inadequate comprehension of at least one right."[204]

While the degree of juvenile understanding may vary slightly from study to study depending on the variables and definitions, overall modern studies confirm Grisso's findings.[205] Grisso found that 33.2% of juveniles understood the key words used in *Miranda* warnings compared to 60.1% of adults.[206] Grisso also found that juveniles commonly misunderstood the word "interrogation" and believed they only had a right to an attorney during a hearing.[207]

196. *Id.* at 111 (quoting Adam Ortiz, *Adolescence, Brain Development and Legal Culpability*, A.B.A. JUV. JUST. CTR., Jan. 2004, at 2).
197. *Id.* at 111–12.
198. *Id.* at 111.
199. *Id.*
200. *Id.* at 112.
201. Cauffman et al., *supra* note 189, at 28–29.
202. Thomas Grisso, *Juveniles' Capacities to Waive* Miranda *Rights: An Empirical Analysis*, 68 CALIF. L. REV. 1134 (1980) [hereinafter Grisso, *Juveniles' Capacities*].
203. *Id.* at 1166.
204. Goldstein et al., *supra* note 180, at 31 (footnote omitted) (summarizing Grisso's findings that have prevailed over time). Among Grisso's findings are that: "88% of ten- and eleven-year-olds, 73% of twelve-year-olds, 65% of thirteen-year-olds, and 54% of fourteen-year-olds had inadequate comprehension of at least one *Miranda* right." *Id.* at 30 (citing Grisso, *Juveniles' Capacities*, *supra* note 202, at 1155).
205. *Id.* at 31.
206. Grisso, *Juveniles' Capacities*, *supra* note 202, at 1153–54.
207. *Id.*

Word comprehension is only the starting point for understanding *Miranda* rights.[208] Juveniles must be able to appreciate and apply the words to their current situation.[209] Grisso and other researchers have found that only 20.9% of juveniles adequately understand *Miranda* rights compared to 42.3% of adults.[210] Another study found that of children age twelve to nineteen, 94% had "less than adequate appreciation of the significance and consequences of waiving their rights."[211] Ninety-nine percent of those studied had a "less than adequate appreciation" of the implications of waiving their right to remain silent.[212] The following illustrates the comprehension issues:

> Many youths believe that "You have the right to remain silent" means "You have to remain silent," or "You can't talk until they tell you to." Many believe that "Anything you say can be used against you in a court of law" means that "If you swear you'll be in big trouble," or "You can't dis the cops." The notion of an adult (let alone a police officer) telling a youth that he doesn't have to talk to the adult simply does not connect with anything else most youths experience at home or in school in their interactions with adults. So they often translate these warnings into things that seem consistent to them regarding how authority figures typically would respond to children.[213]

Studies also call into question juveniles' ability to retain knowledge of their rights if they engage in ongoing questioning. Of those age thirteen to seventeen, only the most mature adolescents recall 50% of the warnings after one minute of receiving them.[214] Moreover, juveniles routinely have inaccurate beliefs about the justice system and the roles of police, attorneys, and judges.[215] Many juveniles have difficulty understanding that the police are not always on their side and believe police do not lie.[216] Juveniles also often believe attorneys are required to disclose all their conversations with the judge.[217]

It is worth noting that these studies are typically conducted in controlled situations, not the custodial interrogation setting; thus, it is likely that juveniles are even less capable of understanding their *Miranda* rights during an emotionally charged interrogation.[218] Further,

208. Cressey, *supra* note 186, at 99.
209. *Id.*
210. Grisso, *Juveniles' Capacities*, *supra* note 202, at 1153.
211. Goldstein et al., *supra* note 180, at 31 (citing NAOMI E. S. GOLDSTEIN ET AL, MIRANDA RIGHTS COMPREHENSION INSTRUMENTS (MRCI) 93 (2014) [hereinafter MRCI]).
212. *Id.* at 31–32 (citing MRCI, *supra* note 211, at 104).
213. Grisso, *Adolescents' Decision Making*, *supra* note 182, at 10.
214. Goldstein et al., *supra* note 180, at 33.
215. *E.g.*, Lauren Gottesman, *Protecting Juveniles' Rights to Remain Silent: Dangers of the* Thompkins *Rule and Recommendations for Reform*, 34 CARDOZO L. REV. 2031, 2053 (2013).
216. Goldstein et al., *supra* note 180, at 38, 40.
217. Cressey, *supra* note 186, at 100.
218. Mendoza, *supra* note 185, at 250.

there are up to 532 different versions of the *Miranda* warning.[219] Juveniles in jurisdictions with complex *Miranda* wordings are even less likely to grasp *Miranda* concepts.[220]

Those best equipped to reason through the *Miranda* warnings have the ability to imagine different possible scenarios that could occur if their *Miranda* rights are waived or not waived and understand the consequences.[221] Studies suggest "it may be physically impossible for adolescents to engage in counterfactual reasoning" and "foresee the possible consequences of their actions."[222] Overall, social science has proven that delinquent juveniles are unlikely to understand their *Miranda* rights when subject to a custodial interrogation.

C. Waiving *Miranda* Rights

For a variety of reasons, juveniles waive their *Miranda* rights more often than adults. Studies consistently show that over 90% of youths waive their rights compared to 60%–80% of adults.[223] Reasons for the high rate of juvenile waivers include the following: juveniles are taught to tell the truth and to respond to authority figures,[224] they lack an understanding or ability to invoke *Miranda* rights effectively, or they have less experience than adults with the justice system.[225]

Moreover, in an exhaustive study of sixteen- and seventeen-year-old youths interrogated in Minnesota for felony offenses, Barry Feld found that nearly 60% of the suspects confessed almost immediately. Feld wrote, "[I]nterrogations were surprisingly brief, most youths confessed or made admissions at the outset, and officers confronted youths with any evidence in only half (54.4 percent of) the cases."[226] Further, "[a] majority (58.6 percent) of juveniles confessed within a few minutes of waiving *Miranda* and did not require prompting by police."[227]

Feld's study confirms studies done in the U.K., which found confessions from juveniles were routinely obtained quickly with little if no police persuasion:

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219. Goldstein et al., *supra* note 180, at 34.
220. *Id.*
221. Cressey, *supra* note 186, at 98.
222. *Id.* (quoting Abigail A. Baird & Jonathan A. Fugelsang, *The Emergence of Consequential Thought: Evidence from Neuroscience*, *in* LAW AND THE BRAIN 245 (S. Zeki & O. Goodenough eds., 2006)).
223. *See e.g.*, Barry C. Feld, *Real Interrogation: What Actually Happens When Cops Question Kids*, 47 LAW & SOC'Y REV. 1, 12 (2013) [hereinafter Feld, *Real Interrogation*]; Mendoza, *supra* note 185, at 251.
224. *E.g.*, Gottesman, *supra* note 215, at 2062.
225. *E.g.*, Feld, *Real Interrogation*, *supra* note 223, at 11–12.
226. *Id.* at 15.
227. *Id.* at 17.

> Research on British interrogations of juveniles reported that "[i]nterviews tended to be very brief with the majority taking less than fifteen minutes (71.4 percent)." . . . Analyses of taped UK interrogations reported that "most were short and surprisingly amiable discussions" in which more than one-third of suspects confessed at the outset. . . . " [T]he confession rate was 58 percent, little interrogative pressure was applied, and very few suspects who initially denied guilt eventually confessed."[228]

D. Risk of False Confessions

There can be no doubt that false confessions are a blight on the legal system. "False confessions and wrongful convictions are undeniable failures of the criminal justice system and deserve the public and empirical attention they receive, for they cause irreparable harm to wrongfully accused individuals and their families."[229] Fortunately, current evidence suggests that only a "small but significant minority of innocent people confess under interrogation."[230] However, as observed by the Court in *J.D.B.*, data suggests a heightened risk of false confessions from youth.[231]

Juveniles are two to three times more likely than adults to falsely confess.[232] For the American population, false confessions cause approximately 14%–25% of all wrongful convictions.[233] This percentage increases to 44% for juveniles.[234] It further increases to 75% among the youngest juveniles ages twelve to fifteen.[235] A study conducted by Steven Drizin and Richard Leo on false confessions found that one-third of their study sample consisted of juveniles.[236] The majority of juvenile false confessors in the study were ages fourteen to seventeen,

228. *Id.* at 21 (citations omitted).
229. Cleary, *supra* note 179, at 118.
230. *Id.* (quoting Saul M. Kassin et al., *Police-Induced Confessions: Risk Factors and Recommendations*, 34 LAW & HUM. BEHAV. 3, 5 (2010)).
231. *See supra* note 66 and accompanying text. There is no way to tell how often false confessions occur or lead to wrongful convictions. Barry C. Feld, *Police Interrogation of Juveniles: An Empirical Study of Policy and Practice*, 97 J. CRIM. L. & CRIMINOLOGY 219, 241 (2006) [hereinafter Feld, *Police Interrogations*]. Through DNA testing, the Innocence Project has found that "more than 1 out of 4 people wrongfully convicted but later exonerated by DNA evidence made a false confession or incriminating statement." Hana M. Sahdev, *Juvenile Miranda Waivers and Wrongful Convictions*, 20 U. PA. J. CONST. L. 1211, 1215 (2018) (quoting *False Confessions & Recording of Custodial Interrogations*, INNOCENCE PROJECT, http://www.innocenceproject.org/causes/false-confessions-admissions/ [https://perma.unl.edu/8NA5-F8QW] (last visited Mar. 8, 2020)).
232. Ariel Spierer, *The Right to Remain a Child: The Impermissibility of the Reid Technique in Juvenile Interrogations*, 92 N.Y.U. L. REV. 1719, 1731 (2017).
233. Steven A. Drizin & Richard A. Leo, *The Problem of False Confessions in the Post-DNA World*, 82 N.C. L. REV. 891, 902 (2004).
234. Saul M. Kassin, *The Psychology of Confessions*, 4 ANN. REV. L. & SOC. SCI. 193, 204 (2008).
235. *Id.*
236. Drizin & Leo, *supra* note 233, at 944.

which is the age range at which many juveniles may be tried as adults.[237]

It is worth noting that the overwhelming majority, 81%, of false confessions identified in the Drizin and Leo study occurred in murder cases.[238] Presumably, murder cases are where police apply their most aggressive interrogation tactics.[239] The majority of the remaining false confessions occurred in the contexts of felony rape and arson.[240]

It is significant that the interrogations yielding false confessions were lengthy. Only 16% lasted less than six hours, and some lasted up

237. *Id.* Several reasons explain the disproportionate rate of false juvenile confessions. Both true and false confessions are generally the result of waiving *Miranda* rights. Juveniles are more likely than adults to waive *Miranda* rights because of the cognitive and developmental differences described above. *See infra* section IV.C. Juveniles frequently waive *Miranda* rights under the belief that doing so will allow them to "go home." Spierer, *supra* note 232, at 1742. Juveniles are also likely to comply with perceived requests from adult authority figures. *See* Christine S. Scott-Hayward, *Explaining Juvenile False Confessions: Adolescent Development and Police Interrogation*, 31 LAW & PSYCHOL. REV. 53, 66 (2007). As developmental psychologist Gerald Koocher stated: "Adults' interactions with children are often framed as requests, yet children are seldom fooled into thinking that they have a real option to decline. . . . [T]his does not suggest unfettered voluntariness in children's decision-making." Gerald P. Koocher, *Different Lenses: Psycho-Legal Perspectives on Children's Rights*, 16 NOVA L. REV. 711, 715 & n.14 (1992). After individuals waive their *Miranda* rights, they are open to the psychological pressures of interrogation—"coercive police practices during interrogations, relying on suggestions that something can be gained by confessing, and exposure to key details about a crime making a confession contaminated." Sahdev, *supra* note 231, at 1216–17. Factors consistently identified as contributing to police-induced false confessions of juveniles include: (1) prolonged questioning, (2) presence of authority figures, and (3) interrogation techniques used by the police. Feld, *Police Interrogations*, *supra* note 231, at 241–46.

238. Drizin & Leo, *supra* note 233, at 946.

239. False confessions are "inextricably linked to police interrogation procedures." Spieirer, *supra* note 232, at 1730 (quoting Allison D. Redlich & Gail S. Goodman, *Taking Responsibility for an Act Not Committed: The Influence of Age and Suggestibility*, 27 LAW & HUM. BEHAV. 141, 154 (2003)). Juveniles "have fewer life experience" and "psychological resources" to overcome pressures during interrogation. Feld, *Police Interrogations*, *supra* note 231, at 244. Further, evidence suggests that in extreme circumstances, an interrogation "may significantly alter children's memories of events" causing them to falsely confess. Scott-Hayward, *supra* note 237, at 67 (quoting Barbara Kaban & Ann E. Tobey, *When Police Question Children: Are Protections Adequate?*, 1 J. CTR. FOR CHILD & CTS. 151, 156 (1999)). Some false confessions are induced by police interrogators minimizing the seriousness of the crime leading the suspect to falsely confess in order to "go home." Kassin, *supra* note 234, at 202–03. Police routinely present false evidence during interrogations with juveniles who often lack the mental ability to challenge false evidence presented by an adult authority figure. *See* Sahdev, *supra* note 231, at 1222. Similarly, juveniles are more likely than adults to falsely confess when presented with false confessions from associates. *See* Drizin & Leo, *supra* note 233, at 974–75.

240. The second largest category of false confessions occurred in rape interrogations (9%) followed by arson (3%). Drizin & Leo, *supra* note 233, at 946–47.

to ninety-six hours.[241] Barry Feld found similar results in his study of false confessions by juveniles concluding that "[a]lmost all cases of proven false confessions involved lengthy interrogations."[242]

It is also relevant that authority figures are the interrogators of juveniles in false confessions cases. Children are taught to trust adults and respect law enforcement officers.[243] Because of this, juveniles try to provide the "right" response to obtain their interrogator's approval.[244] There is also a desire to avoid confrontation with authority figures.[245] Juveniles are aware of the power imbalance they have with authority figures, which can cause communication problems between them.[246] Studies confirm "juveniles are *extremely willing* to comply with authority figures" and are more easily "manipulated into confessing falsely."[247]

Finally, while most commentators believe that juveniles are more likely than adults to give false confessions, some suggest that juveniles are *less likely* to give false confessions than adults. Professor Allison Redlich observes:

> Because juveniles as a group are characterized as risk seekers, and perhaps because juveniles are less likely to appreciate that life is not always fair, it is possible that innocent juveniles (particularly younger ones) will be the least likely to accept plea offers [or presumably make false confessions] compared to guilty juveniles and compared to adults who are either innocent or guilty.
> . . . .
> . . . Though research has established that juveniles misjudged to be guilty are at risk for falsely confessing in the context of police interrogations, the research has also suggested that it is the *combination* of dispositional factors (i.e., young age) and situational factors (i.e., overly long interrogations and inappropriate interrogation techniques) that serve to increase the risk.[248]

All of the above research addresses police interrogations outside of the school context. How it informs school interrogations is not entirely

241. *Id.* at 948–49.
242. Feld, *Police Interrogations, supra* note 231, at 295. Feld observed that in a recent study finding 125 false confessions, "questioning lasted less than six hours in 16% of the cases, continued between six and twelve hours in one-third (34%) of cases, persisted for between twelve and twenty-four hours in another one-third of cases (39%), and continued from one to three days in the remaining 11% of the cases." *Id.* at 308. Lengthy interrogations lead to fatigue, which affects adolescent decision making. Cleary, *supra* note 179, at 121.
243. Spierer, *supra* note 232, at 1741.
244. *Id.*
245. Kassin, *supra* note 234, at 203.
246. Cleary, *supra* note 179, at 122.
247. Spierer, *supra* note 232, at 1741 (quoting Laurel LaMontagne, *Children Under Pressure: The Problem of Juvenile False Confessions and Potential Solutions*, 41 W. ST. U. L. REV. 29, 38–39 (2013)).
248. Allison D. Redlich, *The Susceptibility of Juveniles to False Confessions and False Guilty Pleas*, 62 RUTGERS L. REV. 943, 954–56 (2010) (citations omitted). Professor Redlich equates the issues of false confessions and false guilty pleas. *Id.* at 944.

clear. It seems safe to assume that false confessions occur less often from school interrogations than from ones conducted by police in station houses. Indeed, given the evidence of quick confessions generated from "short and amicable" police interrogations,[249] it seems probable that fewer, perhaps markedly fewer, false confessions emanate from the generally less coercive environment of schoolhouse interrogations.

V. ELIMINATING *MIRANDA* REQUIREMENTS FOR SCHOOL INTERROGATIONS

Commentators have recommended solutions to the issues surrounding interrogations of juveniles identified in this Article. Some argue that the mere presence of an SRO at a student's interrogation on school grounds in the absence of legal counsel transforms the encounter into a custodial interrogation requiring *Miranda* warnings.[250] Such arguments claim the virtue of a bright-line rule[251] settling the case law chaos described in Part III above.

This Article proposes an opposite bright-line rule that removes *Miranda* from school interrogations when school authorities are present. While such interrogations do take on custodial aspects,[252] this Article argues that giving school students *Miranda* warnings is an exercise in futility. The costs of such a requirement outweigh its benefits. Eliminating *Miranda* from school interrogations will not leave students unprotected from being coerced into incriminating themselves because due process protections against the admissibility of coerced confessions will still be in place. Moreover, contrary to the views of some commentators,[253] educational policy is actually promoted rather than hindered by removing *Miranda* requirements from school interrogations. Finally, this Article posits that existing Supreme Court case law on roadside questioning provides precedent for exempting school interrogations from a *Miranda* requirement.

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249. *See supra* note 228 and accompanying text.

250. *See, e.g.*, Elizabeth A. Brandenburg, *School Bullies—They Aren't Just Students: Examining School Interrogations and the* Miranda *Warning*, 59 MERCER L. REV. 731, 733 (2008) (arguing "the necessity for *Miranda* warning"); Sally Terry Green, *A Presumptive In-Custody Analysis to Police-Conducted School Interrogations*, 40 AM. J. CRIM. L. 145, 147–48, 148 n.15 (2013) (recommending states adopt a presumption that SRO's must provide *Miranda* warnings to children in the school setting); North, *supra* note 47, at 477 ("[T]he mere presence of [an SRO] . . . transforms the encounter into a custodial interrogation, and *Miranda* warnings must be given."); Price, *supra* note 104, at 567 (stating SROs must always follow "police protocol for interrogations").

251. *See* Price, *supra* note 104.

252. *See supra* note 80 and accompanying text.

253. *See infra* notes 274–75 and accompanying text.

A. *Miranda* Warnings as Futile

The social science research described above evidences that juveniles routinely cooperate with their interrogators. While the studies are overwhelmingly derived from interrogations outside the school context,[254] there is little reason to believe that students are less cooperative with school interrogations than they are with the police. Indeed, students may be more inclined to cooperate with school interrogators given the likely familiarity with their interrogators and the general interrogation environment.

As noted above, when juveniles are given *Miranda* warnings, over 90% waive their rights and speak with the police.[255] Such a high waiver rate may be attributable to the unique inability of juveniles to comprehend the warnings[256] as well as a variety of other factors characteristic of young people, none of which is likely to change.[257]

The evidence also establishes that the high rate of juvenile waivers is not attributable to pressure from interrogators. Juveniles who confess tend to confess "at the outset" of interrogation,[258] often without any police prodding.[259] The incidence of quick confessions virtually eliminates the risk that such confessions will ultimately prove false given that "almost all cases of proven false confessions involved lengthy interrogations"[260] for the most serious felonies.[261]

Only a slight amount of information is lost to interrogators by giving the warnings because the vast majority of juveniles waive their rights when warned.[262] While giving the warnings makes little practical difference, failing to give them in perceived custodial interrogations can have undesirable consequences. Consider the *N.C.* case discussed above.[263] There a student was escorted to the office of an assistant principal who, in the company of the SRO, informed the student of a report that the student had given a highly addictive opioid to other students.[264] The student immediately confessed. His confession was held inadmissible in his subsequent criminal trial because the court deemed it derived from custodial interrogation without *Miranda* warnings. The facts present no basis for denying either the veracity

254. In Feld's study, 6.2% of students interrogated were questioned by police at school. Feld, *Real Interrogation*, *supra* note 223, at 10.
255. *See supra* note 223 and accompanying text.
256. *See supra* notes 202–25 and accompanying text.
257. *See supra* notes 215–17 and accompanying text.
258. *See supra* notes 226–28 and accompanying text.
259. *Id.*
260. *See supra* note 242 and accompanying text.
261. *See supra* notes 238–40 and accompanying text.
262. Holland, *supra* note 5, at 112.
263. *See supra* notes 106–28 and accompanying text.
264. N.C. v. Commonwealth, 396 S.W.3d 852, 863 (Ky. 2013).

nor the voluntariness of the confession. Its suppression thus rests entirely on a wooden application of *Miranda* principles.

The conclusion of custodial interrogation in *N.C.* is highly subjective and at odds with similar cases.[265] The social science data suggests that it likely would have made no difference if the student had been given the routinely waived warnings. The effect of *Miranda* applicability in *N.C.* was thus the unnecessary suppression of highly probative evidence of a serious crime.

A more sensible approach is to dispense with the requirement to warn altogether. This ends the charade of courts reaching opposite conclusions under similar facts.[266] No longer should courts be required to apply a subjective totality of circumstances test to determine whether a student was in custody when questioned at school.

B. Coerced Confession Protection

Eliminating *Miranda* still allows students the protections of the due process coerced confession rule,[267] requiring that confessions be voluntary under the totality of the circumstances[268] with the age of the student being a highly relevant factor. Given the vulnerability of young people when interrogated,[269] courts should carefully scrutinize confessions to assure that they are not the product of interrogators' promises or threats, which are categories of inducement that have been deemed sufficiently compelling to render resulting confessions inadmissible under longstanding coerced confessions law.[270] A confession would be inadmissible if under the facts of a given case a student is coerced into confessing.

The due process coerced confession doctrine is notoriously vague.[271] *Miranda* supposedly addressed the vagueness problem by requiring a clear set of black-letter rules for those subjected to custodial interrogation.[272] This assumes that it is clear when a suspect is in

265. *See*, *e.g.*, People v. Kay, No. A145381, 2018 WL 636215 (Cal. Ct. App. Jan. 31, 2018).
266. *See supra* subsection III.B.2.
267. *See supra* notes 13–21 and accompanying text for a description of the due process test.
268. "Because the admissibility of statements given after a valid waiver of *Miranda* rights must be determined on the basis of the voluntariness test, that test remains vitally important." Welsh S. White, *What Is an Involuntary Confession Now?*, 50 RUTGERS L. REV. 2001, 2004 (1998).
269. *See supra* Part IV.
270. *See* WAYNE R. LAFAVE ET AL., CRIMINAL PROCEDURE 395 (5th ed. 2009). Given the risk of false confession when interrogations are lengthy, I join commentators who would prohibit interrogations exceeding four hours in duration. *See* Feld, *Real Interrogation*, *supra* note 223, at 26–27.
271. *See supra* section II.A.
272. "*Miranda* . . . contained a set of rules to be followed by police in all future custodial interrogations." LAFAVE ET AL., *supra* note 270, at 368.

custody. If the custody question is itself subject to a vague and subjective test, *Miranda* applicability has simply introduced a new level of vagueness and subjectivity rather than solving those problems entailed in the due process test. That is the situation with school interrogations.

School interrogations entail restrictions of students' physical freedom but occur within a familiar location with interrogators often known to the student. School interrogations are thus *sui generis* and require a unique rule. Therefore, the rule should be that whenever a school official is present at a school interrogation, the interrogation is outside the purview of *Miranda*, whether the official assumes an active or passive role in the interrogation. As will be later explained, the presence of the school official imbues the interrogation with an educational aspect compromised by *Miranda* warnings.

Removing a *Miranda* requirement would not preclude policymakers from imposing a similar requirement by statute.[273] Short of such requirement, interrogators may choose on their own to warn students of rights similar to *Miranda* warnings as a protection against a finding of involuntariness of a confession given after the warnings.

C. Promoting Sound Educational Policy by Removing *Miranda* Requirements

Some commentators admit that warning students of *Miranda* rights during school interrogations is futile. One commentator, nevertheless, argues that the warnings should be given to teach students "a valuable civics lesson: that authority in a democracy should be exercised transparently and with appropriate checks beyond those of self-restraint."[274] Another urges that applying *Miranda* to school interrogations ensures that juveniles "do not lose faith in the legal system" and protects their "right to justice."[275]

It is doubtful that simply asking a student whether or not he was involved in wrongdoing without prior *Miranda* warnings would cause him to lose faith in the legal system or offend his right to justice. It may be that warning students of *Miranda* rights does teach a "valuable civics lesson." On the other hand, failing to give the warnings may assist in teaching the interrogated student a more valuable lesson: telling the truth and being accountable for one's actions are virtues fundamental to ordinary morality and good citizenship.[276] The *Mi-*

273. *See, e.g.*, N.C. GEN. STAT. § 7B-2101 (2015).
274. Holland, *supra* note 5, at 112.
275. Brandenburg, *supra* note 250, at 764.
276. For a thorough discussion of whether people have a moral duty to admit their guilt when confronted by the criminal process, see R. Kent Greenawalt, *Silence as a Moral and Constitutional Right*, 23 WM. & MARY L. REV. 15, 34–52 (1981). Greenwalt wrote:

randa warnings teach guilty students the opposite lesson: they are entitled to remain silent and avoid taking responsibility for their actions.

The Supreme Court acknowledges that educators have a role in teaching students "the shared values of a civilized social order."[277] School authorities routinely urge honest responses when interrogating students.[278] Such admonitions are usually motivated by "custodial" concerns aimed at maintaining a safe educational environment.[279] But interrogations also present teaching moments where school authorities assume the tutelary activity of teaching the virtue of truth telling. This activity is the same one engaged in by parents who routinely urge their children to accept responsibility for their actions and respect authority by telling the truth.[280] In a study of youth questioned by police with their parents present, "[n]o defendants reported that their parents advised them to remain silent."[281] Arguably, many parents would prefer that school officials act in the same manner as they would when assuming tutelary responsibilities over their children.

> Even if we believe that open admission of guilt is usually the course of action that is best, we may hesitate to say that someone has a moral duty to bring conviction and imprisonment upon himself.
>
> . . . Do persons acquire a moral privilege to lie or to remain silent when their own original wrongful acts have caused the state's antagonism? . . . [E]ven though a person is responsible for the state's justified enmity, the state's adoption of an antagonistic position may weaken his responsibilities toward it.

Id. at 36–37. While a guilty adult's moral duty to confess to criminal charges may not exist in all contexts, a stronger moral case exists for urging juveniles to assume responsibility for their wrongful actions. *See infra* notes 277–81 and accompanying text.

277. Bethel Sch. Dist. No. 403 v. Fraser, 478 U.S. 675, 683 (1986).

278. *See e.g.*, *supra* note 54 and accompanying text.

279. Educators assume "custodial and tutelary" roles. *See supra* note 45.

280. *See* Alberts, *supra* note 195, at 123. Judge Henry J. Friendly famously said in discussing the privilege against self-incrimination:

> [W]hile the other [testimonial] privileges accord with the notions of decent conduct generally accepted in life outside the court room, the privilege against self-incrimination defies them. No parent would teach such a doctrine to his children; the lesson parents preach is that while a misdeed, even a serious one, will generally be forgiven, a failure to make a clean breast of it will not be. Every hour of the day people are being asked to explain their conduct to parents, employers, and teachers. Those who are questioned consider themselves to be morally bound to respond, and the questioners believe it proper to take action if they do not.

Henry J. Friendly, *The Fifth Amendment Tomorrow: The Case for Constitutional Change*, 37 U. CIN. L. REV. 671, 680 (1968).

281. Jodi L. Viljoen et al., *Legal Decisions of Preadolescent and Adolescent Defendants: Predictors of Confessions, Please, Communication with Attorneys, and Appeals*, 29 L. & HUM. BEHAV. 253, 261 (2005).

As Justice Harlan observed, "[P]eaceful interrogation is not one of the dark moments of the law."[282] It is less dark when juveniles are the ones being interrogated. The vast majority of juveniles who confess during school interrogations will be dealt with through the juvenile justice system, if dealt with at all through a judicial process.[283] In theory at least, the juvenile system is more rehabilitative than the criminal justice system.[284] In recent years, the juvenile system has in some jurisdictions become punitive,[285] at least in part.[286] Despite a line of cases calling into question the effectiveness of rehabilitation in juvenile justice systems,[287] the Supreme Court has been "reluctant to say that, despite disappointments of grave dimensions, [the juvenile system] still does not hold promise."[288] Probation, with conditions addressing the rehabilitative needs of the individual young person,[289] is by far the most common disposition in juvenile courts.[290]

Miranda warnings are at odds with a rehabilitative juvenile justice model where cooperation between the juvenile and the State is essential. Confessions are thus to be encouraged under the rationale of juvenile courts where "confession of one's deeds would be regarded as an integral part of the therapeutic process, conducive to establishing the trust and confidence toward officials that aid personalized treat-

282. Miranda, v. Arizona, 384 U.S. 436, 517 (Harlan, J., dissenting).

283. *See* MARTIN R. GARDNER, UNDERSTANDING JUVENILE LAW 163–69 (5th ed. 2018). Of course, many school interrogations deal with violations of school rules resolved through school administrative actions.

284. *Id.*

285. In some jurisdictions, utilization of punishment in juvenile courts is systemic. *See, e.g.*, Andrew Walkover, *The Infancy Defense in the New Juvenile Court*, 31 UCLA. L. REV. 503, 528–31 (1984) (describing Washington State's adoption of a punitive juvenile justice model); *see also In re* L.M., 186 P.3d 164 (Kan. 2008) (holding a right to jury trial under Kansas punitive juvenile system).

286. *See, e.g.*, *In re* Felder, 402 N.Y.S.2d 528, 533 (N.Y. Fam. Ct. 1978) (finding that fixed sentences for juveniles committing certain "designated felon[ies]" constitutes punishment).

287. See Martin R. Gardner, *Punitive Juvenile Justice and Public Trials by Jury: Sixth Amendment Applications in a Post-*McKeiver *World*, 91 NEB. L. REV. 1, 25–30 (2012) (discussing *Kent*, *Gault*, and *Winship* cases).

288. McKeiver v. Pennsylvania, 403 U.S. 528, 547 (1971). For an argument that the Supreme Court's recognition of the inherent differences between adolescents and adults entails a constitutional right to a meaningful opportunity to be rehabilitated within the juvenile justice system, see Martin Gardner, *Youthful Offenders and the Eighth Amendment Right to Rehabilitation: Limitations on the Punishment of Juveniles*, 83 TENN. L. REV. 455 (2016).

289. DAVIS, *supra* note 46, at 503–04.

290. In 2017, formal probation was ordered in 63% of all adjudicated cases, with residential placements imposed in 28% of all adjudicated cases. *Adjudicated Delinquency Cases by Disposition:1985–2018*, OFF. OF JUV. JUST. & DELINQ. PREVENTION (Mar. 31, 2020), https://www.ojjdp.gov/ojstatbb/court/qa06501.asp [https://perma.unl.edu/W4XD-ME8L].

ment."[291] Thus, urging students to tell the truth not only teaches a vital moral virtue but also assists in the rehabilitative process should a confession lead to a juvenile court proceeding.

D. Removing *Miranda* from School Interrogations Is Consistent with Existing Supreme Court Case Law

As noted above, the Supreme Court has never decided a case addressing the applicability of *Miranda* for interrogations conducted solely by school authorities. Assuming that the Court would agree with the "clear rule" of the lower courts that *Miranda* does not apply in those circumstances,[292] the question is whether it makes a difference that law enforcement personnel participate in the interrogation. The possible consequences to the juvenile are the same whether he confesses to a sole school official or to a police officer. The confession may lead to possible juvenile or even criminal court proceedings against the juvenile in either case.[293] Whether the interrogation is "law enforcement" rather than "school" oriented makes little difference from the point of view of the student."[294]

J.D.B. recognizes that school interrogations are subject to *Miranda* requirements if the student is deemed "in custody."[295] The Court realizes "that it is occasionally difficult" for police and courts to determine custody.[296] Determinations of custody in school interrogations are inherently difficult. The cases reveal that the supposed "objective analysis" espoused by the *J.D.B.* Court does not give anywhere near the "clear guidance" the test is aimed at providing.[297] Attempting to apply the custody test to school interrogations amounts to a "transformation of the *Miranda* custody test—from a clear, easily applied . . . rule into a highly fact-sensitive standard resembling the voluntariness test that the *Miranda* Court found to be unsatisfactory."[298]

The Court should reconsider its position taken in *J.D.B.* and hold *Miranda* inapplicable to school interrogations when school authorities

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291. Kenneth I. Winston, *Self-Incrimination in Context: Establishing Procedural Protections in Juvenile and College Disciplinary Proceedings*, 48 S. CAL. L. REV. 813, 834 (1975).

292. *See supra* note 88 and accompanying text.

293. *See, e.g.*, D.Z. v. State, 100 N.E.3d 246 (Ind. 2018) (student's confession to a sole school official led to a delinquency adjudication in juvenile court). Statutes in all jurisdictions permit juvenile courts to waive jurisdiction over some juveniles to criminal courts for acts of delinquency. *See* DAVIS, *supra* note 46, at 227–77.

294. *See supra* notes 143–45 and accompanying text.

295. *See supra* note 68 and accompanying text.

296. J.D.B. v. North Carolina, 564 U.S. 261, 271 (2011).

297. *Id.*

298. *Id.* at 283 (Alito, J., dissenting) (objecting to factoring age of student into custody inquiry).

are present.[299] Doing so would not be the first time the Court has found *Miranda* inapplicable to a given context arguably constituting custodial interrogation.

In *Berkemer* v. *McCarty*,[300] the Court addressed whether roadside questioning of a motorist detained pursuant to a routine traffic stop constituted custodial interrogation.[301] The Court found that the "significant curtail[ment]" of the "freedom of action" of drivers and passengers of stopped vehicles does not constitute *Miranda* custody.[302] The Court concluded that traffic stops are not the "types of situations" at issue in *Miranda*.[303] First, detentions for traffic stops are "presumptively temporary and brief," usually lasting only a few minutes comparatively, while station house questioning "frequently is prolonged" with the detainee often believing that "questioning will continue until he provides his interrogators the answers they seek."[304]

Second, circumstances of "typical traffic stop[s] are not such that the motorist feels completely at the mercy of the police."[305] The public nature of a traffic stop minimizes an unscrupulous policeman's abilities to use illegitimate means to extract confessions as well as reduces the detainee's fear that failure to cooperate will subject him to abuse.[306] As the Court stated, "[T]he atmosphere surrounding an ordinary traffic stop is substantially less 'police dominated' than that surrounding the [station house] interrogation at issue in *Miranda*."[307] Thus, "[P]ersons temporarily detained pursuant to such stops are not 'in custody' for the purposes of *Miranda*."[308]

There are apparent similarities between routine traffic stops and school interrogations with school officials present. Given the likelihood of juveniles to confess almost immediately upon being interrogated,[309] school interrogations are almost always brief. This negates the concerns of prolonged interrogations. School interrogations, like roadside questioning, lack the police domination characteristic of station house interrogations. The "police" are often not present during school interrogations. When police are present, almost always it is an

299. Regarding the arguable futility of giving *Miranda* warnings to juveniles, the Court acknowledged the studies questioning the ability of juveniles to comprehend *Miranda* warnings but dismissed their relevance to the issue in *J.D.B.* because no *Miranda* warnings were given. *Id.* at 270 n.4 (majority opinion).
300. 468 U.S. 420 (1984).
301. *Id.* at 435.
302. *Id.* at 436.
303. *Id.* at 437.
304. *Id.* at 438.
305. *Id.*
306. *Id.*
307. *Id.* at 438–39.
308. *Id.* at 440.
309. *See supra* notes 226–28 and accompanying text. The studies show that interrogations tend to be brief even when students do not confess.

SRO whom the student recognizes. This minimizes fears students might otherwise have that they will be abused for failure to cooperate. Such fears are further minimized, if not eliminated altogether, by the presence of the school official familiar to the student. In short, school interrogations with school officials present, like roadside questioning, do not constitute the type of situation at issue in *Miranda* and should not be considered "custodial."[310]

VI. CONCLUSION

Miranda warnings are required when persons are subjected to custodial interrogation. Whether students are in custody for *Miranda* purposes when they are interrogated by school officials and SROs is a problem presently vexing the courts. "[O]ne of the principal advantages of the doctrine that suspects must be given warnings before being interrogated while in custody is the clarity of that rule."[311] However, this advantage is lost in school interrogations. The supposedly workable objective standard favored by the Supreme Court in its *J.D.B.* case for determining the custody issue has proven to be a highly fact-sensitive issue in school interrogations with courts reaching contrary conclusions under similar facts.

This Article offers a solution to this quandary by recommending removal of the *Miranda* requirement when school officials are present during school interrogations. The warnings are largely ineffective in informing juveniles of their rights. Even when effective, mandating *Miranda* warnings runs contrary to sound educational policy encouraging truth telling by students. Further, the *Miranda* requirement can have the effect of suppressing trustworthy and highly probative confession evidence even though the confession is voluntary under traditional due process principles. School interrogations manifest a context outside the purview of *Miranda* applicability similar to roadside questioning. It is time for *Miranda* to be removed from school interrogations.

310. Denying *Miranda* rights to juveniles in school interrogations is at home with the Court's recognition that school students do not necessarily enjoy the same constitutional rights as adults. *See supra* notes 42–43 and accompanying text.

311. *Berkemer*, 468 U.S. at 430.