2011

Reading, Writing, and Interrogating: Providing Miranda Warnings to Students in Schoolhouse Interrogations

Stephanie Forbes
New Jersey Superior Court

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A thirteen-year-old boy sat in a room until a law-enforcement officer arrived. He asked the boy to follow him into another room where three more adults, including another law-enforcement officer, waited. The second law-enforcement officer then proceeded to question the boy about his involvement in a series of home robberies while the other adults encouraged the boy to tell the truth. The boy then implicated himself in the home robberies, acts for which he was later arrested. He claimed that as the officers did not read him his *Miranda* rights, his statement could not be used against him.[1] At first glance, it would appear his privilege against self-incrimination had indeed been violated.[2] It would have been, except for one fact: he was in school when the police interrogated him.

Miranda v. Arizona responded to concerns over widespread police coercion when interrogating suspects in custody. Taking notice of the "menacing" psychological interrogation tactics employed by law-enforcement officers in custodial interrogations,[3] the Supreme Court crafted the ubiquitous *Miranda* warnings that devotees of procedural television "can recite . . . in their sleep."[4] The Court noted that "[e]ven without employing brutality . . . the very fact of custodial interrogation exacts a heavy toll on individual liberty and trades on the weakness of individuals,"[5] and procedural safeguards are necessary to prevent the "[subjugation of] the individual to the will of his examiner."[6] The Court has thus far failed to mandate the provision of these crucial warnings to students during schoolhouse interrogations. But a recent case illustrates the importance of providing *Miranda* warnings to students.

This article will argue that interrogation by a law-enforcement official—including school resource officers—in a school setting is per se custodial interrogation and requires police to give the *Miranda* warnings before questioning students.[7] It does not propose that all questioning of students that has possible criminal implications requires *Miranda*; questioning performed by school officials in their administrative capacity does not require the warnings.[8] This article first reviews *Miranda* requirements and the present approach of applying *Miranda* to the school setting. Next, it reviews emerging doctrine on the difference between juveniles and adults in the criminal justice system. The article then argues that the growing phenomenon of school resource officers as law enforcement and power dynamics between school employees and students make schools custodial in nature. Finally, it conducts a case study of *In re J.D.B.*[9] and concludes that denying *Miranda* rights to students interrogated at school contradicts the purpose behind *Miranda*. A per se custodial interrogation rule equitably resolves these concerns.

REFINING *MIRANDA* AND SCHOOLHOUSE APPLICATION

Almost immediately after deciding *Miranda*, the Court noted clarification was required as to the new procedures, specifically that of custodial interrogation. The *Miranda* Court

1. *See* Miranda v. Arizona, 384 U.S. 436, 444 (1966) ("Prior to any questioning, the person must be warned that he has a right to remain silent, that any statement he does make may be used as evidence against him, and that he has a right to the presence of an attorney, either retained or appointed.").
2. "No person . . . shall be compelled in any criminal case to be a witness against himself . . . ." US CONST. amend. V.
3. *Miranda*, 384 U.S. at 457.
4. Amos N. Guiora, *Creating an Exception to an Exception—Too Dangerous and Too Unwarranted*, JURIST (Apr. 2, 2011), http://jurist.org/forum/2011/04/creating-an-exception-to-an-exception.php (Apr. 2, 2011); *see also* Dickerson v. United States, 530 U.S. 428, 443 (2000) (noting the *Miranda* warnings "have become part of our national culture").
5. *Miranda*, 384 U.S. at 455.
6. *Id.* at 457–58 ("Unless 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.").
7. Throughout this article, "school" will refer to K-12 schools only. As most of the students in K-12 will be under eighteen, juveniles and students may be used interchangeably, but the proposed rule will apply to all enrolled students regardless of age.
8. "A principal, acting alone and without invoking or outwardly benefiting from the authority of any law enforcement officer may question a student without complying with *Miranda*'s requirements. A student's answers to such questions will be admissible at subsequent juvenile or criminal proceedings." Paul Holland, *Schooling* Miranda*: Policing Interrogation in the Twenty-First Century Schoolhouse*, 52 LOY. L. REV. 39, 40–41 (2006). For analysis of the requirement of *Miranda* warnings when school administrators "act as law enforcement," see generally *id.* This distinction between law enforcement and school administrators acting pursuant to their administrative duties comports with New Jersey v. T.L.O., 469 U.S. 325, 342 (1985) (permitting reasonable warrantless school searches to maintain discipline and safety in schools).
9. 686 S.E.2d 135 (N.C. 2009), *rev'd*, 131 S. Ct. 2394 (2011).

defined custodial interrogation as "questioning initiated by law-enforcement officers after a person has been taken into custody or otherwise deprived of his freedom of action in any significant way."[10] *Oregon v. Mathiason*[11] provided the Court an opportunity to clarify that definition.

The officers in *Mathiason*, who suspected the defendant of involvement in a home break-in, left a note at his house asking to speak with him. "He came voluntarily to the police station, where he was immediately informed that he was not under arrest. At the close of a 1/2-hour interview [he] did in fact leave the police station without hindrance."[12] The Court also rejected the assertion that "[s]uch a noncustodial situation is . . . converted to one in which *Miranda* applies simply because . . . the questioning took place in a 'coercive environment.'"[13] Rejecting a per se custodial rule, the Court noted that "[a]ny interview of one suspected of a crime by a police officer will have coercive aspects to it, simply by virtue of the fact that the police officer is part of a law-enforcement system which may ultimately cause the suspect to be charged with a crime," and the mere fact the interrogation takes place in a police station does not make a noncustodial interview into a custodial interrogation.[14] The Court later created a two-prong test to determine custody: "[F]irst, what were the circumstances surrounding the interrogation; and second, given those circumstances, would a reasonable person have felt he or she was not at liberty to terminate the interrogation and leave."[15] In applying *Miranda* to school settings, courts have relied on this objective custody test to justify declining to recognize school interviews as custodial interrogations.[16]

The District of Columbia Court of Appeals held that police did not improperly fail to *Mirandize* a student before interrogating him at school about sexually abusing his three-year-old sister.[17] The investigator and principal met J.H. in the hallway and escorted him to a conference room, "which the court estimated would be about 30 feet by 50 feet," at which time "[t]he principal quickly left without saying anything."[18] The court noted "J. was not restrained in any way. . . . Investigator Gerald did not say anything 'one way or another' about whether J. could leave, and 'J.H. never asked if he could leave.' Gerald did not raise his voice. He made no threats or promises."[19] The court declined to extend *Miranda* rights, saying "*Miranda* focused upon the pressure inherent in the incommunicado interrogation of individuals in a police-dominated atmosphere," and that "we cannot conclude as a matter of law that [J.] was in custody when the police interrogated [him], *i.e.,* that [his] freedom of action was curtailed to a degree associated with a formal arrest."[20] Several other courts determined interrogations at schools did not meet the objective *Miranda* custody test,[21] including a recent case before the Supreme Court.

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The Supreme Court of North Carolina recently concluded "a juvenile who made incriminating revelations to law-enforcement officers . . . was not in custody when he incriminated himself" during his questioning at school.[22] J.D.B., a thirteen-year-old special-education student, was interrogated by a police officer in a school conference room about a rash of recent thefts.[23] Only after J.D.B. had incriminated himself did the officer inform J.D.B. "that he did not have to speak with him and that he was free to leave."[24] The North Carolina court held "[t]he uniquely structured nature of the school environment inherently deprives students of some freedom of action. However, the typical restrictions of the school setting apply to all students and do not constitute a 'significant' deprivation of freedom of action," falling short of the custodial requirement of *Miranda*.[25] The U.S. Supreme Court granted certiorari on another question[26] and ultimately reversed and remanded on that basis.[27] This article, however, uses the case to argue that given the particular vulnerability of juveniles in interrogatory situations, schoolhouse interrogations by law enforcement satisfy the custody prong of *Miranda*.

THE EMERGING "JUVENILES ARE DIFFERENT" JURISPRUDENCE

The Supreme Court has noted that "neither the Fourteenth Amendment nor the Bill of Rights is for adults alone,"[28] and indeed, recent cases indicate an evolving "juveniles are differ-

10. *Miranda*, 384 U.S. at 444.
11. 429 U.S. 492 (1977) (per curiam).
12. *Id.* at 495.
13. *Id.*
14. *Id.*
15. Thompson v. Keohane, 516 U.S. 99, 112 (1995) (footnote omitted).
16. *See, e.g.*, *In re* J.H. 928 A.2d 643, 650–51 (D.C. 2007).
17. *Id.* at 650.
18. *Id.* at 646.
19. *Id.* at 647.
20. *Id.* at 651 (alterations in original) (internal quotation marks omitted).
21. *See* Marjorie A. Shields, Annotation, *What Constitutes "Custodial Interrogation" Within Rule of* Miranda v. Arizona *Requiring That Suspect Be Informed of Federal Constitutional Rights Before Custodial Interrogation—At School*, 59 A.L.R. 6th 393 (2010).
22. *In re* J.D.B., 686 S.E.2d 135, 136 (N.C. 2009), *rev'd*, 131 S. Ct. 2394 (2011).
23. *Id.* at 136.
24. *Id.* at 137.
25. *Id.* at 138. "For a student in the school setting to be deemed in custody, law enforcement must subject the student to 'restraint on freedom of movement' that goes well beyond the limitations that are characteristic of the school environment in general." *Id.* (quoting State v. Buchanan, 543 S.E.2d 823, 827 (N.C. 2001)).
26. "Whether a trial court may consider a juvenile's age in a Fifth Amendment *Miranda* custody analysis in evaluating the totality of the objective circumstances and determining whether a reasonable person in the juvenile's position would have felt he or she was free to terminate police questioning and leave." Brief for Petitioner at i, J.D.B. v. North Carolina, 131 S. Ct. 2394 (2011) (No. 09-11121).
27. J.D.B. v. North Carolina, 131 S. Ct. 2394, 2406, 2408 (2011) (holding that a child's age should be included in the custody analysis but not deciding whether J.D.B. was in custody).
28. *In re* Gault, 387 U.S. 1, 13 (1967).

[T]he impulsivity and irresponsibility of juveniles creates a special concern in interrogation situations.

ent" jurisprudence. The immaturity and impulsiveness of juveniles formed the basis of the Court's justification for withholding certain punishments from them. In *Roper v. Simmons*, the Court held the Eighth Amendment prohibited the imposition of capital punishment on defendants who were under eighteen at the time of their crime.[29] The Court observed "as the scientific and sociological studies . . . tend to confirm, '[a] lack of maturity and an underdeveloped sense of responsibility are found in youth more often than in adults and are more understandable among the young. These qualities often result in impetuous and ill-considered actions and decisions.'"[30] The Court additionally pointed to state laws prohibiting "those under 18 years of age from voting, serving on juries, or marrying without parental consent," as "recognition of the comparative immaturity and irresponsibility of juveniles."[31] The Court later determined that life without parole could not be imposed on juveniles for non-homicide offenses in *Graham v. Florida*.[32] "As compared to adults, juveniles have a 'lack of maturity and an underdeveloped sense of responsibility;' they 'are more vulnerable or susceptible to negative influences and outside pressures, including peer pressure;' and their characters are 'not as well formed.'"[33] The same rationale underlying these decisions justifies treating juveniles in school as in custody for *Miranda* purposes.[34]

Juvenile Susceptibility to Interrogation: The Next Step in "Kids are Different?"

The Court has declined to move from the standard voluntariness determination of *Miranda* waivers.[35] But the impulsivity and irresponsibility of juveniles create a special concern in interrogation situations. Research suggests that interrogation techniques—such as those the *Miranda* Court used as justification for crafting the warnings[36]—affect juveniles more than adults.[37] The risk of false confessions increases with juveniles as "[t]hey think less strategically and more readily assume responsibility for peers than do adults,"[38] and "are more likely to comply with authority figures and to tell police what they think the police want to hear."[39] In one study,

> [S]ubjects took part in a reaction time task using a computer keyboard. They were then accused of pressing a prohibited key on the keyboard, causing the computer to crash. Half the subjects were then presented with false evidence in the form of a bogus computer printout showing that they had pressed a key they were warned not to touch. All subjects were innocent, and all were prompted to sign a confession.[40]

The study emphasized the special vulnerability of juveniles, finding alarmingly high rates of false confessions: 78 percent in twelve- to thirteen-year-olds, 72 percent for fifteen- to sixteen-year-olds, and 59 percent in eighteen- to twenty-six-year-olds.[41] Although courts may consider age in determining whether a person voluntarily waived his or her *Miranda* rights, the Supreme Court previously declined to mandate consideration of the suspect's age in the custody determination.[42] In spite of this refusal, age is not wholly irrelevant in custody analysis. The demographic most likely to falsely confess includes school-age students like J.D.B., and yet courts have been unwilling to afford them *Miranda* protections in the one place they spend the most time.

The State of North Carolina and its amici in *J.D.B.* assert the petitioner's standard would make age a proxy for location and

29. 543 U.S. 551 (2005).
30. *Id.* at 569 (quoting Johnson v. Texas, 509 U.S. 350, 367 (1993).
31. *Id.*
32. 130 S. Ct. 2011 (2010). Petitions have already been filed in the Supreme Court to extend the ban on juvenile life without parole to homicide crimes. Adam Liptak & Lisa Faye Petak, *Juvenile Killers in Jail for Life Seek a Reprieve*, N.Y. TIMES, Apr. 20, 2011, at A13.
33. *Graham*, 130 S. Ct. at 2026 (quoting *Roper*, 543 U.S. at 569–70).
34. *See generally In re* J.D.B., 686 S.E.2d 135, 142 (N.C. 2009) (Brady, J., dissenting) ("The rationale behind these laws is practical and just. The perceptions, cognitive abilities, and moral development of juveniles are different from those of adults; thus, the law rightly takes this into account when dealing with juvenile offenders.").
35. Fare v. Michael C., 442 U.S. 707, 725 (1979) ("We discern no persuasive reasons why any other approach is required where the question is whether a juvenile has waived his rights, as opposed to whether an adult has done so.").
36. *See* Miranda v. Arizona, 384 U.S. 436, 449–54 (1966) (describing common psychological interrogation techniques).
37. "[I]nterrogation techniques designed to manipulate adults may be even more effective and thus problematic when used against children. Tactics like aggressive questioning, presenting false evidence, and leading questions may create unique dangers when employed with youths." Barry C. Feld, *Police Interrogation of Juveniles: An Empirical Study of Policy and Practice*, 97 J. CRIM. L. & CRIMINOLOGY 219, 244–46 (2006).
38. *Id.* at 244; *see also* Brief for the Am. Med. Ass'n and the Am. Acad. of Child and Adolescent Psychiatry as Amici Curiae In Support of Neither Party at 2, Graham v. Florida, 130 S. Ct. 2011 (2010) (No. 08-7412) ("Adolescents are also more emotionally volatile and susceptible to stress and peer influences.").
39. Feld, *supra* note 37, at 246.
40. Saul M. Kassin & Gisli H. Gudjonsson, *The Psychology of Confessions: A Review of the Literature and Issues*, 5 PSYCHOL. SCI. IN THE PUB. INT. 33, 52 (2004).
41. *Id.* at 53. The missing data for fourteen- and seventeen-year-olds is presumably an error.
42. Yarborough v. Alvarado, 541 U.S. 652, 666 (2004) (holding in federal habeas case age was not a proper consideration in custody determination). *But see id.* at 669 (O'Connor, J., concurring) ("There may be cases in which a suspect's age will be relevant to the "custody" inquiry under [*Miranda*]."). The *Yarborough* majority opinion seemingly precludes the success of J.D.B. as presented to the Supreme Court. *See supra* note 26. However, it does not impact a decision finding school interrogations are per se custodial.

make the objective custody test too subjective.[43] Refocusing on the location of the interrogation—school—rather than the age of the suspect removes this concern. Instead of a juvenile being in custody because he or she is young, he or she is in custody because he or she is in school—"an objective circumstance that is readily observable by officers."[44] The age of the suspect simply serves to provide a basis of understanding why he or she may not feel able to terminate the interrogation in school,[45] and it justifies the creation of a bright-line rule regarding schoolhouse interrogations.

The denial of *Miranda* rights to students in school hinges on the objective custody determination: was the suspect "deprived of his freedom of action in any significant way?"[46] The North Carolina Attorney General flatly dismissed the assertion that students were in custody for *Miranda* purposes during school hours, claiming "the school setting itself is a familiar one to a student. In that respect, it is less inherently coercive than a police station."[47] As *J.D.B.* illustrates, this line of thought ignores the reality that schools are increasingly populated with law-enforcement officials, creating an atmosphere reminiscent of the *Miranda* Court's "incommunicado interrogation of individuals in a police-dominated atmosphere."[48]

NONCUSTODIAL CUSTODY?: SCHOOL INTERROGATIONS AS CUSTODIAL INTERROGATIONS

Officer Krupke Roaming the Halls:[49] *The Increasing Presence of Law Enforcement in Schools*

Concerns over school safety have steadily increased since the mid-nineties due to highly publicized school shootings and other violence.[50] One response to parental and lawmaker concern has been the presence of school resource officers (SROs) in the educational setting. The Center for the Prevention of School Violence defines an SRO as "a certified law-enforcement officer who is permanently assigned to provide coverage to a school or a set of schools. The SRO is specifically trained to perform three roles: law-enforcement officer; law-related counselor; and law-related education teacher."[51] Although no national numbers regarding SROs exist, the trend increases yearly.[52] "[I]n 2004, 60 percent of high school teachers reported armed police officers stationed on school grounds, and in 2005, almost 70 percent of public school students ages 12 to 18 reported that police officers or security guards patrol their hallways."[53] In 2009, it was estimated that 20,000 law-enforcement officers patrolled schools.[54] As "'[l]aw enforcement officer' means a sworn law-enforcement officer with the power to arrest,"[55] SROs have the ability to arrest children at school and have increasingly done so,[56] disproportionately affecting poor, minority, and special-needs students.[57] Some research has suggested the presence of SROs itself criminalizes student behavior, as "discipline problems traditionally handled by school principals and teachers now are more likely handled by a school police officer [e.g.,] a scuffle between students becomes assault or disrupting class

"The SRO is specifically trained to perform three roles: law-enforcement officer; law-related counselor; and law-related education teacher."

43. *See* Brief for the Respondent at 25–28, J.D.B. v. North Carolina, 131 S. Ct. 2394 (2011) (No. 09-11121) [*hereinafter* Respondent's Brief]; *see also* Brief of the Nat'l District Attorneys Ass'n as Amicus Curiae in Support of Respondent at 9–14, J.D.B. v. North Carolina, 131 S. Ct. 2394 (2011) (No. 09-11121) [*hereinafter* NDAA Brief]; Brief for the United States as Amicus Curiae Supporting Respondent at 32, J.D.B. v. North Carolina, 131 S. Ct. 2394 (2011) (No. 09-11121) [*hereinafter* United States Brief].
44. Respondent's Brief, *supra* note 43, at 35.
45. *See* Thompson v. Keohane, 516 U.S. 99, 112 (1995); Berkemer v. McCarty, 468 U.S. 420, 442 (1984) ("[T]he only relevant inquiry is how a reasonable man in the suspect's position would have understood his situation.").
46. Miranda v. Arizona, 384 U.S. 436, 444 (1966).
47. Respondent's Brief, *supra* note 43 at 36–37 (citations omitted).
48. *Miranda*, 384 U.S. at 445.
49. *See* West Side Story (Mirisch Corp. 1961).
50. Matthew T. Theriot, *School Resource Officers and the Criminalization of Student Behavior*, 37 J. Crim. Justice 280, 280 (2009).
51. Ctr. for the Prevention of Sch. Violence, *School Resource Officer*, http://www.ncdjjdp.org/cpsv/school_resource_officer.html (last visited Oct. 20, 2011); *see also* Va. Code Ann. § 9.1-101 (2006) ("'School resource officer' means a certified law-enforcement officer hired by the local law-enforcement agency to provide law-enforcement and security services to Virginia public elementary and secondary schools.").
52. Theriot, *supra* note 50, at 281 (noting the number of SRO programs have "swelled since the late 1990s," and "represent a significant and popular trend in school violence prevention").
53. Catherine Y. Kim & I. India Geronimo, *Policing in Schools: Developing a Governance Document for School Resource Officers in K-12 Schools* at 5, ACLU White Paper (Aug. 2009) (footnotes omitted), *available at* http://www.aclu.org/files/pdfs/racialjustice/whitepaper_policinginschools.pdf.
54. Theriot, *supra* note 50, at 281.
55. N.C. Gen. Stat. § 115C-391.1(b)(6) (2009).
56. Kim & Geronimo, *supra* note 53, at 8 ("The number of children arrested or referred to court for school discipline has grown in recent years.").
57. *Id.* at 9. ("Children of color and students with disabilities are disproportionately represented among these students [referred to courts by schools]. In Florida, Black youth, who represented only 22 percent of the overall juvenile population, accounted for 47 percent of all school-based delinquency referrals; youth with special needs accounted for 23 percent of all school-based referrals." (footnotes omitted)); *see also* 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, 542 (2009) ("[The school-to-prison pipeline] has had a disproportionate impact on poor and minority communities and has dramatically increased the number of juveniles that pass through the criminal justice system. Ironically, this increase has occurred at the same time that overall and juvenile crime rates have declined. A critical component of the pipeline is the role of police officers in the public schools." (footnotes omitted)).

By giving SROs a place within the school social system, administrators are legitimizing SRO authority in students' eyes.

becomes disorderly conduct."[58] Additionally, SROs' efficiency controlling crime is questionable—most violent crimes by juveniles occur after school hours and outside of school.[59] Regardless of SROs' effect on the school violence rate, their presence in hallways impacts students' feelings of confinement and *Miranda* custodial analysis.

Teachers Command, and Students Obey: Power Dynamics and Custody

The presence of SROs intensifies the inherent power structure of schools by reinforcing students' low rank in school hierarchy.[60] In addition to the principal, teachers, and other school administrators, students must now rank themselves against SROs, who carry the force of the criminal law with them.[61] Merely by virtue of holding a social position within the school, children legitimatize the authority's orders within the school.[62] In determining whether to defer to authority figures, children "consider the location of the event and whether it is within the jurisdiction of the authority. In addition, they view legitimacy with respect to the type of directive issued by the authority."[63] By giving SROs a place within the school social system, administrators are legitimatizing SRO authority in students' eyes. Although it is important for SROs to have authority and the support of school administrators to perform their duties—SROs could hardly be expected to do a good job if the school undermines their authority—school support for SROs and outside law enforcement impacts students' ability to exercise their rights in an interrogation. The unique nature of school settings only increases the pressure to cooperate with school administrators and law enforcement, including outside law enforcement unaffiliated with the school, "to avoid provoking conflict."[64]

As courts have observed, "[p]ublic schools have a relationship with their students that is markedly different from the relationship between most governmental agencies . . . and the children with whom they deal."[65] Even though the U.S. Supreme Court has held students do not "shed their constitutional rights . . . at the schoolhouse gate,"[66] the rights students enjoy in school have been sharply curtailed.[67] If a student believes the officer has the support of the highest authority in the school, the student will be unlikely to believe that he or she has a choice in whether to speak with the officer without incurring disciplinary measures.[68] "Through the legal doctrine of *in loco parentis*, courts upheld the right of schools to discipline students, to enforce rules, and to maintain order."[69] The power dynamics between school authorities and cooperating law enforcement all impact the custody analysis by forming the "circumstances surrounding the interrogation."[70]

Follow Me Please: A Case Study of In Re J.D.B.

The North Carolina Supreme Court erred in holding J.D.B. was not in custody and was therefore not entitled to *Miranda*

58. Theriot *supra* note 50, at 280.
59. OJJDP Statistical Briefing Book—Time of Day, OFFICE OF JUVENILE JUSTICE AND DELINQUENCY PREVENTION (Dec. 21, 2010), http://www.ojjdp.gov/ojstatbb/offenders/qa03301.asp?qaDate=2008 ("Juvenile violence peaks in the afterschool hours on school days and in the evenings on nonschool days. On nonschool days, the incidence of juvenile violence increases through the afternoon and early evening hours, peaking between 7 p.m. and 9 p.m."); OJJDP Statistical Briefing Book—Comparing Adult and Juvenile Offenders, OFFICE OF JUVENILE JUSTICE AND DELINQUENCY PREVENTION (Dec. 21, 2010), http://www.ojjdp.gov/ojstatbb/offenders/qa03401.asp?qaDate=2008 ("Nearly one-third (29%) of all violent crime committed by juvenile offenders occurs between 3 p.m. and 7 p.m.").
60. Marta Laupa & Elliot Turiel, *Children's Concepts of Authority and Social Contexts*, 85 J. OF EDUC. PSYCHOL. 191, 191 (1993) ("In particular, it has been found that children view an authority, such as a teacher, as a member of a social system, that of the school in the case of a teacher.").
61. *See supra* notes 51–57 and accompanying text.
62. Laupa & Turiel, *supra* note 60, at 191. ("[C]hildren judge that holding a social position in that system is one attribute that legitimizes a teacher's directives within the social context of the school").
63. *Id.* at 196.
64. Feld, *supra* note 37, at 230 ("Social expectations of obedience to authority and children's lower social status make them more vulnerable than adults during interrogation. Less powerful people, such as juveniles or racial minorities, often speak indirectly with authority figures . . . . *Miranda* requires suspects to invoke their rights clearly and unambiguously, a requirement that runs contrary to most juvenile delinquents' social responses and verbal styles.").
65. Tenenbaum v. Williams, 193 F.3d 581, 607 (2d Cir. 1999).
66. Tinker v. Des Moines Indep. Cmty. Sch. Dist., 393 U.S. 503, 506 (1969).
67. *See, e.g.*, Morse v. Frederick, 551 U.S. 393, 397 (2007) ("[S]chools may take steps to safeguard those entrusted to their care from speech that can reasonably be regarded as encouraging illegal drug use . . . ."); New Jersey v. T.L.O., 469 U.S. 325, 341 (1985) ("[S]chools do[] not require strict adherence to the requirement that searches be based on probable cause to believe that the subject of the search has violated or is violating the law. Rather, the legality of a search of a student should depend simply on the reasonableness, under all the circumstances, of the search."). Some Supreme Court justices would go further in curtailing students' rights at school. *E.g.*, *Morse*, 551 U.S. at 412–13 (Thomas, J., concurring).
68. *See* Brief of Juvenile Law Ctr., et al. as Amici Curiae in Support of Petitioner at 21, J.D.B. v. State of North Carolina, 131 S. Ct. 2394 (2011) (No. 09-11121) [*hereinafter* JLC Brief] ("In school settings particularly, students may place greater weight on the authority of the adults they encounter . . . [and are] likely to place greater weight on the authority of police officers in the company of school authority figures.").
69. *Morse*, 551 U.S. at 412–13 (Thomas, J., concurring) ("Teachers commanded, and students obeyed. Teachers did not rely solely on the power of ideas to persuade; they relied on discipline to maintain order.").
70. Thompson v. Keohane, 516 U.S. 99, 112 (1995).

warnings prior to his interrogation by a juvenile investigator.[71] When considered in conjunction with juveniles' susceptibility to interrogation, the school environment is sufficiently coercive that it warrants a per se rule requiring *Miranda* warnings before school interrogations. "A middle school is a restrictive environment. . . . [M]iddle school students are not free to leave the campus without permission, and visitors to the school, including parents and guardians of students, must upon arrival report their presence and receive permission to be at the facility."[72] Moreover, the cases cited by opponents of *Mirandizing* students do not support their argument. The State misapplies U.S. Supreme Court precedent and subjects students to the very dangers the *Miranda* Court enacted precautions to prevent.

In *J.D.B.*, an SRO went into J.D.B.'s classroom and escorted him to a conference room where the assistant principal, his intern, and a juvenile investigator from the local police department waited.[73] The investigator proceeded to interrogate J.D.B. about home break-ins while the assistant principal urged J.D.B "to 'do the right thing' and tell the truth."[74] The court denied J.D.B. was in custody as no one locked the door or restrained the student, and stated: "For a student in the school setting to be deemed in custody, law enforcement must subject the student to restraint on freedom of movement that goes well beyond the limitations that are characteristic of the school environment in general."[75] The court also denied that the school resource officer's presence "render[ed] that questioning custodial in nature."[76]

North Carolina argued before the Supreme Court that the mere fact that students must attend school does not create custody.[77] However, the attendance issue sufficiently distinguishes school interrogations from the U.S. Supreme Court cases cited in support. North Carolina cited *Oregon v. Mathiason* for the proposition "that a non-custodial setting is not converted to a custodial one simply because a reviewing court concludes that, even in the absence of any formal arrest or restraint on freedom of movement, the questioning took place in a coercive environment like a police station."[78] But this misapplies the facts in *Mathiason*. The Court in *Mathiason* placed great emphasis on the fact that the defendant "came voluntarily to the police station, where he was immediately informed that he was not under arrest. . . . It is clear *from these facts* that Mathiason was not in custody or otherwise deprived of his freedom of action in any significant way."[79] Mathiason had a choice in going to the police station that students do not have in attending school: "[t]he penalties for failure to attend school can be severe: a youth can be detained, declared a ward of the court, or have criminal liability and even jail time imposed on his or her parents."[80]

The investigator proceeded to interrogate J.D.B. . . . while the assistant principal urged J.D.B. "to 'do the right thing' and tell the truth."

Assuming arguendo that J.D.B.'s mere presence in school did not render him in custody, his removal to the conference room surely did. J.D.B. was removed from his classroom by a certified law-enforcement officer and escorted to a room containing another law-enforcement officer and two school administrators, whom the student is socialized to obey.[81] As Justice Kagan noted in oral argument: "Do we need either imaginative powers or empirical data to know that when a 13-year-old is brought into a room in his school, taken out of class, four people are there, two are police officers, one is assistant principal, threatened with custody, that that person is not going to feel free to take off and leave?"[82] "The only logical reason for [the SRO] to escort J.D.B. was to restrain his freedom of movement; J.D.B. had no choice but to comply with his removal from the classroom. . . . Therefore, J.D.B.'s freedom of movement was restricted from the moment he was removed from his classroom . . . ."[83] Although "the school setting itself is a familiar one to a student,"[84] administrative conference rooms likely are not.

Adopting this line of reasoning would severely prejudice students' rights by implying schools are "safe zones" for police interrogations. If being taken out of class by an uniformed officer and held in a room by the authority figures of the school and outside law enforcement is not "'restraint on freedom of movement' that goes well beyond the limitations that are characteristic of the school environment in general,"[85] it seems unlikely any questioning in schools could ever be considered custodial interrogation under *Miranda*. Indeed, this appears to be the position Justice Scalia took in oral argument: because

71. *In re* J.D.B., 686 S.E.2d 135, 136 (N.C. 2009), *rev'd*, 131 S. Ct. 2394 (2011).
72. *Id.* at 143 (Brady, J., dissenting).
73. *Id.* at 138–39 (majority opinion).
74. *Id.* at 144 (Brady, J., dissenting).
75. *Id.* at 138 (majority opinion).
76. *Id.* at 139.
77. Respondent's Brief, *supra* note 43, at 36 ("Even if this Court were to consider the setting in which the statements in this case were made, the questioning of petitioner by law enforcement officers in a school setting did not make the interview custodial."); *see also* United States Brief, *supra* note 43, at 33 ("The Court has, for example, held that the far more restrictive environment of incarceration to serve a sentence in a prison does not automatically constitute 'custody' for *Miranda* purposes, although additional restraints in a prison interview may amount to 'custody.'").
78. Respondent's Brief, *supra* note 43, at 36 (citing Oregon v. Mathiason, 429 U.S. 492 (1977) (per curiam)).
79. *Mathiason*, 429 U.S. at 495 (emphasis added).
80. JLC Brief, *supra* note 64, at 15–16.
81. Laupa & Turiel, *supra* note 60, at 196 ("[T]he principal is generally seen by children as the highest authority in the school.").
82. Transcript of Oral Argument at 13, J.D.B. v. North Carolina, 131 S. Ct. 2394 (2011) (09-11121), *available at* http://www.supremecourt.gov/oral_arguments/argument_transcripts/09-11121.pdf [*hereinafter* Oral Argument]; *see also In re* J.D.B., 686 S.E.2d 135, 143–44 (Brady, J., dissenting) (N.C. 2009) ("That a special investigator from the police department . . . was making a special trip to the school would alert any reasonable middle school student that something serious was taking place . . . .").
83. *In re J.D.B.*, 686 S.E.2d at 143–44 (Brady, J., dissenting).
84. Respondent's Brief, *supra* note 43, at 36–37.
85. *In re J.D.B.*, 686 S.E.2d at 138 (quoting State v. Buchanan, 543 S.E.2d 823, 827 (N.C. 2001)).

[T]he choice to interrogate in school . . . demonstrates the same kind of psychological manipulation the *Miranda* Court warned against.

students are required to attend school and obey teacher directives, students are never in custody. He stated:

> [T]he additional coercive effect of not being able to leave [the conference room] probably didn't make a whole lot of difference. He knew he was stuck where his parents had put him, in the school. And if the school sent him to a classroom, he had to be in the classroom; and if the school sent him to a place where he could, if he wished, voluntarily speak to the police officers, he had to be there.[86]

This assertion is absurd. There is certainly a difference between being required to be in a classroom learning and being required to accompany a uniformed police officer to go speak with the assistant principal and another law-enforcement officer. One is an everyday occurrence; the other presumably is not.[87] The court's determination that J.D.B. was not in custody, and was therefore not entitled to notice of his rights, ignores the reality of schools' restrictive nature, the relationships between officials and students, and the interrogation in question. Moreover, the denial of *Miranda* rights to students interrogated by police at school contradicts the very purpose of the *Miranda* warnings.

Upholding the Very Danger Miranda *Sought To Prevent*

The removal of a suspect from familiar surroundings (classrooms) and forcing him "into an unfamiliar atmosphere and [running him] through menacing police interrogation procedures" is the exact kind of psychological coercion that the *Miranda* warnings were designed to thwart.[88] At no time did any of the four adults in J.D.B.'s case "undertake to afford appropriate safeguards at the outset of the interrogation to insure that the statements were truly the product of free choice."[89] The withholding from students of knowledge about the right not to incriminate themselves forces them to become complicit in their own prosecutions.[90]

Additionally, the choice to interrogate in school rather than at home, especially in offenses occurring off school grounds, demonstrates the same kind of psychological manipulation the *Miranda* Court warned against: "The subject should be deprived of every psychological advantage. In his own home he may be confident, indignant, or recalcitrant. He is more keenly aware of his rights and more reluctant to tell of his indiscretions of criminal behavior within the walls of his home."[91] Placing a student in a situation where he or she has no advocate, indeed cannot secure one due to his or her lack of knowledge of the right to have one, isolates him or her. In fact, the Court noted isolation was the key feature of coercive interrogations: "To be alone with the subject is essential to prevent distraction and to deprive him of any outside support."[92] To prevent the wholesale dismantling of students' Fifth Amendment privilege against self-incrimination, there must be a per se rule of custodial interrogation and *Miranda* warnings.

No Miranda*-Free Zones: Justifications for a Per Se* Miranda *Rule in Schools*

The recognition of required *Miranda* warnings when students are interrogated by law enforcement in school protects students' rights and provides a bright-line rule for school officials and law enforcement. Moreover, by limiting it to the school setting, it does not unduly burden law enforcement. Logic dictates that if courts take the special nature of the school environment into account in order to restrict some constitutional rights,[93] then courts should also take the school environment into account to strengthen other constitutional rights.

The susceptibility of juveniles to police interrogation techniques and the inherent power structure of schools require *Miranda* warnings to ensure police do not take advantage of students' deference to authority.[94] If school interrogation is not per se custodial, then schools risk becoming a free zone for officers to interrogate students. Armed with the knowledge *Miranda* cannot enter the school, police would choose to speak to students in schools to avoid warning students of their rights and risking possible interference by parents or other advo-

86. Oral Argument, *supra* note 82, at 33 (statement of J. Scalia).
87. *See id.* at 33 (statement of J. Ginsburg) ("This seventh grader was marched by the school security officer, taken away from his peers, from his class in—put in a room with a closed door with the assistant principal. That is not a normal part of the school day. That's not where he is required to be.").
88. Miranda v. Arizona, 384 U.S. 436, 457 (1966).
89. *Id.*
90. *See id.* at 466 ("Without the protections flowing from adequate warning and the rights of counsel, 'all the careful safeguards erected around the giving of testimony, whether by an accused or any other witness, would become empty formalities in a procedure where the most compelling possible evidence of guilt, a confession, would have already been obtained at the unsupervised pleasure of the police.'" (quoting Mapp v. Ohio, 367 U.S. 643, 685 (1961) (Harlan, J., dissenting))).
91. *Id.* at 449–50; *see also In re* J.D.B., 686 S.E.2d 135, 143 (N.C. 2009) (Brady, J., dissenting), *rev'd*, 131 S. Ct. 2394 (2011) ("Law enforcement in the instant case took advantage of the middle school's restrictive environment and its psychological effect by choosing to interrogate J.D.B. there, instead of at his home or in any other public, more neutral location.").
92. *Miranda*, 384 U.S. at 455.
93. Morse v. Frederick, 551 U.S. 393, 396–97 (2007) ("[W]e have held that the constitutional rights of students in public school are not automatically coextensive with the rights of adults in other settings, and that the rights of students must be applied in light of the special characteristics of the school environment.") (internal citation and quotation marks omitted); *see also supra* note 67 and accompanying text.
94. *In re J.D.B.*, 686 S.E.2d at 147 (Hudson, J., dissenting) ("[T]he school environment, where juveniles are faced with a variety of negative consequences—including potential criminal charges—for refusing to comply with the requests or commands of authority figures, the circumstances are inherently more coercive and require more, not less, careful protection of the rights of the juvenile.").

cates.[95] "It is troubling that . . . a public middle school, which should be an environment where children feel safe and protected, [could become] a place where a law-enforcement investigator claim[s] a tactical advantage over a juvenile."[96] Recognizing a right to receive *Miranda* warnings from law enforcement before school interrogations would protect students' rights and would not come at the expense of law-enforcement goals nor needlessly restrict school administrators' abilities to enforce school rules.

Mirandizing students will not "destroy the criminal justice system."[97] North Carolina Attorney General Roy Cooper asserted in oral argument that "under [J.D.B.'s] theory, a school resource officer who is going to take a juvenile into a room to talk about a stolen cell phone or bullying, the first thing that he's got to say is you have the right to remain silent. Now, that, in my opinion, disrupts the communication."[98] However the Court has previously noted:

> [N]o system of criminal justice can, or should, survive if it comes to depend for its continued effectiveness on the citizens' abdication through unawareness of their constitutional rights. No system worth preserving should have to fear that if an accused is permitted to consult with a lawyer, he will become aware of, and exercise, these rights. If the exercise of constitutional rights will thwart the effectiveness of a system of law enforcement, then there is something very wrong with that system.[99]

Police should not be able to claim students should not know of their rights because they may choose to invoke them. The limitation of this per se rule to school settings would also prevent subjective factors from entering into the objective custody determination.

The main concern over extending the *Miranda* custody rule to consider age is that it would completely dismantle *Miranda*'s objective custody determination.[100] By linking the determination to location instead of age, this fear is unfounded. The standard is completely objective: the student is either in school or not. It would not create a "*Miranda* minor" rule, mandating different warnings for all K-12 students in all situations. Students in school would receive the standard *Miranda* warnings, the standard for determining voluntariness of any waiver would remain the same, and a public safety exception could be read into this rule as it has been in *Miranda*.[101] A per se custodial interrogation rule for schools will balance law enforcement needs without sacrificing notice to students of their constitutional rights.

CONCLUSION

The purpose behind *Miranda* was to provide clear guidance to law-enforcement officers as to procedure to ensure people could make informed decisions before waiving their rights. Unfortunately, "police have complied more with the letter than with the spirit of *Miranda*."[102] As the *J.D.B.* case and others like it illustrate,[103] law-enforcement officers engage in psychologically intimidating interrogation without taking the small step of informing students of their right not to incriminate themselves. "[W]e can't simply say 'we're not going to do anything. We are not going to tell these children that they don't have to cooperate with the State in building a case against themselves.'"[104] The time has come for the recognition of a per se custodial interrogation rule when students are questioned by law enforcement at school. Failing to do so would give law-enforcement officers carte blanche to question students at school. The special nature of schools creates the intimidating atmosphere that so concerned the *Miranda* court. There must be a bright-line rule to prevent students' privilege against self-incrimination from becoming a right in name only.[105]

Stephanie Forbes graduated from the William & Mary School of Law in 2011, and she won the American Judges Association's writing competition for law students with this article. She presently serves as a law clerk to the Honorable Jane Grall of the New Jersey Superior Court, Appellate Division. Forbes received her undergraduate degree in 2008 from Mount Holyoke College. She thanks Professor Paul Marcus and her parents for all their support.

95. For example in *Greene v. Camreta*, a social worker chose to question an elementary school student, allegedly sexually abused, at school "because it is a place where children feel safe and would allow him 'to conduct the interview away from the potential influence of suspects, including parents.'" 588 F.3d 1011, 1016 (9th Cir. 2009), *vacated as moot by* 131 S. Ct. 2020 (2011).
96. *In re J.D.B.*, 686 S.E.2d at 143 (Brady, J., dissenting).
97. Oral Argument, *supra* note 82, at 38 (statement of J. Breyer) ("Now, what happens to destroy the criminal justice system? You can see from my overstatement, I tend to suspect nothing, but you tell me.").
98. *Id.* (statement of N.C. Att'y Gen. Roy Cooper).
99. Escobedo v. Illinois, 378 U.S. 478, 490 (1964).
100. *See generally* Respondent's Brief, *supra* note 43. *See also* Yarborough v. Alvarado, 541 U.S. 652, 667 (2004) ("The *Miranda* custody inquiry is an objective test. . . . The objective test furthers 'the clarity of [*Miranda*'s] rule,' ensuring that the police do not need 'to make guesses as to [the circumstances] at issue before deciding how they may interrogate the suspect.'" (quoting Berkemer v. McCarty, 468 U.S. 420, 431 (1984) (alterations in original) (citation omitted))).
101. New York v. Quarles, 467 U.S. 649, 655 (1984) (holding there is a "public safety exception to the requirement that Miranda warnings be given before a suspect's answers may be admitted into evidence").
102. Marvin Zalman & Brad W. Smith, *The Attitudes of Police Executives Toward* Miranda *and Interrogation Policies*, 97 J. CRIM. L. & CRIMINOLOGY 873, 925 (2007).
103. *See generally* Shields, *supra* note 21.
104. Oral Argument, *supra* note 82, at 24–25 (statement of Barbara S. Blackman, Attorney of Record for the Petitioner).
105. *See* Miranda v. Arizona, 384 U.S. 436, 444 (1966) ("This was the spirit in which we delineated, in meaningful language, the manner in which the constitutional rights of the individual could be enforced against overzealous police practices. It was necessary . . . to insure that what was proclaimed in the Constitution had not become but a 'form of words' . . . in the hands of government officials." (internal citation omitted)).