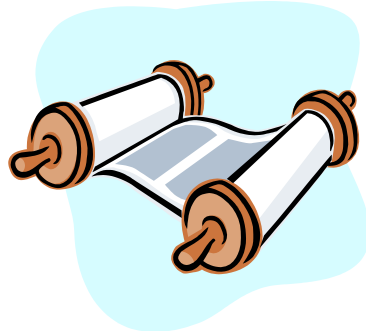


SEVENTH ANNUAL

MARSHALL-BRENNAN CONSTITUTIONAL LITERACY PROJECT

CONSTITUTION DAY TEACHING MODULE



The Fifth Amendment's Privilege Against Self-Incrimination and Public School Students: When do *Miranda* Rights Apply?

September 17, 2011

Produced by the **Marshall-Brennan Constitutional Literacy Project** at American University Washington College of Law. Substantial contributors to this unit include Claire Griggs, Jessica Kurtz, and Maryam Ahranjani. The Project appreciates the support of the American Constitution Society in implementing the teaching module in high schools across the country.

The Fifth Amendment's Privilege Against Self-Incrimination and Public School Students: When Do *Miranda* Rights Apply?

INSTRUCTIONS

Description:

This unit can be taught during the week of Constitution Day or afterwards. While it may be taught in separate parts, we recommend that students are familiar with the information provided in the background section prior to learning any of the three cases (*Miranda v. Arizona*, *Berghuis v. Thompkins*, and *JDB v. North Carolina*).

The overarching goal of this lesson plan is to teach 9th-12th grade students about the significance of the Constitution as a living document that confers rights upon them as young people.

Objectives:

- 1) To learn about the Fifth Amendment in greater depth, focusing on the issue of juvenile *Miranda* rights. *JDB* provides a unique opportunity for students to think about how the Fifth Amendment affects them personally.
- 2) To learn about the Supreme Court case *Miranda v. Arizona*, in which the Court held that a person must be informed of their right to remain silent and have an attorney present during questioning, among other things, during custodial interrogation.
- 3) To learn about the 2011 Supreme Court case *JDB v. North Carolina*, in which the Court held that age must be considered as a factor in custody determinations in school settings.

Length of Lesson: 1-2 class periods of 60 minutes. This module may take three periods if your class period is shorter than 60 minutes or if you have a large class.

Supplies Needed: This packet.

The Fifth Amendment's Privilege Against Self-Incrimination and Public School Students: When Do *Miranda* Rights Apply?

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Recommended approach:

Day One

- Review “Fifth Amendment Vocabulary” – page 5
 - Teachers can either provide students with a copy of the vocabulary sheet or simply display/discuss the vocabulary prior to the start of the lesson.
- Review “Fifth Amendment Background” material – page 6
 - A student or the teacher/presenter should read the actual text of the Fifth Amendment aloud to the class.
 - This lesson focuses on the privilege against self-incrimination, so most of the time should be spent on the “no person shall have to be a witness against himself” provision (bolded in materials).

***Read an excerpt of the actual case of Miranda v. Arizona to see firsthand how the Supreme Court articulated these concepts. (The excerpt comes from the textbook Youth Justice in America by Maryam Ahranjani, Andrew G. Ferguson, and Jamin B. Raskin).*

- Read “*Miranda v. Arizona*” case
 - Supreme Court Opinion condensed – page 10
 - Summarized Version – page 16

Included are two versions of the case. Based on the level of learning in your classroom, choose which version is best suited for the students. Additionally, the “Summarized Version” can be used in conjunction with the “Supreme Court Opinion condensed” as summary and follow-up to check for understanding.

- Complete “*Miranda v. Arizona* Case Brief” – page 17
- Complete “The 5th Amendment *Miranda* Application” worksheet – page 21
 - Please see corresponding *Miranda* flow chart and have students use it to complete this activity – page 23

Recommended approach:

Day Two

- Students complete “*Miranda* Warm-Up Activity (*Miranda* Card)” – page 24
 - This activity will serve as a brief review of *Miranda*.
- Students complete “Modern Day *Miranda* Application: *Berghuis v. Tompkins*” worksheet – page 25
- Read “*JDB v. North Carolina*” case
 - Supreme Court Opinion condensed – page 26
 - Summarized Version – page 31

Included are two versions of the case. Based on the level of learning in your classroom, choose which version is best suited for the students. Additionally, the “Summarized Version” can be used in conjunction with the “Supreme Court Opinion condensed” as summary and follow-up to check for understanding.

- Students complete “The 5th Amendment *JDB* Application” – page 32

Fifth Amendment Vocabulary

Subpoena	A written legal document commanding a person to appear in court or else be penalized for failure to appear
Custody	Under arrest; period of time during which a person has been deprived of his freedom of action
Interrogation	Questioning; questions, words, or actions initiated by the police that the police should know is likely to lead to an incriminating response from the suspect
Custodial Interrogation	When you are asked questions by the police while you are under arrest and have been taken into custody by the police; to trigger <i>Miranda</i> rights, there must be a custodial interrogation. This means that you must be in custody, and be interrogated. You cannot have only one or the other
Coerce	Force or threat of force
Double jeopardy	The Fifth Amendment protects criminal defendants from being tried twice for the same crime.

Fifth Amendment Background

The Text of the 5th Amendment

NO PERSON SHALL BE HELD TO ANSWER FOR A CAPITAL, OR OTHERWISE INFAMOUS CRIME, UNLESS ON A PRESENTMENT OR INDICTMENT OF A GRAND JURY, EXCEPT IN CASES ARISING IN THE LAND OR NAVAL FORCES, OR IN THE MILITIA, WHEN IN ACTUAL SERVICE IN TIME OF WAR OR PUBLIC DANGER; NOR SHALL ANY PERSON BE SUBJECT FOR THE SAME OFFENSE TO BE TWICE PUT IN JEOPARDY OF LIFE OR LIMB; NOR SHALL BE COMPELLED IN ANY CRIMINAL CASE TO BE A WITNESS AGAINST HIMSELF, NOR BE DEPRIVED OF LIFE, LIBERTY, OR PROPERTY, WITHOUT DUE PROCESS OF LAW; NOR SHALL PRIVATE PROPERTY BE TAKEN FOR PUBLIC USE, WITHOUT JUST COMPENSATION.

Let's break it down! What are the important parts?

Provision	Explanation
No person shall be held to answer for a crime without the indictment of a grand jury.	In practice today, grand juries are not terribly common, but their role is to determine whether there is enough evidence for a case to proceed to trial.
No person can be tried for the same crime twice.	This is also known as double jeopardy.
** No person shall have to be a witness against himself.	This is known as "taking or pleading the 5 th " and it means a person does not have to answer a question that would implicate them in a crime while on the stand.
No person shall be deprived of life, liberty, or property without due process of the law.	Remember, that the due process clause says that every individual is entitled to a fair trial and protection of the law

Explanation of Self-Incrimination:

The Supreme Court has determined that before any confession or incriminating statements made while you are in police custody can be used against you in court, you must first have been informed of your 5th Amendment right against self-incrimination. After being advised of your rights you can still choose to speak, but a waiver of rights must be made _____, _____, and _____. You have to understand the rights you are giving up. You cannot be _____ or _____ into giving up your rights.

Why are these 5th Amendment Rights so Important?

1. They protect the innocent.
 - a. The 5th Amendment makes sure that the government doesn't take advantage of confessions that may have been **coerced**.
 - b. Recognizes that the government sometimes will use inhumane treatment such as physical or psychological abuse, or even torture, to get what they want.

2. They protect suspects from being forced to choose among self-accusation, perjury, and contempt.
 - a. It is the prosecution's job to prove guilt beyond a reasonable doubt. The accused individual doesn't have to prove anything so he shouldn't have to be a witness against himself.

After Miranda Rights are Given

If an individual indicates in any way, prior to or during questioning, that he wishes to remain silent _____.

If an individual indicates that he wants an attorney, _____
_____.

Remedy

What happens if an individual says he wishes to remain silent, or wants a lawyer, but the police continue to question them anyway? If this happens, then the police are _____!

The remedy for a violation of this rule is usually _____

_____.

(ANSWER KEY)

Fifth Amendment Background

The Text of the 5th Amendment

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** No person shall have to be a witness against himself.	This is known as "taking or pleading the 5 th " and it means a person does not have to answer a question that would implicate them in a crime while on the stand.
No person shall be deprived of life, liberty, or property without due process of the law.	Remember, that the due process clause says that every individual is entitled to a fair trial and protection of the law

**** This lesson focuses on the privilege against self-incrimination, so most time should be spent on this provision.**

Explanation of Self-Incrimination:

The Supreme Court has determined that before any confession or incriminating statements made while you are in police custody can be used against you in court, you must first have been informed of your 5th Amendment right against self-incrimination. After being advised of your rights you can still choose to speak, but a

waiver of rights must be made voluntarily, knowingly, and intelligently. You have to understand the rights you are giving up. You cannot be coerced or tricked into giving up your rights.

Why are these 5th Amendment Rights so Important?

1. They protect the innocent.
 - a. The 5th Amendment makes sure that the government doesn't take advantage of confessions that may have been **coerced**.
 - b. Recognizes that the government sometimes will use inhumane treatment such as physical or psychological abuse, or even torture, to get what they want.

2. They protect suspects from being forced to choose among self-accusation, perjury, and contempt.
 - a. It is the prosecution's job to prove guilt beyond a reasonable doubt. The accused individual doesn't have to prove anything so he shouldn't have to be a witness against himself.

After Miranda Rights are Given

If an individual indicates in any way, prior to or during questioning, that he wishes to remain silent the interrogation must cease.

If an individual indicates that he wants an attorney, interrogation must stop until an attorney is present.

Remedy

What happens if an individual says he wishes to remain silent, or wants a lawyer, but the police continue to question them anyway? If this happens, then the police are violating the Miranda rule.

The remedy for a violation of this rule is usually exclusion of the confession or illegally obtained statements.

***Read an excerpt of the actual case of Miranda v. Arizona to see firsthand how the Supreme Court articulated these concepts. (The excerpt comes from the textbook Youth Justice in America by Maryam Ahranjani, Andrew G. Ferguson, and Jamin B. Raskin).*

<i>Miranda</i> Vocabulary	
Jurisprudence	Body of law.
Incommunicado	Without communication with others.
Stratagems	Tricky strategies for deception.
Subjugate	Bring under control and governance as a subject.
Inherently	Deeply part of something; essential or intrinsic.
Delineate	Describe, portray, or set forth with accuracy or in detail.

**ERNESTO A. MIRANDA, PETITIONER,
V.
STATE OF ARIZONA.**

*Supreme Court of the United States
Argued Feb. 28, March 1 and 2, 1966
Decided June 13, 1966*

Mr. Chief Justice WARREN delivered the opinion of the Court.

The cases before us raise questions which go to the roots of our concepts of American criminal **jurisprudence**: the restraints society must observe consistent with the federal Constitution in prosecuting individuals for crimes. More specifically, we deal with the admissibility of statements obtained from an individual who is subjected to custodial police interrogation and the necessity for the procedures which assure that the individual is accorded his privilege under the fifth Amendment to the Constitution not be compelled to incriminate himself.

I.

An understanding of the nature and setting of this in-custody interrogation is essential to our decisions today. The difficulty in depicting what transpires at such interrogations stems from the fact that in this country they have largely taken place **incommunicado**. From extensive factual studies undertaken in the early 1930's, including the famous Wickersham Report to congress by a presidential Commission, it is clear that police violence and the 'third degree' flourished at that time. In a series of cases decided by this Court long after these studies, the police resorted to

physical brutality- beating, hanging, whipping- and to sustained and protracted questioning incommunicado in order to confessions.....

The examples given above are undoubtedly the exception now, but they are sufficiently widespread to be the object of concern. Unless a proper limitation upon custodial interrogation is achieved-such as these decisions will advance- there can be no assurance that practices of this nature will be eradicated in the foreseeable future...

Again we stress that the modern practice of in-custody interrogation is psychologically rather than physically oriented. As we have stated before,... this Court has recognized that coercion can be mental as well as physical, and that the blood of the accused is not the only hallmark of an unconstitutional inquisition...

Interrogation still takes place in privacy. Privacy results in secrecy and this in turn results in a gap in our knowledge as to what in fact goes on in the interrogation rooms. A valuable source of information about present police practices, however, may be found in various police manuals and texts which document procedures employed with success in the past, and which recommend various other effective tactics. These texts are used by law enforcement agencies themselves as guides...

The officers are told by the manuals that the 'principal psychological factor contributing to a successful interrogation is privacy-being alone with the person under interrogation.' To highlight the isolation and unfamiliar surroundings, the manuals instruct the police to display an air of confidence in the suspect's guilt and from outward appearance to maintain only an interest in confirming certain details. The guilt of the subject is to be posited as a fact. The interrogation should direct his comments toward the reasons why subject committed the act, rather than court failure by asking the subject whether he did it. Like other men, perhaps the subject has had a bad family life, had an unhappy childhood, had too much to drink, had an unrequited desire for woman. The officers are instructed to minimize the moral seriousness of the offense, to cast blame on the victim or on society. These tactics are designed to put the subject in a psychological state where his story is but an elaboration of what the police purport to know already - that he is guilty. Explanations to the contrary are dismissed and discouraged...

When the techniques described above prove unavailing, the texts recommend they alternated with a show of some hostility. One poly often used has been termed the 'friendly-unfriendly' or the 'Mutt and Jeff' act:

'In this technique, two agents are employed. Mutt, the relentless investigator who knows the subject guilty and is not going to waste any time. He's sent a dozen men away for this crime and he's going to send the subject away for the full term. Jeff, on the other hand, is obviously a kindhearted man. He has a family himself. He has a brother who was involved in a little scrape like this. He disapproves of Mutt and his tactics and will arrange to get him off the case if the subject will cooperate. He can't hold Mutt off for very long. The subject would be wise to make a quick decision. The technique is applied by having both investigators present while Mutt acts

out his role. Jeff may stand by quietly and demur at some of Mutt's tactics. When Jeff makes his plea for cooperation, Mutt is not present in the room'.

The interrogations sometimes are instructed to induce a confession out of trickery. The technique here is quite effective in crimes which require identification or which run in series. In the identification situation, the interrogator may take a break in his questioning to place the subject among a group of men line-up. 'The witness or complainant (previously coached, if necessary) studies the line-up and confidently points out the subject as the guilty party.' Then questioning resumes 'as though there were now no doubt about the guilty of the subject.' A variation on this technique is called the reverse line-up:

The accused is placed in a line-up, but this time he is identified by several fictitious witnesses or victims who associated him with different offenses. It is expected that the subject will become desperate and confess to the offense under investigation in order to escape from the false accusations.'

The manuals also contain instruction for police on how to handle the individual who refuses to discuss the matter entirely, or who asks for an attorney or relatives. The examiner is to concede him the right to remain slight.' This usually has a very undermining effect. First of all, he is disappointed in his expectation of an unfavorable reaction on the part of the interrogator. Secondly, a concession of this right to remain slight impresses the subject with the apparent fairness of his interrogator. After this psychological conditioning however, the officer is told to point out the incriminating significance if the subject refusal to talk:

'Joe you have a right to remain silent. That's your privilege and I'm the last person in the world who'll try to take it away from you. If that's the way you want to leave this, O.K. But let me ask you this. Suppose you were in my shoes and I were in my shoes and you called me in to ask me about this and I told you. 'I don't want to answer any of your questions.' You'd think I had something to hide, and you'd probably be right in thinking that. That's exactly what I'll have to think about you, and so will everybody else. So let's sit here and talk this whole thing over.' ..

From these representative samples of interrogation techniques, the setting prescribed by the manuals and observed in practice becomes clear. In essence, it is this: To be alone with the subject is essential to prevent distraction and to deprive him of any outside support. The aura of confidence in his guilt undermines his will to resist. He merely confirms the preconceived story the police seek to have him describe. Patience and persistence, at times relentless questioning, are employed. To obtain a confession, the interrogator must 'patiently maneuver himself or his quarry into a position from which the desired objective may be attained.' When normal procedures fail to produce the needed result, the police may resort to deceptive **stratagems** such as giving false legal advice. It is important to keep the subject off balance, for example, by trading on his insecurity about himself or his surroundings. The police then persuade, trick, or cajole him out of exercising his constitutional rights.

Even without employing brutality, the 'third degree' or the specific stratagems described above, the very fact of custodial interrogation exacts a heavy toll on individual liberty and trades on the weakness of individuals.

In the cases before us today, given this background, we concern ourselves primarily with this interrogation atmosphere and the evils it can bring. . . .

It is obvious that such an interrogation environment is created for no purpose other than to **subjugate** the individual to the will of his examiner. This atmosphere carries its own badge of intimidation. To be sure, this is not physical intimidation, but it is equally destructive of human dignity. The current practice of incommunicado interrogation is at odds with one of our Nation's most cherished principles- that the individual may not be compelled to incriminate himself. 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.

From the foregoing, we can readily perceive an intimate connection between the privilege against self-incrimination and police custodial questioning. . . .

III

We have concluded that without proper safeguards the process of in-custody interrogation of persons suspected or accused of crime contains **inherently** compelling pressures which work to undermine the individual's will to resist and to compel him to speak where he would not otherwise do so freely. In order to combat these pressures and to permit a full opportunity to exercise the privilege against self-incrimination, the accused must be adequately and effectively apprised of his right and the exercise of those rights must be fully honored.

. . . At the outset, if a person in custody is to be subjected to interrogation, he must first be informed in clear and unequivocal terms that he has the right to remain silent... More important, such a warning is an absolute prerequisite in overcoming the inherent pressures of the interrogation atmosphere. It is not just the subnormal or woefully ignorant who succumb to an interrogator's imprecations, whether implied or expressly stated, that the interrogation will continue until a confession is obtained or that silence in the face of accusation is itself damning and will bode ill when presented to a jury. Further, the warning will show the individual that his interrogators are prepared to recognize his privilege should he choose to exercise it.

The warning of the right to remain silent must be accompanied by the explanation that anything said can and will be held against the individual in the court. This warning is needed in order to make him aware not only of the privilege, but also of the consequences of forgoing it. It is only through an awareness of these consequences that there can be any assurance of real understanding and intelligent exercise of the privilege. Moreover, this warning may serve to make the individual more acutely aware that he is faced with a phase of the adversary system- that he is not in the presence of the persons acting solely in his interest.

The circumstances surrounding in-custody interrogation can operate very quickly to overbear the will of one merely made aware of his privilege by his interrogators. Therefore, the right to have counsel present at the interrogation is indispensable to the protection of the Fifth Amendment privilege under the system which we **delineate** today. Our aim is to assure that the individual's right to consult with counsel prior to questioning, but also to have counsel present during any questioning if the defendant so desires.

An individual need not make pre-interrogation request for a lawyer. While such request affirmatively secures his right to have one, his failure to ask for a lawyer does not constitute a waiver. No effective waiver of the right to counsel during interrogation can be recognized unless specifically made after the warnings we here delineate have been given. The accused who does not know his rights and therefore does not make a request may be the person who most needs counsel.

Accordingly we hold that an individual held for interrogation must be clearly informed that he has the right to consult with a lawyer and to have the lawyer with him during interrogation under the system protecting the privilege we delineate today.

If an individual indicates that he wishes the assistance of counsel before any interrogation occurs, the authorities cannot rationally ignore or deny his request on the basis that the individual does not have or cannot afford a retained attorney. The financial ability of the individual has no relationship to the scope of the rights involved here. The privilege against self-incrimination secured by the Constitution applies to all individuals. The need for counsel in order to protect the privilege exists for the indigent as well as the affluent. In fact, were we to limit these constitutional rights to those who can retain an attorney, our decisions today would be of little significance. The cases before us as well as the vast majority of confession cases with which we have dealt in the past involve those unable to retain counsel. . . .

In order fully to apprise a person interrogated of the extent of his rights under this system then, it is necessary to warn him not only that he has the right to consult with an attorney, but also that if he is indigent a lawyer will be appointed to represent him. Without this additional warning the admonition of the right to consult with counsel would often be understood as meaning only that he can consult with a lawyer if he has one or has the funds to obtain one. The warning of the right to counsel would be hollow if not couched in terms that would convey to the indigent- the person most often subjected to interrogation- the knowledge that he too has a right to have counsel present. . . .

Once warnings have been given, the subsequent procedure is clear. If the individual indicates in any manner, at any time prior to or during the questioning, that he wishes to remain silent, the interrogation must cease. . . . Any statement taken after the person invokes his privilege cannot be other than the product of compulsion, subtle or otherwise. Without the right to cut off questioning, the setting of in-custody interrogation operates on the individual to overcome free choice in producing a statement after the privilege has been once invoked. If the individual states

that he wants an attorney, the opportunity to confer with the attorney and to have him present during any subsequent questioning to the police, they must respect his decision to remain silent.

The warnings required and the waiver necessary in accordance with our opinion today are... prerequisites to the admissibility of any statement made by a defendant.

IV

A recurrent argument made in these cases is that society's need for interrogation outweighs the privilege. . . . The whole thrust of our foregoing discussion demonstrates that the Constitution has prescribed the rights of the individual when confronted with the power of government when it provided in the Fifth Amendment that an individual cannot be abridged. . . .

In announcing these principles, we are not unmindful of the burdens which law enforcement officials must bear, often under trying circumstances. We also fully recognize the obligation of all citizens to aid in enforcing the criminal laws. This Court, while protecting individual rights, has always given ample latitude to law enforcement agencies in the legitimate exercise of their duties. The limits we have placed on the interrogation process should not constitute an undue interference with a proper system of law enforcement. As we have noted, our decision does not in any way preclude police from carrying out their traditional investigatory functions.

We reverse.

SUMMARIZED VERSION: MIRANDA V. ARIZONA

Facts of the Case:

A kidnapping and sexual assault occurred in Phoenix, Arizona, in March 1963. On March 13 Ernesto Miranda, 23, was arrested in his home, taken to the police station, identified by the victim, and taken into an interrogation room. Miranda was not told of his rights to counsel prior to questioning. Two hours later, investigators emerged from the room with a written confession signed by Miranda. It included a typed disclaimer, also signed by Miranda, stating that he had “full knowledge of my legal rights, understanding any statement I make may be used against me,” and that he had knowingly waived those rights. Two weeks later at a preliminary hearing, Miranda again was denied counsel. At his trial he did have a lawyer, whose objections to the use of Miranda's signed confession as evidence were overruled. Miranda was convicted of kidnapping and rape, and received a 20-year sentence.

<u>Legal Question:</u>	<u>Court Opinion and Reasoning:</u>
Was a confession an admissible document in a court of law if it was obtained without warnings against self-incrimination and without legal counsel—rights guaranteed to all persons by the 5th and 6th amendments?	By a 5-4 margin, the Court voted to overturn Miranda's conviction. Miranda was not in any way apprised of his right to consult with an attorney and to have one present during the interrogation, nor was his right not to be compelled to incriminate himself effectively protected in any other manner. Without these warnings [his] statements were inadmissible. The mere fact that he signed a statement which contained a typed-in clause stating that he had 'full knowledge' of his 'legal rights' does not approach the knowing and intelligent waiver required to relinquish constitutional rights.”
With whom does the burden of proof rest for determining whether a defendant has legally “waived” his or her rights?	The burden is upon the State to demonstrate that “procedural safeguards effective to secure the privilege against self-incrimination” are followed.
What is the standard for judging whether “voluntary confessions” should be deemed admissible?	The Court held “[A] valid waiver will not be presumed simply from the silence of the accused after warnings are given or simply from the fact that a confession was in fact eventually obtained.... Moreover, any evidence that the accused was threatened, tricked or cajoled into a waiver will, of course, show that the defendant did not voluntarily waive his privilege.”
What rights are given to people subject to custodial interrogation?	Police must warn a suspect “prior to any questioning that he has the right to remain silent, that anything he says can be used against him in a court of law, that he has the right to the presence of an attorney, and that if he cannot afford an attorney one will be appointed for him prior to any questioning if he so desires.”

CASE BRIEF

Your Name:	
Case Name:	
What are the Important Facts?	
Legal Issue: What is the problem or question that needs to be answered by the Court?	
What are the parties' arguments?	

What are the parties' arguments? (cont.)	
What is the holding? (What does the Court decide?)	
What is the Court's reasoning?	

(ANSWER KEY)

CASE BRIEF

Your Name:	
Case Name:	Miranda v. Arizona
What are the Important Facts?	Ernesto Miranda was arrested and charged with rape and kidnapping of a woman in Arizona. He was brought into the police station and interrogated. During the many hours he was questioned, he made several incriminating statements that were used by the prosecution to convict him. He was never informed by police of his rights to remain silent and to talk to a lawyer.
Legal Issue: What is the problem or question that needs to be answered by the Court?	What protections does a person have during custodial interrogations?
What are the parties' arguments?	For Miranda: The police clearly violated Miranda's 5th Amendment right to remain silent, and his 6th Amendment right to legal counsel. His confession was illegally obtained and should be thrown out. His conviction was faulty, and he deserved a new trial.

What are the parties' arguments? (cont.)	For Arizona: Ernesto Miranda was no stranger to police procedures. He
	negotiated with police officers with intelligence and understanding. He signed
	his confession willingly.
What is the holding? (What does the Court decide?)	The Supreme Court decided that an individual held for interrogation must be clearly
	informed that he has the right to consult with a lawyer and to have the lawyer with
	him during interrogation. Also, criminal suspects are entitled to have an attorney
	provided free of charge because the financial ability of the person has no
	relationship to the scope of the rights involved. The right applies to all people, not
	just those that can pay for a lawyer.
What is the Court's reasoning?	Warnings are needed in order to make a person aware not only of their
	privileges, but also of the consequences of giving them up. Incommunicado
	interrogation is at odds with right of citizens against self-incrimination. The purpose
	of the right to counsel is to ensure that the person's right to choose to remain silent
	is protected throughout the entire interrogation process.

The 5th Amendment *Miranda* Application

Directions: Read the scenarios below. Using your *Miranda* flow chart, decide if the *Miranda* rule applies, and if the evidence should be excluded.

1. Josie was arrested by Officer Jones for shoplifting. While handcuffing her, Officer Jones reads Josie her *Miranda* rights. When they arrived at the police station, Josie waived her right to silence. Should the evidence be excluded?

2. Arnold is picked up by Officer Scott for his supposed connection to a murder. Officer Scott takes Arnold down to the precinct and places him in a small locked room with no lights. He handcuffs him to the table and makes him sit there for four hours. Officer Scott then comes in and tells Arnold that he should answer some questions if he knows what's good for him. Arnold says he wants a lawyer and to remain silent but Officer Scott questions him for 5 hours anyway. Finally Arnold breaks down and talks. Are *Miranda* rights required in this situation?

Should the evidence be excluded?

3. The police believe that Susie might be involved in drug dealing. Officer Frank goes to her house to ask her some questions but Susie isn't there. Officer Frank leaves a message that Susie should come down to the station. When Susie arrives at the station, Officer Frank asks her some questions at his desk which is out in the open. She is not restrained in any way; the questioning lasts for one hour.

Are *Miranda* rights required? _____.

Why or why not? _____.

(ANSWER KEY)

*Please see corresponding *Miranda* flow chart and have students use it to complete this activity.

The 5th Amendment *Miranda* Application

Directions: *Read the scenarios below. Using your Miranda flow chart, decide if the Miranda rule applies, and if the evidence should be excluded.*

1. Josie was arrested by Officer Jones for shoplifting. While handcuffing her, Officer Jones reads Josie her Miranda rights. When they arrived at the police station, Josie waived her right to silence. Should the evidence be excluded?
No, because Josie made a voluntary, knowing, and intelligent waiver of her right to remain silent.

2. Arnold is picked up by Officer Scott for his supposed connection to a murder. Officer Scott takes Arnold down to the precinct and places him in a small locked room with no lights. He handcuffs him to the table and makes him sit there for four hours. Officer Scott then comes in and tells Arnold that he should answer some questions if he knows what's good for him. Arnold says he wants a lawyer and to remain silent but Officer Scott questions him for 5 hours anyway. Finally Arnold breaks down and talks. Are Miranda rights required in this situation?

Yes, because Arnold was subject to custodial interrogation. Although Arnold was not actually arrested, the circumstances of his custody make it clear he was not free to leave and Officer Scott questioned him after he requested an attorney.

Should the evidence be excluded?

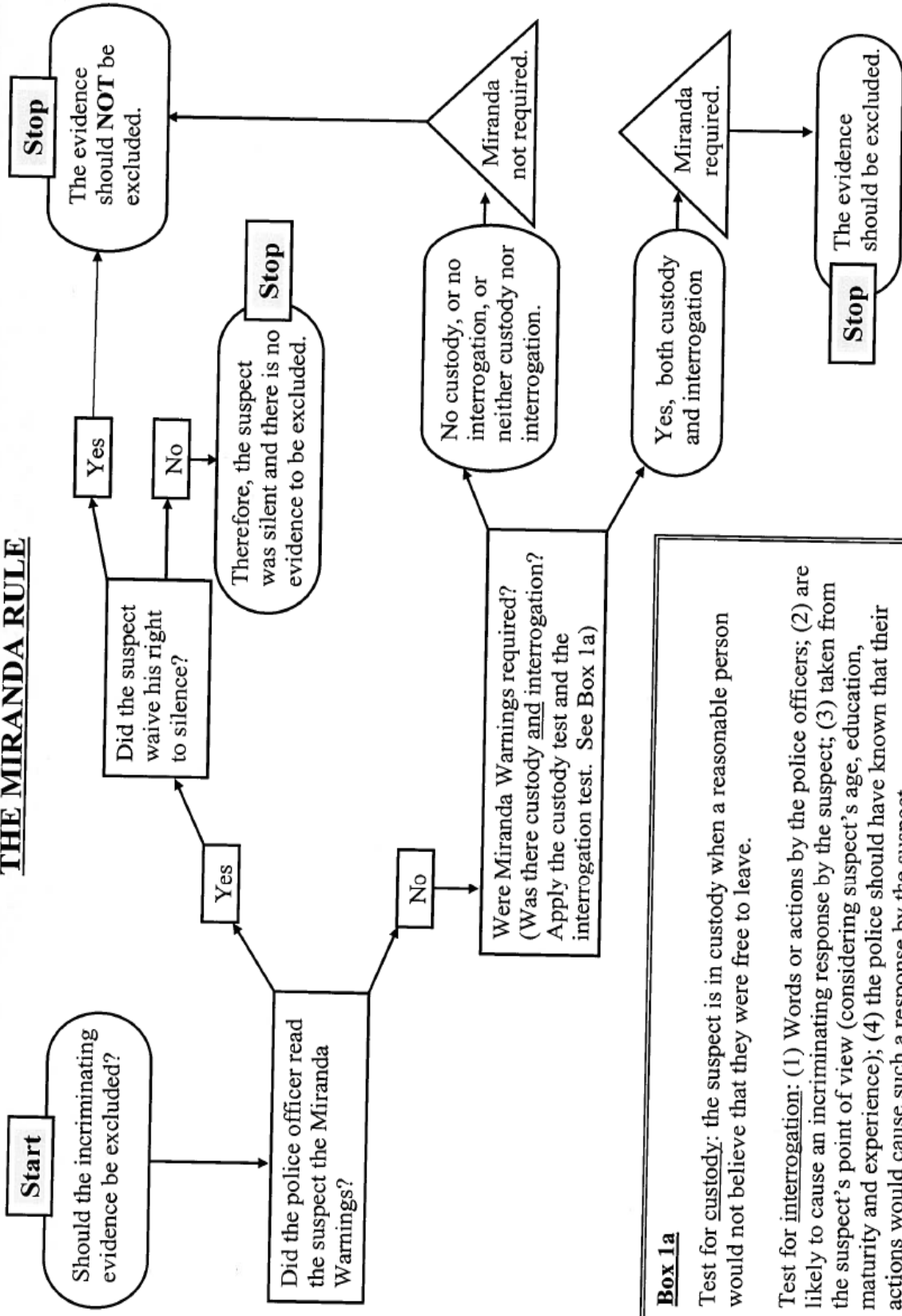
Yes

3. The police believe that Susie might be involved in drug dealing. Officer Frank goes to her house to ask her some questions but Susie isn't there. Officer Frank leaves a message that Susie should come down to the station. When Susie arrives at the station, Officer Frank asks her some questions at his desk which is out in the open. She is not restrained in any way; the questioning lasts for one hour.

Are Miranda rights required? No

Why or why not? Susie is not in custody.

THE MIRANDA RULE



Box 1a
 Test for custody: the suspect is in custody when a reasonable person would not believe that they were free to leave.
 Test for interrogation: (1) Words or actions by the police officers; (2) are likely to cause an incriminating response by the suspect; (3) taken from the suspect's point of view (considering suspect's age, education, maturity and experience); (4) the police should have known that their actions would cause such a response by the suspect.

Miranda Warm-Up Activity

As a result of the case *Miranda v. Arizona*, police officers must inform suspects of their rights to a lawyer and to remain silent. Many jurisdictions use Miranda waiver cards to prove that suspects have been read, and understand, their rights. Willing suspects that wish to speak to the police without counsel can sign these cards to acknowledge that they are waiving their rights. Below is a copy of a Miranda Waiver Card. Read the card and fill it out the way you would if you were at the police station.

PD 47 Rev.8/73	METROPOLITAN POLICE DEPARTMENT
WARNING AS TO YOUR RIGHTS	
<p>You are under arrest. Before we ask you any questions, you must understand what your rights are.</p> <p>You have the right to remain silent. You are not required to say anything to us at any time or to answer any questions. Anything you say can be used against you in court.</p> <p>You have the right to talk to a lawyer for advice before we question you and to have him with you during questioning.</p> <p>If you cannot afford a lawyer and want one, a lawyer will be provided for you.</p> <p>If you want to answer questions now without a lawyer present you will still have the right to stop answering at any time. You also have the right to stop answering at any time until you talk to a lawyer.</p>	

WAIVER	
<p>1. Have you read or had read to you the warning as to your rights? _____</p> <p>2. Do you understand these rights? _____</p> <p>3. Do you wish to answer any questions? _____</p> <p>4. Are you willing to answer questions without having an attorney present? _____</p> <p>5. Signature of the defendant on the line below _____</p> <p>6. Time _____ Date _____</p> <p>7. Signature of Officer _____</p> <p>8. Signature of Witness _____</p>	

Modern Day *Miranda* Application: *Berghuis v. Thompkins*

Directions: Read the section below and then respond to the questions.

On January 10, 2000, Samuel Morris and Frederick France were shot repeatedly while driving through a strip mall parking lot in Southfield Michigan. The shots killed Morris and severely wounded France. The police investigation quickly pointed to Eric Purifoy and Van Chester Thompkins. Purifoy was arrested and charged with the murder of Samuel Morris as well as assault and weapons offenses, but was subsequently acquitted of the murder and assault charges. Thompkins, however, evaded the police until February 19, 2001, more than a year after the shooting and six months after Purifoy was acquitted of the murder charges.

Three days after his capture, the Southfield police department interrogated Thompkins at a jail in Ohio. At the outset of the interrogation, a detective read Thompkins his *Miranda* rights and received Thompkins' verbal confirmation of his understanding, although Thompkins refused to sign a form stating he acknowledged those rights. Over the course of the interrogation, Thompkins was largely silent, answering only a few questions either non-verbally or with simple statements such as "yeah," "no," or "I don't know." After nearly three hours, the detective tried what he called a "different tack." After asking Thompkins whether he believed in and prayed to God, he asked whether Thompkins had asked God for forgiveness for "shooting that boy down." Thompkins replied, "Yes."

At Thompkins' trial, the defense moved to suppress Thompkins' incriminating response. The trial court denied the motion, ruling that Thompkins did not invoke his right to remain silent and indeed engaged in limited interactions with the police in response to direct questioning.

The Supreme Court held that if Thompkins had said he wanted to remain silent or that he did not want to talk, he would have invoked his right to end the interrogation, and since he did neither the statements were admissible.

Do you agree with the Supreme Court that in order for a person to invoke their right to remain silent, and end a police interrogation, they must actually state their intent to remain silent?

<i>JDB</i> Vocabulary	
Suppress	Keep from being know or heard; exclude evidence from trial.
Coercive	Relating to or using force or threats
Inherently	Deeply part of something; essential or intrinsic
Prerequisite	Required as a prior condition
Subjective	Using personal reasons to decide something
Objective	Not influenced by personal feelings or opinions in considering and representing facts
Detrimental	Tending to cause harm
Susceptible	Likely or liable to be influenced or harmed by a particular thing
<i>De novo</i>	From the beginning; anew

SUPREME COURT OF THE UNITED STATES

J. D. B., PETITIONER *v.* NORTH CAROLINA

Argued March 23, 2011

Decided June 16, 2011

JUSTICE SOTOMAYOR delivered the opinion of the Court.

This case presents the question whether the age of a child subjected to police questioning is relevant to the custody analysis of *Miranda v. Arizona*. It is beyond dispute that children will often feel bound to submit to police questioning when an adult in the same circumstances would feel free to leave. Seeing no reason for police officers or courts to blind themselves to that commonsense reality, we hold that a child’s age properly informs the *Miranda* custody analysis.

I

A

Petitioner J. D. B. was a 13-year-old, seventh-grade student attending class at Smith Middle School in Chapel Hill, North Carolina when he was removed from his classroom by a uniformed police officer, escorted to a closed door conference room, and questioned by police for at least half an hour.

This was the second time that police questioned J. D. B. in the span of a week. Five days earlier, two home break-ins occurred, and various items were stolen. Police stopped and questioned J. D. B. after he was seen behind a residence in the neighborhood where the crimes occurred. That same day, police also spoke to J. D. B.'s grandmother—his legal guardian—as well as his aunt.

Police later learned that a digital camera matching the description of one of the stolen items had been found at J. D. B.'s middle school and seen in J. D. B.'s possession. Investigator DiCostanzo, the juvenile investigator with the local police force who had been assigned to the case, went to the school to question J. D. B. Upon arrival, DiCostanzo informed the uniformed police officer on detail to the school (a so-called school resource officer), the assistant principal, and an administrative intern that he was there to question J. D. B. about the break-ins. Although DiCostanzo asked the school administrators to verify J. D. B.'s date of birth, address, and parent contact information from school records, neither the police officers nor the school administrators contacted J. D. B.'s grandmother.

The uniformed officer interrupted J. D. B.'s afternoon social studies class, removed J. D. B. from the classroom, and escorted him to a school conference room. There, J. D. B. was met by DiCostanzo, the assistant principal, and the administrative intern. The door to the conference room was closed. With the two police officers and the two administrators present, J. D. B. was questioned for the next 30 to 45 minutes. Prior to the commencement of questioning, J. D. B. was given neither *Miranda* warnings nor the opportunity to speak to his grandmother. Nor was he informed that he was free to leave the room.

After learning of the prospect of juvenile detention, J. D. B. confessed that he and a friend were responsible for the break-ins. DiCostanzo only then informed J. D. B. that he could refuse to answer the investigator's questions and that he was free to leave. Asked whether he understood, J. D. B. nodded and provided further detail, including information about the location of the stolen items. Eventually J. D. B. wrote a statement, at DiCostanzo's request. When the bell rang indicating the end of the school day, J. D. B. was allowed to leave to catch the bus home.

B

Two juvenile petitions were filed against J. D. B., each alleging one count of breaking and entering and one count of larceny. J. D. B.'s public defender moved to **suppress** his statements and the evidence derived there from, arguing that suppression was necessary because J. D. B. had been “interrogated by police in a custodial setting without being afforded *Miranda* warning[s].” After a suppression hearing at which DiCostanzo and J. D. B. testified, the trial court denied the motion, deciding that J. D. B. was not in custody at the time of the schoolhouse interrogation and that his statements were voluntary. As a result, J. D. B. entered a transcript of admission to all four counts, renewing his objection to the denial of his motion to suppress, and the court adjudicated J.D.B. delinquent.

A divided panel of the North Carolina Court of Appeals affirmed. The North Carolina Supreme Court held, over two dissents, that J. D. B. was not in custody when he confessed, “declin[ing] to extend the test for custody to include consideration of the age . . . of an individual subjected to questioning by police.”

We granted certiorari to determine whether the *Miranda* custody analysis includes consideration of a juvenile suspect's age.

II

A

Any police interview of an individual suspected of a crime has “**coercive** aspects to it.” Only those interrogations that occur while a suspect is in police custody, however, “heighte[n] the risk” that statements obtained are not the product of the suspect's free choice.

By its very nature, custodial police interrogation entails “**inherently** compelling pressures.” Even for an adult, the physical and psychological isolation of custodial interrogation can “undermine the individual's will to resist and . . . compel him to speak where he would not otherwise do so freely.” Indeed, the pressure of custodial interrogation is so immense that it “can induce a frighteningly high percentage of people to confess to crimes they never committed.” That risk is all the more troubling—and recent studies suggest, all the more acute—when the subject of custodial interrogation is a juvenile.

Recognizing that the inherently coercive nature of custodial interrogation “blurs the line between voluntary and involuntary statements,” this Court in *Miranda* adopted a set of prophylactic measures designed to safeguard the constitutional guarantee against self-incrimination. Prior to questioning, a suspect “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.” And, if a suspect makes a statement during custodial interrogation, the burden is on the Government to show, as a “**prerequisite**” to the statement's admissibility as evidence in the Government's case in chief, that the defendant “voluntarily, knowingly and intelligently” waived his rights.

[W]e have required police officers and courts to “examine all of the circumstances surrounding the interrogation,” including any circumstance that “would have affected how a reasonable person” in the suspect's position “would perceive his or her freedom to leave.” On the other hand, the “**subjective** views harbored by either the interrogating officers or the person being questioned” are irrelevant. The test, in other words, involves no consideration of the “actual mindset” of the particular suspect subjected to police questioning.

The benefit of the **objective** custody analysis is that it is “designed to give clear guidance to the police.” *Alvarado*, 541 U. S., at 668. Police must make in-the-moment judgments as to when to administer *Miranda* warnings. By limiting analysis to the objective circumstances of the interrogation, and asking how a reasonable person in the suspect's position would understand his freedom to terminate questioning and leave, the objective test avoids burdening police with the task of anticipating the idiosyncrasies of every individual suspect and divining how those particular traits affect each person's subjective state of mind.

B

The State and its *amici* contend that a child's age has no place in the custody analysis, no matter how young the child subjected to police questioning. We cannot agree. In some circumstances, a child's age “would have affected how a reasonable person” in the suspect's position “would perceive his or her freedom to leave.” That is, a reasonable child subjected to police questioning will sometimes feel pressured to submit when a reasonable adult would feel free to go. We think it clear that courts can account for that reality without doing any damage to the objective nature of the custody analysis.

A child's age is far "more than a chronological fact." It is a fact that "generates commonsense conclusions about behavior and perception." Such conclusions apply broadly to children as a class. And, they are self-evident to anyone who was a child once himself, including any police officer or judge.

Time and again, this Court has drawn these commonsense conclusions for itself. We have observed that children "generally are less mature and responsible than adults,"; that they "often lack the experience, perspective, and judgment to recognize and avoid choices that could be **detrimental** to them,"; that they "are more vulnerable or **susceptible** to . . . outside pressures" than adults; and so on. Addressing the specific context of police interrogation, we have observed that events that "would leave a man cold and unimpressed can overawe and overwhelm a lad in his early teens." Describing no one child in particular, these observations restate what "any parent knows"—indeed, what any person knows—about children generally.

... Precisely because childhood yields objective conclusions like those we have drawn ourselves—among others, that children are "most susceptible to influence," and "outside pressures," considering age in the custody analysis in no way involves a determination of how youth "subjectively affect[s] the mindset" of any particular child.

In fact, in many cases involving juvenile suspects, the custody analysis would be nonsensical absent some consideration of the suspect's age. This case is a prime example. Were the court precluded from taking J. D. B.'s youth into account, it would be forced to evaluate the circumstances present here through the eyes of a reasonable person of average years. In other words, how would a reasonable adult understand his situation, after being removed from a seventh-grade social studies class by a uniformed school resource officer; being encouraged by his assistant principal to "do the right thing"; and being warned by a police investigator of the prospect of juvenile detention and separation from his guardian and primary caretaker? To describe such an inquiry is to demonstrate its absurdity. Neither officers nor courts can reasonably evaluate the effect of objective circumstances that, by their nature, are specific to children without accounting for the age of the child subjected to those circumstances.

Indeed, although the dissent suggests that concerns "regarding the application of the *Miranda* custody rule to minors can be accommodated by considering the unique circumstances present when minors are questioned in school," 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, say, a parent volunteer on school grounds to chaperone an event, or an adult from the community on school grounds to attend a basketball game. Without asking whether the person "questioned in school" is a "minor," the coercive effect of the schoolhouse setting is unknowable.

Reviewing the question *de novo* today, we hold that so long as the child's age was known to the officer at the time of police questioning, or would have been objectively apparent to a reasonable officer, its inclusion in the custody analysis is consistent with the objective nature of that test. This is not to say that a child's age will be a determinative, or even a significant, factor in every case. It is, however, a reality that courts cannot simply ignore.

III

The State and its *amici* offer numerous reasons that courts must blind themselves to a juvenile defendant's age. None is persuasive. To start, the State contends that a child's age must be excluded from the custody inquiry because age is a personal characteristic specific to the suspect himself rather than an "external" circumstance of the interrogation. Despite the supposed significance of this distinction, however, at oral argument counsel for the State suggested without hesitation that at least some undeniably personal characteristics—for instance, whether the individual being questioned is blind—are circumstances relevant to the custody analysis. Thus, the State's quarrel cannot be that age is a personal characteristic, without more. But the same can be said of every objective circumstance that the State agrees is relevant to the custody analysis: Each circumstance goes to how a reasonable person would "internalize and perceive" every other. Indeed, this is the very reason that we ask whether the objective circumstances "add up to custody," instead of evaluating the circumstances one by one.

Finally, the State and the dissent suggest that excluding age from the custody analysis comes at no cost to juveniles' constitutional rights because the due process voluntariness test independently accounts for a child's youth. To be sure, that test permits consideration of a child's age, and it erects its own barrier to admission of a defendant's inculpatory statements at trial. But *Miranda*'s procedural safeguards exist precisely because the voluntariness test is an inadequate barrier when custodial interrogation is at stake. To hold, as the State requests, that a child's age is never relevant to whether a suspect has been taken into custody—and thus to ignore the very real differences between children and adults—would be to deny children the full scope of the procedural safeguards that *Miranda* guarantees to adults.

* * *

The question remains whether J. D. B. was in custody when police interrogated him. We remand for the state courts to address that question, this time taking account of all of the relevant circumstances of the interrogation, including J. D. B.'s age at the time. The judgment of the North Carolina Supreme Court is reversed, and the case is remanded for proceedings not inconsistent with this opinion.

It is so ordered.

SUMMARIZED VERSION: *J.D.B. v. NORTH CAROLINA*

Facts of the Case:

A North Carolina boy identified as J.D.B. was a 13-year-old special education student in 2005 when the police showed up at his school to question him about a string of neighborhood burglaries. The police had learned that the boy was in possession of a digital camera that had been reported stolen. The boy was escorted to a school conference room, where he was interrogated in the presence of school officials. J.D.B.'s parents were not contacted, and he was not given any warnings about his rights under the 1966 decision in *Miranda v. Arizona*, such as the right to remain silent or to have access to a lawyer. J.D.B. confessed to the crimes, but later sought to have his confession suppressed on the basis that he was never read his Miranda rights. He argued that because he was effectively in police custody when he incriminated himself, he was entitled to Miranda protections.

In December 2009, the North Carolina Supreme Court held that it could not consider the boy's age or special education status in determining whether he was in custody, and because he was not in custody, he was not entitled to Miranda warnings.

Legal Question:

Should courts consider the age of a juvenile suspect in deciding whether he or she is in custody for *Miranda* purposes?

Majority Opinion:

By a 5-4 majority opinion, the Supreme Court reversed the lower court order. "It is beyond dispute that children will often feel bound to submit to police questioning when an adult in the same circumstances would feel free to leave. Seeing no reason for police officers or courts to blind themselves to that commonsense reality, we hold that a child's age properly informs the *Miranda* custody analysis." The Court underscored the dangers of not applying age to the custody analysis, writing: "to hold... that a child's age is never relevant to whether a suspect has been taken into custody— and thus to ignore the very real differences between children and adults— would be to deny children the full scope of the procedural safeguards that *Miranda* guarantees to adults". Finally, the Court pointed out that the law reflects the idea that a child's judgment is not the same as an adult's, in the form of legal disqualifications on children as a class (e.g. limitations on a child's ability to marry without parental consent).

The Court placed emphasis on the fact that age is an objective circumstance and including it in a custody analysis does not place an undue burden on the police. The Court has repeatedly emphasized that the custody analysis is an objective test. The Court wrote that consideration of age involved no consideration of the specific mindset of the individual. Rather, the Court held that age is an objective fact that affects how a reasonable person would perceive his or her freedom to leave.

The Supreme Court sent the case back to the state court to determine whether the youth was in custody when he was interrogated.

The 5th Amendment *JDB* Application

1. For the purposes of *Miranda*, was JDB in custodial interrogation when he was being questioned by police at his school? Why, or why not?

2. What are some of the elements that would make it seem like JDB was in a custodial interrogation setting?

3. What is JDB arguing in this case? What does he think should happen to the statements he made to the police officer?

4. Does the Court think that juveniles and adults respond the same way to certain situations?

5. Why/How does the Court say juveniles are different from adults?

6. What is the holding of this case?

7. What do you think about how the Court decided this case? Do you think age should be a factor in a *Miranda* custody analysis?

(ANSWER KEY)

The 5th Amendment *JDB* Application

1. For the purposes of *Miranda*, was JDB in custodial interrogation when he was being questioned by police at his school? Why, or why not?

It's up to the North Carolina Supreme Court to apply the Supreme Court's holding in *JDB*, but probably he was subject to custodial interrogation when he was questioned by police because the officers took JDB to a separate room where, as a 13-year-old, he did not feel free to leave, and where the officers asked him questions.

2. What are some of the elements that would make it seem like JDB was in a custodial interrogation setting?

He was escorted by officers to a closed conference room, where the officers questioned him. Additionally, JDB's parents were not there and school officials were encouraging JDB to "do the right thing."

3. What is JDB arguing in this case? What does he think should happen to the statements he made to the police officer?

JDB is arguing that the officers' actions made subjected him to custodial interrogation and therefore, he was entitled to *Miranda* warnings. JDB believes that his statements should be suppressed (not allowed to be used as evidence against him).

4. Does the Court think that juveniles and adults respond the same way to certain situations?

No, the Court believes that juveniles will respond differently to certain situations than adults.

5. Why/how does the Court say juveniles are different from adults?

Children are generally less mature and responsible than adults. Also, children lack experience, perception, and judgment to determine what will be detrimental to them. Additionally, children are more susceptible and vulnerable to outside pressures.

6. What is the holding of this case?

The Court held that a child's age properly informs the *Miranda* custody analysis.

7. What do you think about how the Court decided this case? Do you think age should be a factor in a *Miranda* custody analysis?