Legal reform in school safety has been driven primarily by state court decisions operating within the parameters of a few cases handed down by the U.S. Supreme Court. The justices have made it clear that interfering with decisionmaking by public educators will be rare because, "Judicial interposition in the operation of the public school system of the Nation raises problems requiring care and restraint... [b]y and large, public education in our Nation is committed to the control of state and local authorities." Epperson v. Arkansas, 393 U.S. 97, 104 (1968). This judicial deference has become so engrained among all courts that it is generally held that, "maintaining security and order in the schools requires..."
a certain degree of flexibility in school disciplinary procedures, and we have respected the value of preserving the informality of the student-teacher relationship.” New Jersey v. TLO, 469 U.S. 325, 340 (1985). As a result, since 1969 fewer than ten cases have been handed down on matters involving the authority of educators to maintain a safe, effective educational environment.

Therefore, when the U.S. Supreme Court speaks on an issue of student rights, a great deal can be made of the event. This spring, on June 16, 2011, the Court handed down the first school safety decision involving students and the Fifth Amendment. In J.D.B. v. North Carolina, ___ U.S. ___, 2011 U.S. LEXIS 4557 (2011), the Court announced rules governing the impact a child’s age will have on interrogations by police officers on campus. The Court held that the age of a child must be considered as a factor when determining custody for Miranda purposes.

INTERROGATION BASICS

The rules of interrogation are called “Miranda warnings” after the case of Miranda v. Arizona, 384 U.S. 436 (1966). In Miranda, the Court formalized the notion of the “right to remain silent,” by endorsing the set of warnings to be given citizens when in custody. The Miranda warnings are a part of the jurisprudence of the Fifth Amendment; “No person... shall be compelled in any criminal case to be a witness against himself.”

JDB settles an longstanding debate in constitutional law about juveniles: the Miranda rules apply to both juveniles and adults alike. When there is uncertainty over whether a person is “in custody,” courts typically use a reasonableness test measured from the point of view of the person being interrogated. Thus, Miranda warnings must be given when a person reasonably believes his freedom to leave has been curtailed. It is irrelevant whether the police have probable cause to arrest the person, or whether the police officer subjectively believes that the person is not in custody. All police know that this rule is harder to apply than it is to explain. After JDB, it becomes a little more difficult.

First, educators enjoy a general exemption from the Miranda warnings. Courts are reluctant to view school officials as government officials falling within the requirements of Miranda based on the reasoning quoted above from TLO. Educators have the authority to question students concerning misconduct that has taken place on the school campus. In addition, educators act in loco parentis in ever a police officer conducts a custodial interrogation of any person, including a student on campus.

JDB AS THE LITMUS TEST

However, one can make too much of the case of J.D.B. v. North Carolina. JDB is not a case that involves school safety of any kind. It is a case about so-called “outside police officers.” In J.D.B., a 13-year-old middle school student, was suspected of two home break-ins in which various items were stolen. On the day of the incidents, J.D.B. was found in the neighborhood of the homes and was questioned by police. Police additionally spoke with J.D.B.’s grandmother, also his legal guardian, and aunt. A digital camera was stolen from one of the homes, and a camera that matched the description was later found at J.D.B.’s school and had been seen in his possession.

Five days after the break-in, a police investigator visited the school in order to question J.D.B. The investigator informed the school resource officer, assistant principal and administrative intern of his purpose, but J.D.B.’s grandmother was not contacted. The school resource officer removed J.D.B. from one of his classes during the school day and escorted him to a conference room within the school. The investigator, assistant principal and administrative intern were also present. J.D.B. was questioned in the room for 30-45 minutes with the door closed. He was not presented with Miranda warnings, told that he was free to leave the room, nor given an opportunity to speak with his grandmother.
The questioning began with leisurely topics, such as sports and family life. The investigator then received J.D.B.'s permission to talk about the break-ins. J.D.B. denied that he was involved and stated that he was in the neighborhood to find work mowing lawns. The investigator continued to pursue the topic, showing a stolen camera and asking about an incident in which a homeowner returned to find J.D.B. behind her home. The investigator informed J.D.B. that he would seek to place J.D.B. in juvenile detention if he believed that J.D.B. would continue to invade homes. J.D.B. subsequently confessed to breaking into the homes with a friend. After the confession, the investigator informed J.D.B. that he did not have to answer the questions and was free to leave.

J.D.B. was tried for breaking and entering and for larceny. The trial court denied his motion to suppress his statements obtained during the questioning. The decision was affirmed by the court of appeals, and the North Carolina Supreme Court which both held that J.D.B. was not in custody during the questioning and Miranda warnings were not required. The North Carolina courts refused to include the age of a juvenile as an element in the custody analysis.

"CUSTODY" AND AGE IN THE PUBLIC SCHOOL SETTING

The U.S. Supreme Court reversed and expanded the scope of Miranda to include a new rule for youthful offenders. The justices ruled that given the coercive nature of police interrogation, the requirement that officers give Miranda warnings helps to ensure that statements made by all suspects are completely voluntary. Then the justices got to the crux of the matter: whether J.D.B. was in custody at the time of the questioning. The Court ruled that the custody issue is to be determined by an objective standard. This standard is established by examining the circumstances surrounding the interrogation and whether a reasonable person would have felt free to leave in those circumstances. Any circumstance that affects a person's belief that they are not free to leave should be a part of the inquiry.

In determining whether J.D.B. was in custody when he confessed, the Court drew a line between the objective mind of an adult and that of a child. "[A] reasonable child subjected to police questioning will sometimes feel pressured to submit when a reasonable adult would feel free to go." The Court noted that the risk of a suspect admitting to a crime that he did not commit is even greater when the suspect in questioning is a minor, and that the vulnerability and susceptibility of children to submit to pressure is a commonsense conclusion. The Court pointed to instances in which the immaturity of children is applied to other applications of the law: limits on entering binding contracts and marriage without parental consent. Further, in negligence lawsuits determining liability, all courts include a person's childhood as a relevant circumstance in the reasonable person analysis.

The Court emphasized the uniqueness of a student interrogation being carried out in a middle school setting, which by its nature limits the freedom of children. An adult would not be subject to removal from the class or unavoidable questioning from a school administrator. However, a juvenile in school expects to do what he/she is told and, while hoping it will never happen, knows that being summoned to the school office to answer for an indiscretion is a reasonable possibility. Therefore, the Court found that it only made sense, to factor age into the custody analysis. The Court distinguished a child's age from personal characteristics, which do not have an "objectively discernible relationship to a reasonable person's understanding of his freedom of action." The Court assured that factoring in a child's age would not jeopardize the objective custody analysis. Rather, the fact that an individual is a child leads to the objective conclusion that the child is "more susceptible to influence."

The Court defended its position several times in the opinion. In response to the argument that age is a personal characteristic and not an "external" circumstance affecting the interrogation, the Court noted that other personal characteristics, such as blindness, have been considered as relevant objective circumstances. Moreover, age may be considered because although it may internally or psychologically influence a suspect's perception, "the Miranda custody inquiry turns on the mindset of a reasonable person in the suspect's position." All objective circumstances carry such an impact to some degree.

Another argument criticized by the majority was that including age as a factor would muddle police officers' analysis of whether custody exists. The Court responded by saying that, ignoring a child's age would be confusing in that the results would be unrealistic and unfair. Further, when a child's age is readily apparent, its role in the analysis is would not be difficult. This inquiry would require no more competency than officers already employ, as only common sense is necessary to scrutinize the age of a child as it relates to custody. Even if clarity were compromised, the Court noted that it has not declined to include as a factor any relevant objective circumstance that may blur the line between custodial and noncustodial.

The Court ultimately held that a child's age is a proper factor to be considered in the objective custody analysis. This rule was qualified by limiting its application to situations where the child's age was known by the officer during questioning or would have been objectively evident to a reasonable officer. The Court did not address whether J.D.B. was in custody under the new rule, but remanded the case to the state court for a factual analysis.
JDB AND THE ROLE OF THE SRO

J.D.B. formalizes the factor of age when juveniles are being questioned on campus by police. Significantly, J.D.B. does not represent a radical departure from the rules that previously applied in the public school setting. Essentially, the U.S. Supreme Court in J.D.B. endorses, without citations, the course previously plotted by the many state court decisions that ruled that special caution is required when young, impressionable children encounter police while on campus. These state court cases, now codified by J.D.B., create a list of sorts to regulate the interrogation setting on campus.


3. If police question a student, then police must ensure that the student understands that he is not under arrest, can leave if he wants to, and does not have to answer questions from the police. See, In re Loredo, 865 P.2d 1312 (Or. Ct.App. 1993), In re Killitz, 651 P.2d 1382 (Or. Ct.App. 1982), In re Welfare of G.S.P., 610 N.W.2d 651 (Minn. Ct.App. 2000), Kalmakoff v. State, 2011 WL 3241860 (Alaska 2011).


This rule is compatible with the legal reform in school safety regarding police. Fourth Amendment law recognizes the SRO when acting as a resource to the educator's desire to maintain a safe campus, but treats police as an outsider for all other collaboration. The courts have divided the student search rules into three scenarios:

1. Where school officials initiate the search or police involvement is minimal, the reasonableness standard is applied;

2. Where the search is conducted by the school resource officer on his or her own initiative to further educationally related goals, the reasonableness standard is applied; and

3. Where "outside" police officers initiate the search of a student for investigative purposes, the probable cause and warrant requirements are applied.

J.D.B. effectively treats all police as outsiders when (1) the event that causes the questioning does not involve school safety, and (2) when the event involves school safety but a competent educator is available to perform the necessary tasks in loco parentis.
JDB AND THE ROLE OF EDUCATORS

After J.D.B., it is clear that school officials must be considered protective guardians when it comes to on-campus interrogations by police officers. This duty, while contrary to the usual collaborative relationship with police, is required to discourage abuse by the coercive appearance of both public officials in the eyes of the student in question. Courts are wary that students who are younger and who also have no prior experience with questioning by police or school officials may reasonably believe that they are either in police custody or believe that they are in trouble with the school and thus be more likely to make incriminating statements. The Idaho Court of Appeals underscores this in In re John Doe, 130 Idaho 811; 948 P.2d 166 (1997), where a ten-year-old boy was told by educators to leave his fifth-grade classroom and go to the faculty lounge to be interrogated by an SRO without receiving Miranda warning of any kind.

“We think it unlikely that the environment of a principal’s office or a faculty room is considered by most children to be a familiar or comfortable setting, for students normally report to these locations for disciplinary reasons, as Doe had in the past. It is also unlikely that any ten-year-old would feel free to simply leave the administrative area of the school after having been summoned there by school authorities for a police interview. We are persuaded that under these circumstances a child ten years of age would have reasonably believed that his appearance at the designated room and his submission to the questioning was compulsory and that he was subject to restraint which, from such a child’s perspective, was the effective equivalent of arrest.” 948 P.2d at 172-74.

Otherwise, the role of educators does not change after J.D.B. Before, J.D.B., the attention of the Court focused solely on student rights arising out of the First and the Fourth Amendments. The rules from these cases are more favorable toward school officials than students. Recently, in Morse v. Frederick, 551 U.S. 393 (2007), the Court set forth the controlling principle.

“[T]he constitutional rights of students in public school are not automatically coextensive with the rights of adults in other settings...Drawing on the principles applied in our student speech cases, we have held in the Fourth Amendment context that ‘while children assuredly do not “shed their constitutional rights ... at the schoolhouse gate,” ... the nature of those rights is what is appropriate for children in school.’” Vernonia Sch. Dist. 47 v. Acton, 515 U.S. 646, 655-56, (1995). In particular, “the school setting requires some easing of the restrictions to which searches by public authorities are ordinarily subject.” New Jersey v. T.L.O., 469 U.S. 325, 340 (1985). (“Fourth Amendment rights, no less than First and Fourteenth Amendment rights, are different in public schools than elsewhere ...”); Bd. of Educ. v. Earls, 536 U.S. 822, 829-30 (2002) (“‘special needs’ in here in the public school context”);

“while schoolchildren do not shed their constitutional rights when they enter the schoolhouse, Fourth Amendment rights ... are different in public schools than elsewhere; the ‘reasonableness’ inquiry cannot disregard the schools’ custodial and tutelary responsibility for children.” Morse v. Frederick, 551 U.S. 393, 396 - 406 (2007).

After J.D.B., as a matter of constitutional law, educators should make sure that students fully understand what it is they are being asked to do. When incidents are school-related, the best practice is for educators to conduct the questioning; no warnings of any kind are required. Any confusion over the role of age in a police interrogation will be resolved in favor of the student, especially as the age of the juvenile decreases. However, the Supreme Court does not change the nature of the authority of the educator to question students as a means of keeping the campus safe for learning. In this context, J.D.B. is not a school safety case at all, but instead is specifically about limitations on outside government officials who come onto campus.

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