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J.D.B. v. North Carolina: Ushering in a New "Age" of Custody Analysis Under *Miranda*

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TABLE OF CONTENTS

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INTRODUCTION

Over the past six years, the United States Supreme Court has carved out a distinct jurisprudential approach to youth. In 2005, the Court abolished the death penalty for juveniles in *Roper v. Simmons*.[1] Then the Court ruled that juveniles could no longer be sentenced to life without the possibility of parole for non-homicide offenses in *Graham v. Florida*.[2] *Roper* and *Graham* changed the national conversation about the culpability of minors who engage in criminal acts. As a result of these two cases, which embraced the scientific evidence revealing fundamental differences between juvenile and adult minds, juveniles can no longer be classified among the worst offenders, deserving of the most serious punishment.[3] The magnitude of *Roper* and *Graham* is equal in significance to the Supreme Court's extension of due process rights to children in the 1967 landmark case, *In re Gault*. As important as *Roper* and *Graham* are in their own right, collectively they pave the way for more meaningful due process protections for children adjudicated in the criminal justice system.[4]

One year after *Graham*, the Court handed down *J.D.B. v. North Carolina*, completing what could be considered a trilogy of Supreme Court cases that forge a new approach to youth status in our justice system. For the first time, the Supreme Court applied *Roper*, *Graham*, and recent adolescent development research to a context other than the Eighth Amendment.

In her majority opinion in *J.D.B.*, Justice Sotomayor grasped the significance of age in her common-sense approach to

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[1] Roper v. Simmons, 543 U.S. 551 (2005).

[2] Graham v. Florida, 130 S. Ct. 2011, 2034 (2010).

[3] *See Graham*, 130 S. Ct. at 2026 ("No recent data provide reason to reconsider the Court's observations in *Roper* about the nature of juveniles . . . developments in psychology and brain science continue to show fundamental differences between juvenile and adult minds."); *Roper*, 543 U.S. at 569 ("Three general differences between juveniles under 18 and adults demonstrate that juvenile offenders cannot with reliability be classified among the worst offenders.").

[4] *See infra* Part IV.

Miranda custody determinations. *J.D.B.* was a thirteen-year-old student interrogated by a police detective in the principal's office of the boy's middle school.[5] As the Court noted, if it were to ignore J.D.B.'s age in the custody analysis, as precedent mandated, it would be forced to evaluate how a reasonable adult would feel when removed from his seventh grade social studies class, brought to the principal's office, interrogated by a police detective, and warned of detention in a juvenile facility if he failed to cooperate.[6] That makes little sense, as either a practical or legal matter.

In *J.D.B.*, the Court held that age is a relevant factor in determining whether a juvenile is in custody for *Miranda* purposes.[7] Drawing from prior cases, including *Roper* and *Graham*, both premised on the "understanding that the differentiating characteristics of youth are universal,"[8] a majority of the Court agreed that failing to consider age in the custody analysis would be nonsensical.[9] Justice Sotomayor explained that age is far more "than a chronological fact";[10] it informs behavior and perception.[11]

Looking to the future, with the specific attributes of children now firmly acknowledged in Supreme Court precedent, a qualitatively different analysis is possible for juveniles in a variety of contexts not yet considered by the Court. There are any number of scenarios, from pre-trial to disposition, that may

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[5] J.D.B. v. North Carolina, 131 S. Ct. 2394, 2399 (2011).

[6] *Id.* at 2407 ("[I]gnoring a juvenile defendant's age will often make the [*Miranda*] inquiry more artificial . . . .").

[7] *Id.* at 2399.

[8] *Id.* at 2404.

[9] *Id.* at 2405 ("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."); *see also* Graham v. Florida, 130 S. Ct. 2011, 2028 (2010) ("A 16 year old and a 75 year old each sentenced to life without parole receive the same punishment in name only."); Roper v. Simmons, 543 U.S. 551, 569 (2005) (distinguishing juvenile and adult offenders based on age and its implications).

[10] *J.D.B.*, 131 S. Ct. at 2403 (citing Eddings v. Oklahoma, 455 U.S. 104, 115 (1982)).

[11] *See id.*

require courts to approach the application of procedural and substantive criminal law differently to youth in juvenile and adult court proceedings. These include such matters as competency, self-defense, lack of mens rea, accomplice liability, voluntariness of waiver of rights, and suppression of physical evidence.[12] This Article will address three separate areas where the *Roper*, *Graham*, *J.D.B.* trilogy may prove to have a profound impact: waiver of right to counsel, *Terry* stops,[13] and the nature of the attorney-client relationship.[14] In each of these contexts, various attributes of youth have differing effects on the doctrinal determination. For instance, if juveniles are characteristically impetuous decision makers, they may require additional protections to ensure that they are afforded a meaningful opportunity to be represented by a lawyer.[15]

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[12] *See* Marsha Levick, J.D.B. v. North Carolina*: The U.S. Supreme Court Heralds the Emergence of the "Reasonable Juvenile" in American Criminal Law*, 89 CRIM. L. REP. 753, 753 (2011) (offering a fuller discussion of how the *Roper*, *Graham*, *J.D.B.* trilogy opens the door to replacing the "reasonable person" standard with a "reasonable child" standard).

[13] *Terry*-type detentions are brief detentions of civilians predicated on reasonable and articulable suspicion. Police officers may stop and question a civilian to confirm or dispel an officer's suspicion. *See* Terry v. Ohio, 392 U.S. 1 (1968).

[14] *See infra* Part IV.

[15] The long-standing practice in some jurisdictions of children waiving counsel at arraignment and proceeding pro se may be curtailed after *J.D.B.* The most reliable way to ensure a juvenile is represented throughout the proceedings is to impose a non-waivable right to counsel. *See* IRA M. SCHWARTZ, (IN)JUSTICE FOR JUVENILES: RETHINKING THE BEST INTERESTS OF THE CHILD 160–61 (Lexington Books 1st prtg. ed. 1989) ("Nonwaivable right to counsel is also important because of the research indicating that young juveniles as a class do not understand the nature and significance of their Miranda rights to remain silent and to counsel."); Donna M. Bishop & Hillary B. Farber, *Joining the Legal Significance of Adolescent Development Capacities with the Legal Rights Provided by* In re Gault, 60 RUTGERS L. REV. 125, 127 (2007); Barry C. Feld, *Violent Youth and Public Policy: A Case Study of Juvenile Justice Law Reform*, 79 MINN. L. REV. 965, 994 (1995) (citing ADVISORY TASK FORCE ON THE JUVENILE JUSTICE SYS., MINN. SUPREME COURT, FINAL REPORT 5–11 (1994) ("The Study Committee recommended mandatory, non-waivable appointment of counsel for juveniles charged with felony or gross misdemeanor offenses, and in any proceeding

Likewise, considering age when assessing the reasonableness of whether a juvenile would feel free to terminate the encounter during a *Terry* stop may compel a different outcome after *J.D.B.* Finally, a juvenile's difficulty in weighing long-term consequences against short-term gains could put him or her at a significant disadvantage in terms of the quality of the representation he or she receives.[16] Though the extent of *J.D.B.*'s impact is currently unknowable, it has great potential to ensure a meaningful delivery of constitutional protections to children in the investigative and adjudicatory phases of proceedings. Before exploring these possibilities in greater depth, Part I of this article briefly traces Supreme Court treatment of age of the suspect in *Miranda* custody determinations. Part II in turn discusses *Roper* and *Graham* and the foundation those decisions laid for construing age as an objective factor in the custody analysis. Part III addresses the relevance of juvenile cognitive and social functioning in custodial interrogations. Finally, Part IV addresses the potential for applying other constitutional rights afforded to juveniles in a manner inclusive of age and psychosocial development, as demonstrated by *J.D.B.*

I. The Absence of Age as a Factor in the Supreme Court's Custody Analysis

Before *J.D.B. v. North Carolina*, the Supreme Court had not definitively decided whether age is relevant in determining whether a person is in custody for *Miranda* purposes. In 1966, the year *Miranda* was decided, the Court did not contemplate the implications of its holding for juveniles because Fifth Amendment protections were not extended to juveniles until a year later, in the landmark case of *In re Gault*.[17] The *Miranda* custody analysis was consequently predicated upon the presumption that a reasonable adult would be the subject of

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that may lead to out-of-home placement.")).

[16] Graham v. Florida, 130 S. Ct. 2011, 2032 (2010).

[17] *In re* Gault, 387 U.S. 1 (1967).

interrogation,[18] and the Court mandated consideration of whether, in light of the police conduct, a "reasonable person" in the suspect's position would feel "at liberty to terminate the interrogation and leave."[19] The inquiry requires courts to examine objective factors present during the interrogation[20] in order to avoid the unworkable task of requiring police to assess how a suspect's unique personality traits may have affected his or her subjective state of mind.[21] Although courts take into account the age of a suspect when assessing the voluntariness of statements and waiver of right against self-incrimination, age was not historically considered in the context of the *Miranda* custody analysis.[22]

The Court came close to considering the relevance of age in assessing custody in *Yarborough v. Alvarado*.[23] Michael Alvarado was seventeen and one half years old, with no criminal record.[24] He was suspected of being involved in an attempted robbery and murder with another boy who was believed to be the shooter.[25] Approximately one month following the shooting,

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[18] *See* Stansbury v. California, 511 U.S. 318 (1994); Oregon v. Mathiason, 429 U.S. 492 (1977).

[19] Thompson v. Keohane, 516 U.S. 99, 112 (1995).

[20] These include:

> (1) whether the suspect was informed at the time of questioning that the questioning was voluntary, that the suspect was free to leave or request the officers to do so, or that the suspect was not considered under arrest; (2) whether the suspect possessed unrestrained freedom of movement during the questioning; (3) whether the suspect initiated contact with authorities or voluntarily acquiesced to official request to respond to questions; (4) whether strong arm tactics or deceptive stratagems were employed during questioning; (5) whether the atmosphere of the questioning was police dominated; or, (6) whether the suspect was placed under arrest at the termination of the questioning.

See United States v. Griffin, 922 F.2d 1343, 1349 (8th Cir. 1990).

[21] J.D.B. v. North Carolina, 131 S. Ct. 2394, 2402 (2011) (citing Berkemer v. McCarty, 468 U.S. 420, 430–31 (1984)).

[22] *See* Fare v. Michael C., 442 U.S. 707 (1979).

[23] Yarborough v. Alvarado, 541 U.S. 652 (2004).

[24] *Id.* at 656, 660.

[25] *Id.* at 656.

upon the request of police, Alvarado's parents brought him to the police station.[26] Without his parents present, police questioned him for two hours about an attempted robbery and murder.[27] After initial denials, Alvarado eventually admitted that he was present and that he helped to hide the gun after the shooting.[28] The police never gave Alvarado Miranda warnings.[29] The trial court found he was not in custody and convicted him of first degree murder.[30] The State appeals court affirmed the lack of custody determination.[31]

Alvarado filed a habeas corpus petition in which he claimed he was being held pursuant to a state court judgment predicated upon an unreasonable application of clearly established federal law.[32] When the Ninth Circuit Court of Appeals considered the custody issue presented in *Alvarado*, it endorsed a requirement for extra procedural safeguards when a juvenile is the subject of a police interrogation.[33] It reasoned that, if a youth, by virtue of age and immaturity, is more susceptible to police coercion during a custodial interrogation, he is also more likely to believe that he is in custody in the first place.[34] The Supreme Court granted certiorari.

Because the issue reached the Supreme Court in the context of a habeas proceeding, the Court applied the deferential standard of review set forth in the Antiterrorism and Effective Death Penalty Act of 1996 ("AEDPA"), rather than review de novo whether Alvarado was in custody.[35] The Court addressed the limited issue of whether the state court unreasonably applied clearly established law when it held that Alvarado was not in

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[26] *Id.*

[27] *Id.*

[28] *Id.* at 657.

[29] *Id.* at 656.

[30] *Id.* at 658.

[31] People v. Soto, 88 Cal. Rptr. 2d 688 (Cal. Ct. App. 1999).

[32] *Alvarado*, 541 U.S. at 655.

[33] *Id.* at 660 (citing Alvarado v. Hickman, 316 F.3d 841 (9th Cir. 2002)).

[34] *Id.*

[35] *Id.* at 655 (citing Antiterrorism and Effective Death Penalty Act of 1996, 28 U.S.C. § 2254(d)(1) (2006)).

custody.[36] Because of the absence of Supreme Court precedent regarding age as a relevant factor in custody determinations, the Court ruled that the state trial court did not err when it denied consideration of age in its determination that Michael Alvarado was not in custody.[37] Writing for the majority, Justice Kennedy reaffirmed the Court's long-standing adherence to an objective custody test under *Miranda*.[38]

Importantly, *Alvarado* did not foreclose consideration of age in the custody analysis; it merely held that such consideration is not a matter of clearly established federal law.[39] Nonetheless, the decision caused some state courts to retreat from considering a suspect's age when evaluating whether that juvenile was in custody. For instance, Iowa and Illinois, which had historically used age as a factor in considering whether a juvenile was in custody and thus deserving of Miranda warnings, ceased that practice in response to *Alvarado*.[40] Similarly, states such as Wyoming, the District of Columbia, and North Carolina that had not previously decided whether age was a relevant consideration in custody determinations foreclosed consideration of age following *Alvarado*.[41]

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[36] *Id.* at 655; *see also* § 2254(d)(1).

[37] *Alvarado*, 541 U.S. at 668. Justice O'Connor was the swing vote. In her concurrence, she recognized that there may be instances where age should be a factor, but not in this case because Michael was merely six months shy of his eighteenth birthday. *Id.* at 669 (O'Connor, J., concurring).

[38] *Id.* at 668 (majority opinion).

[39] J.D.B. v. North Carolina, 131 S. Ct. 2394, 2405 (2011) ("Our prior decision in *Alvarado* in no way undermines these conclusions . . . . [W]e observed that accounting for a juvenile's age in the *Miranda* custody analysis 'could be viewed as creating a subjective inquiry.' We said nothing, however, of whether such a view would be correct under the law." (citations omitted) (quoting *Alvarado*, 541 U.S. at 668)).

[40] *See* People v. Croom, 883 N.E.2d 681, 689 (Ill. App. Ct. 2008) ("Given the . . . emphasis on objectiveness [in *Alvarado*], we decline to consider defendant's age [sixteen] when determining whether he was in custody . . . ."); State v. Bogan, 774 N.W.2d 676, 681 n.1 (Iowa 2009) ("Previously, we . . . use[d] age as part of the analysis in determining a defendant's custodial status. However, subsequent[ly] . . . the Supreme Court decided *Yarborough v. Alvarado*, which questions whether age is a factor to consider under a federal constitutional analysis." (citations omitted)).

[41] *See In re* J.F., 987 A.2d 1168, 1175–76 (D.C. 2010) (declining to

In retrospect, it would have been premature for the *Alvarado* Court to reach the issue of whether age should be considered in determining whether a juvenile suspect is in custody. Because Michael Alvarado was almost an adult at seventeen and one half years old,[42] the case did not present an ideal set of facts to encourage the Court to delve into the frailties and vulnerabilities of adolescence. Furthermore, the legal recognition that children are categorically different from adults did not exist at the time of *Alvarado*. Although the law treated youth differently from adults in some contexts,[43] the foundation for recognizing the neurological and psychological differences between adolescents and adults in the criminal context was not laid until *Roper v. Simmons*.[44] *Roper* was the first of a progression of cases relying on the age of the juvenile offender as grounds for a distinct approach toward the application of constitutional protections. Then, in *Graham v. Florida*, Justice Kennedy elaborated on the universal differences between children and adults.[45]

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consider the age of J.F., a fourteen-year-old, because "the Supreme Court has not held that a suspect's age . . . is relevant to the *Miranda* custody analysis," and instead, considering that he "was never told that he was required to speak with the officers, he was not handcuffed, and he traveled to the station in an unmarked car with plainclothes officers" to determine that he was not in custody); *In re* W.R., 675 S.E.2d 342, 344 (N.C. 2009) (applying the objective "reasonable person" standard to conclude that the fourteen-year-old defendant was not in custody at the time of questioning while not considering the age of the juvenile); C.S.C. v. State, 118 P.3d 970, 978 (Wyo. 2005) (holding that the age of a sixteen-year-old student suspect need not be considered in custody inquiry where the student was repeatedly told that he was not under arrest, was not obligated to answer questions, and could leave at any time).

[42] *Alvarado*, 541 U.S at 656.

[43] *See, e.g.*, RESTATEMENT (SECOND) OF TORTS § 283A (1965) ("If the actor is a child, the standard of conduct to which he must conform to avoid being negligent is that of a reasonable person of like age, intelligence, and experience under like circumstances."). Military service is another example where the law treats youth differently than adults. *See generally* Military Selective Service Act of 1967, 50 U.S.C. app. §§ 451–73 (2006).

[44] Roper v. Simmons, 543 U.S. 551, 569–70 (2005).

[45] Graham v. Florida, 130 S. Ct. 2011, 2026 (2010).

II. THE IMPORTANCE OF *ROPER* AND *GRAHAM* TO JUVENILES

Roper and *Graham* are the keys to understanding Justice Kennedy's vision of childhood and the distinct qualities of children that differentiate them from adults.[46] Quite possibly, the 5-4 ruling in *J.D.B.* would have been different had the case been decided prior to *Roper*. Attaining majority in *J.D.B.* likely depended on Justice Kennedy's vote, which no doubt influenced Justice Sotomayor's opinion. Indeed, Kennedy's opinions in *Roper* and *Graham* announced a jurisprudential approach to youth predicated on the belief that there are characteristics unique to juveniles that render them categorically distinct from adults.[47] Both decisions follow a logical progression in terms of explaining how the biological and psychosocial development of youth can mitigate their culpability. The cases reveal evidence of Kennedy's views on the objectivity of age.

A. Roper v. Simmons

In *Roper v. Simmons*, the Supreme Court held that the death penalty is a disproportionate punishment for persons under the age of eighteen, and therefore violates the Eighth Amendment's prohibition against cruel and unusual punishment.[48] The decision

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[46] *See* Tamar R. Birckhead, Graham v. Florida*: Justice Kennedy's Vision of Childhood and the Role of Judges*, 6 DUKE J. CONST. L. & PUB. POL'Y 66, 69–74 (2010).

[47] *See Roper*, 543 U.S. at 569 (noting that children "are more vulnerable or susceptible to . . . outside pressures" than adults); *see also Graham*, 130 S. Ct. at 2026 ("No recent data provide reason to reconsider the Court's observations in *Roper* about the nature of juveniles. As petitioner's *amici* point out, developments in psychology and brain science continue to show fundamental differences between juvenile and adult minds.").

[48] *Roper*, 543 U.S. at 578. Christopher Simmons proposed and committed burglary and murder by breaking and entering, tying up a victim, and throwing the victim off a bridge with the help of friends. *Id.* at 555–58. Simmons was sentenced to death at the age of seventeen. *Id.* at 558. The United States Supreme Court found that the execution of minors violated the Eighth Amendment prohibition of "cruel and unusual punishment" as applied to the states through the incorporation doctrine of the fourteenth Amendment. *Id.* at 578–79.

established that, as a categorical matter, juveniles are less culpable than adults and thus less deserving of the most severe punishment.[49] The Court relied on social science research and common life experience in declaring the presence of "signature qualities of youth"[50] to support its abolition of the death penalty for juveniles. The majority, therefore, held the view that age renders certain characteristics salient regardless of the particular idiosyncrasies of an individual child. Justice Sotomayor's opinion in *J.D.B.* six years later reflects this sentiment:

> A child's age, however, is different. 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.[51]

The first of these three salient characteristics is "[a] lack of maturity and an underdeveloped sense of responsibility . . . found in youth more often than in adults . . . ."[52] The Court noted that "[t]hese qualities often result in impetuous and ill-considered actions and decisions."[53] "In recognition of the comparative immaturity and irresponsibility of juveniles, almost every State prohibits those who are under 18 years of age from voting, serving on juries, or marrying without parental consent."[54] The second characteristic is the fact that "juveniles are more vulnerable or susceptible to negative influences and outside pressures, including peer pressure"[55] which the Court noted "is

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[49] *Id.* at 568–70.

[50] *Id.* at 570 (quoting Johnson v. Texas, 509 U.S. 350, 368 (1993)).

[51] J.D.B. v. North Carolina, 131 S. Ct. 2394, 2404–05 (2011) (alteration in original) (citations omitted).

[52] *Roper*, 543 U.S. at 569 (alteration in original) (quoting Johnson v. Texas, 509 U.S. 350, 367 (1993)) (internal quotation marks omitted).

[53] *Id.* (quoting *Johnson*, 509 U.S. at 367) (internal quotation marks omitted).

[54] *Id.*

[55] *Id.* ("[Y]outh is more than a chronological fact. It is a time and condition of life when a person may be most susceptible to influence . . . ." (alteration in the original) (quoting Eddings v. Oklahoma, 455 U.S. 104, 115

explained in part by the prevailing circumstance that juveniles have less control, or less experience with control, over their own environment."[56] Third, "the character of a juvenile is not as well formed as that of an adult. The personality traits of juveniles are more transitory, less fixed."[57]

The Court reasoned that, juvenile offenders, by virtue of these characteristics, are significantly less culpable than adults, even those who commit heinous acts of murder.[58] To illustrate that the Court views these traits as universal, when pressed to reject a per se rule in favor of a case-by-case assessment of an individual defendant's psychological and social maturity, the Court responded that "[t]he differences between juvenile and adult offenders are too marked and well understood to risk allowing a youthful person to receive the death penalty despite insufficient culpability."[59]

B. Graham v. Florida

Five years after *Roper v. Simmons*, the Court considered whether sentencing persons who committed non-homicide offenses before age eighteen to a life sentence without the possibility of parole violated the Eighth Amendment. Relying heavily on *Roper*, *Graham v. Florida* answered that question in the affirmative, protecting an entire class of offenders from receiving determinate life sentences.[60] In the majority opinion, once again led by Justice Kennedy, the Court observed that a life without parole sentence and a death sentence share defining characteristics—the denial of all hope and certainty that redemption will not change one's mortal fate or destiny.[61] For instance, the Court observed that, even if a state does not

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(1982))).

[56] *Id.*

[57] *Id.* at 570.

[58] *Id.*

[59] *Id.* at 572–73.

[60] Graham v. Florida, 130 S. Ct. 2011, 2034 (2010) (holding that the Eighth Amendment "prohibits the imposition of a life without parole sentence on a juvenile offender who did not commit homicide").

[61] *Id.* at 2027.

execute an offender, life without parole is an irrevocable forfeiture of the duration of one's life.[62] The Court found that sentencing a juvenile to life without parole was unusually harsh because it denied the youth any chance for redemption.[63]

Once again, Justice Kennedy, writing for the majority, found that specific immutable characteristics of youth require their categorical exclusion from a particular punishment.[64] *Graham v. Florida* bolsters *Roper's* findings about youth by acknowledging that scientific research has furthered our understanding of the cognitive differences (variations in reasoning and understanding) and psychosocial differences (disparities in social and emotional functioning) between juveniles and adults.[65] *Graham* is a logical extension of Justice Kennedy's approach in *Roper*, finding that the well-documented and understood traits of adolescence mitigate a youth's culpability.[66] In other words, by virtue of age alone, a juvenile's culpability cannot be equal to that of an adult.[67] *Graham* carries *Roper*'s rationale regarding the general

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[62] *See id.* at 2028 ("[If sentenced to life without parole], a juvenile offender will on average serve more years of his life in prison than an adult offender.").

[63] *Id.* at 2028–30. Graham, who was sixteen years old at the time of the first offense, received probation after a plea deal for attempting to rob a restaurant with friends. *Id.* at 2018. While on probation for that offense, he was later arrested again. *Id.* The court gave him the maximum possible sentence for violating his probation by committing a home invasion robbery, possessing a firearm, and associating with persons engaged in criminal activity. *Id.* at 2020. Graham was given life without parole. *Id.*

[64] *Id.* at 2026 ("Juveniles are more capable of change than are adults . . . .").

[65] *Id.* Though cognitive abilities vary widely among individuals, legal precedent has accepted the well-established social science research that children process information differently than adults, and their judgments and perceptions reflect orientations associated with adolescence. *See* Steinberg, L. et al., *Are Adolescents Less Mature than Adults? Minor's Access to Abortion, the Juvenile Death Penalty, and the Alleged APA "Flip-Flop,"* 64 AM. PSYCHOLOGIST 583–97 (2009); *see also* Bishop & Farber, *supra* note 15, at 149 (citing Elizabeth Scott & Thomas Grisso, *The Evolution of Adolescence*, 88 J. CRIM. L. & CRIMINOLOGY 137, 160–64 (1997)).

[66] *Graham*, 130 S. Ct. at 2026–27.

[67] *Id.* at 2027 ("It follows that, when compared to an adult murderer, a juvenile offender who did not kill or intend to kill has a twice diminished

character of a juvenile's psychosocial immaturity and cognitive abilities[68] a step further by articulating additional distinctions between adults and juveniles in the context of the penological goals. *Graham* points out that because of a juvenile's "limited understanding of the criminal justice system," their "mistrust [of] adults," and their tendency toward impulsive decision making, "they are less likely . . . to work effectively with their lawyers to aid in their own defense."[69]

Society is replete with laws that disqualify a minor from engaging in particular conduct because of the unique vulnerabilities of children. For instance, there are laws that restrict children from marrying,[70] entering into binding contracts,[71] possessing alcohol,[72] and serving in the armed forces,[73] to name just a few.[74] Once a child reaches the age of majority, the justification for these protections becomes obsolete, because they rest on the objective characteristics of childhood. While there may be some children whose capacity to negotiate a

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moral culpability. The age of the offender and the nature of the crime each bear on the analysis.").

[68] *See supra* note 47 and accompanying text.

[69] *Graham*, 130 S. Ct. at 2032.

[70] Brief for Am. Ass'n of Jewish Lawyers & Jurists et al. as Amici Curiae Supporting Petitioners, *Graham*, 130 S. Ct. 2011 (No. 08-7412), 2009 WL 2236776, at *9 ("All fifty states have established minimum age requirements to vote, marry, join the military, obtain a driver's license, and consume alcohol.").

[71] Kiefer v. Fred Howe Motors, Inc., 158 N.W.2d 288, 290 (Wis. 1968) ("The law governing agreements made during infancy reaches back over many centuries. The general rule is that 'the contract of a minor, other than for necessaries, is either void or voidable at his option.'" (citations omitted) (quoting Grauman, Marx & Cline Co. v. Krienitz, 126 N.W. 50, 52 (Wis. 1910))).

[72] *See, e.g.*, N.C. GEN. STAT. § 18B-302 (2010); R.I. GEN. LAWS § 3-8-4 (2010); VT. STAT. ANN. tit. 7, § 658 (2010).

[73] *See, e.g.*, GA. CODE ANN. § 38-2-3 (2011); 20 ILL. COMP. STAT. ANN. 1805/1 (2011); N.Y. MIL. LAW § 2 (McKinney 1990).

[74] *See* J.D.B. v. North Carolina, 131 S. Ct. 2394, 2403 (2011) ("[L]imits on children's legal capacity under the common law 'secure them from hurting themselves by their own improvident acts.'" (quoting 1 WILLIAM BLACKSTONE, COMMENTARIES ON THE LAWS OF ENGLAND 464–65 (Oxford, Claredon Press 1765)).

contract or perform in military operations would exceed that of an adult, society nonetheless assigns prohibitions according to age—an objective factor that applies evenly to every minor regardless of her skill level or precociousness.

The relevance of social norms and legal standards based on minority played an important role in the Court's decisions regarding whether juveniles can be subject to the most severe punishments.[75] In *Roper* and *Graham*, the Court considered the appropriateness of the death penalty and life without parole, respectively, for non-homicide offenses committed by minors.[76] The stark contrast between prohibiting a minor from marrying due to his immaturity, but subjecting him to the death penalty despite his age, underscores a paradox present in our criminal justice system.[77] In part, the abolition of the death penalty and life without parole is recognition that characteristics of youth are universal. Specifically, because laws disqualify children, as a class, from certain activities based on the belief that they lack mature judgment, it follows that they should be protected from the harshest criminal sanctions.[78]

III. *ROPER* AND *GRAHAM* EXTEND BEYOND THE EIGHTH AMENDMENT CONTEXT

Roper and *Graham* have had a profound impact on Eighth Amendment jurisprudence, and both of these decisions have contributed greatly to the field of juvenile justice. Many scholars have written about the application of *Roper* and *Graham* to areas

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[75] Roper v. Simmons, 543 U.S. 551, 568–70 (2005).

[76] *Roper*, 543 U.S. at 568–70; Brief for American Ass'n of Jewish Lawyers & Jurists et al., *supra* note 70, at *9–14.

[77] *See Roper*, 543 U.S. at 569. Almost every state has laws that distinguish youth from adults "[i]n recognition of the comparative immaturity and irresponsibility of juveniles." *Id.* The distinction made by states is among several factors demonstrating "that juvenile offenders cannot with reliability be classified among the worst offenders" for which the death penalty is reserved. *Id.* at 553.

[78] *See* Graham v. Florida, 130 S. Ct. 2011, 2026 (2010); *Roper*, 543 U.S. at 568–70.

of jurisprudence other than the Eighth Amendment.[79] Practitioners and academics alike have recognized that *Roper* and *Graham* constitute a new jurisprudential approach that accounts for the uniqueness of youth in protecting and delivering constitutional rights to juveniles. Collectively, *Roper* and *Graham* are evidence that the current Supreme Court is committed to ensuring that "youth" is treated as a mitigating rather than an aggravating factor.[80] The Court's recognition of a juvenile's psychosocial immaturity and cognitive functioning as it relates to punishment left open the question of whether these same findings would be equally relevant to other constitutional protections. *J.D.B.* answered that question in the context of police interrogation.

A. J.D.B. v. North Carolina

In 2005, a police detective from the Chapel Hill, North Carolina Police Department arrived at Smith Middle School to

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[79] *See* Bishop & Farber, *supra* note 15; Tamar R. Birckhead, *Juvenile Justice Reform 2.0*, 20 J.L. & POL'Y 79 (2011) [hereinafter Birckhead, *Juvenile Justice*] ("[R]ecent Supreme Court decisions ending the juvenile death penalty and juvenile life without parole sentences for non-homicides, and holding that a child's age properly informs the *Miranda* custody analysis, could lead to significant change in both the juvenile and criminal justice systems for young offenders."); Tamar R. Birckhead, *The Age of the Child: Interrogating Juveniles After* Roper v. Simmons, 65 WASH. & LEE L. REV. 385, 386 (2008) ("[T]he principal bases of *Simmons* [should] be applied to the area of juvenile interrogation."); Mary Graw Leary, *Reasonable Expectations of Privacy for Youth in a Digital Age*, 80 MISS. L.J. 1035, 1094 n.169 (2011) (citing *Roper* and *Graham* to show that the court recognizes fundamental differences between adults and children, and may recognize that children and adult generations currently have different expectations of privacy); Levick, *supra* note 12; Elizabeth Locker, *Grow Up Georgia . . . It's Time to Treat Our Children As Children*, 4 J. MARSHALL L.J. 85, 87 (2011) (citing *Roper* and *Graham* to advocate for juvenile delinquency jurisdiction for all persons under eighteen, regardless of the crime). Currently, "Georgia law generally limits delinquency jurisdiction to children under seventeen and further identifies seven felonies that, if a child as young as thirteen is alleged to have committed, are excluded from original juvenile court jurisdiction." *Id.*

[80] *See* Birckhead, *supra* note 46, at 79.

interview a student about a stolen digital camera.[81] The camera was found in the school and was one of several items stolen from two recent residential break-ins.[82] The detective believed that J.D.B., a 13 year old special education student in the seventh grade, had stolen the camera from a neighbor's house.[83] A school police officer escorted J.D.B. from his classroom to a conference room where he was met by the assistant principal, her assistant, and the juvenile detective doing the investigation.[84]

After J.D.B. entered the conference room, the door was closed behind him.[85] In the presence of the administrators, the detective asked J.D.B. to explain where he had been at the time that the break-ins occurred.[86] J.D.B. confirmed that he was in the neighborhood then, but informed the police that he had been looking for work.[87] The detective pressed J.D.B. further and pulled out the stolen camera.[88] Eventually, J.D.B. confessed to breaking into his neighbor's house and stealing the camera.[89] He wrote a full statement detailing the theft.[90] By this time, roughly forty-five minutes had passed since the interrogation had begun.[91]

Except for one statement encouraging J.D.B. to tell the truth, the school administrators were present but silent throughout the interrogation.[92] Instead, the police detective conducted all the questioning.[93] J.D.B's grandmother, his legal guardian, was not notified about the questioning.[94] It was only after J.D.B. admitted to stealing the camera that the detective

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[81] J.D.B. v. North Carolina, 131 S. Ct. 2394, 2399 (2011).
[82] *Id.*
[83] *Id.*
[84] *Id.*
[85] *Id.*
[86] *Id.*
[87] *Id.*
[88] *Id.*
[89] *Id.* at 2400.
[90] *Id.*
[91] *Id.* at 2399.
[92] *Id.*
[93] *See id.* 2399–400.
[94] *Id.* at 2399.

told him he did not have to speak to him and that he was free to leave.[95] However, no Miranda warnings were given.[96]

The detective used the confession and the written statement to obtain a search warrant for J.D.B.'s home.[97] After police retrieved the other stolen items, they ultimately charged J.D.B. with one count of breaking and entering and one count of larceny.[98] The trial court denied J.D.B's motion to suppress his statements made during the interrogation, saying that his statements were voluntary and that he was not in custody, and the intermediate appellate court affirmed.[99] The North Carolina Supreme Court upheld both the trial court decision and the intermediate appellate court.[100] The Court rested its finding on the characteristics of the school environment as generally restrictive in regard to all students, and therefore the interrogation was not satisfactorily custodial to meet the purpose for which Miranda warnings were designed.[101] The North Carolina Supreme Court's reasoning would make it virtually impossible for a judge to find that a student interrogated in a school setting is ever in custody for purposes of *Miranda*.

B. Roper *and* Graham *Meet* Miranda

J.D.B. v. North Carolina approached the question of age and its relevance to the *Miranda* custody analysis relying on past precedent, social science, and common sense.[102] As Justice Sotomayor opined, common sense conclusions about behavior

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[95] *Id.* at 2400.

[96] *Id.* at 2399.

[97] *See In re* J.D.B., 686 S.E.2d 135, 136–37 (N.C. 2009), *rev'd sub nom.*, J.D.B. v. North Carolina, 131 S. Ct. 2394 (2011).

[98] *J.D.B.*, 131 S. Ct. at 2400.

[99] *Id.*

[100] *In re J.D.B.*, 686 S.E.2d at 136.

[101] *Id.* at 138 ("The 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 . . . .").

[102] *See J.D.B.*, 131 S. Ct. at 2394.

and perception may be based upon age.[103] One need not possess a degree in child development to appreciate that children behave and perceive events differently from adults.[104]

It is no coincidence then that the *J.D.B.* Court began its explanation of the relevance of age to the *Miranda* custody test with a recitation of cases affirming the inherently coercive atmosphere of an interrogation.[105] The test for custody under *Miranda* limits itself to consideration of objective circumstances in determining how a reasonable person in the suspect's position would understand his freedom to end the questioning and leave.[106] Relying upon the general characteristics of children, the Court found that police officers and judges can consider age without "doing any damage to the objective nature of the custody analysis."[107] As *Miranda* recognized, "the very fact of custodial interrogation exacts a heavy toll on individual liberty and trades on the weakness of individuals,"[108] and weaknesses could not be more evident than in children.

J.D.B. is replete with references to *Roper* and *Graham*, among other cases, to explain why age is relevant to the *Miranda* custody analysis. Specifically, the Court noted that a juvenile's susceptibility and vulnerability to external pressures is equally relevant to a child's perception of whether he is free to terminate the interrogation, and that coercive interrogation techniques used on children increase the potential for false confessions.[109] Borrowing from *Roper*, *Graham*, and other Supreme Court precedent, the Court explained that a reasonable child subjected to police questioning would sometimes feel pressured to submit when his or her adult counterpart would

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[103] *Id.* at 2407.

[104] *Id.*

[105] *Id.* at 2401 (citing Dickerson v. United States, 530 U.S. 428, 435 (2000); Oregon v. Mathiason, 429 U.S. 492, 495 (1977)).

[106] *Id.* at 2402 (citing Thompson v. Keohane, 516 U.S. 99, 112 (1995)).

[107] *Id.* at 2403.

[108] Miranda v. Arizona, 384 U.S. 436, 455 (1966).

[109] *J.D.B.*, 131 S. Ct. at 2401 (citing Steven A. Drizin & Richard A. Leo, *The Problem of False Confessions in the Post–DNA World*, 82 N.C. L. REV. 891, 906–07 (2004)).

not.[110] In light of a child's deference to authority, a juvenile suspect is likely to feel he must comply with a police officer's request to talk to him, especially where he is surrounded by school personnel in the principal's office.[111] For instance, a child in a situation like J.D.B.'s would almost certainly perceive his circumstances differently from how an adult in the same situation might. As the *J.D.B.* Court noted,

> [t]he effect of the schoolhouse 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.[112]

Likewise, scientific findings about the adolescent tendency to emphasize short-term gains while minimizing long-term consequences[113] provide insight into a juvenile suspect's decision to cooperate with police and submit to an interrogation. Some youth are likely to submit to questioning for the purpose of fulfilling a desire to go home, even if that results in detention,

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[110] *Id.* at 2403 (citing Stansbury v. California, 511 U.S. 318, 325 (1994)).

[111] *Id.* at 2405.

[112] *Id.*

[113] *See* Christine Holdeman et al., Roper v. Simmons *the Death Penalty Was Banned for Juvenile Offenders*, 35 LINCOLN L. REV. 43, 79 (2008) (discussing how scientists have shown that while adolescents perform cost-benefit analyses, they skew this balance by emphasizing short-term results and discounting future consequences more than adults do); Elizabeth S. Scott et al., *Evaluating Adolescent Decision Making in Legal Contexts*, 19 LAW & HUM. BEHAV. 221, 233 (1995) (discussing research that indicates developmental influences lead youthful decision makers and adults to differ in "the subjective value they attach to various perceived consequences in the process of making choices . . . ."); Laurence Steinberg et al., *Age Differences in Future Orientation and Delay Discounting*, 80 CHILD DEV. 28–44 (2009) (researchers found differences in future orientation and the ability to delay rewards among adolescents of various ages as well as adults).

rather than invoking their rights out of concern for their best legal interests.[114] At first blush, this may seem applicable only to the waiver of Miranda rights, but in fact a youth's tendency toward impetuous decision making for short term gratification may permit police to rely on less authoritative conduct to achieve compliance, which is relevant to the custody inquiry. The characteristics unique to adolescent brain development and psychosocial development make a juvenile's perception of a restraint on his freedom fundamentally distinct from an adult's perception of that restraint. As Sotomayor explained, "[n]either 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 . . . ."[115] These truths are self-evident and draw their source from normative experiences—whether it be childhood or parenthood, or perhaps both.[116]

In both *Graham* and *J.D.B.*, the government argued for alternatives that would deny adolescents different protections. The government, in *Graham*, argued that because states, including Florida, account for a juvenile offender's age when determining whether to prosecute in adult criminal court or in juvenile court, there is no need to exclude juveniles from life without parole sentences categorically.[117] The government

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[114] *See* Saul M. Kassin & Gisli Gudjonsson, *The Psychology of Confessions: A Review of the Literature and the Issues*, 5 PSYCHOL. SCI. PUB. INT. 33, 52 (2004) (citing to a 1981 study that found most juveniles who waived their Miranda rights did so because they wanted to be released); *see also* Laurence Steinberg, *Juveniles on Trial: MacArthur Foundation Study Calls Competency into Question*, CRIM. JUST. MAG., Fall 2003, at 20, 23 (discussing findings that adolescents are more willing than adults to confess, "especially if they believe it will result in . . . going home.").

[115] *J.D.B.*, 131 S. Ct. at 2405.

[116] *See id.* at 2407 ("[A] child's age, when known or apparent, is hardly an obscure factor to assess. . . . [O]fficers and judges need no imaginative powers, knowledge of developmental psychology, training in cognitive science, or expertise in social and cultural anthropology to account for a child's age. They simply need the common sense to know that a 7–year–old is not a 13–year–old and neither is an adult.").

[117] Graham v. Florida, 130 S. Ct. 2011, 2030 (2010) ("[T]he State argues that the laws of Florida and other States governing criminal procedure

contended that a state's sentencing discretion was ample to ensure fair sentencing procedure.[118] The *Graham* Court held otherwise, echoing its reasoning in *Roper* that the differences between juveniles and adults are so "marked and well understood" that they require a categorical rule that a juvenile cannot be sentenced to life without parole.[119]

In *J.D.B.*, the government argued that because a suspect's age is considered under the voluntariness test of the Due Process Clause, age is adequately accounted for when considering the admissibility of the defendant's statement.[120] Just as the *Graham* Court rejected the state's charging scheme argument, the *J.D.B.* Court rejected efforts to keep age out of the *Miranda* custody analysis.[121] Both *Graham* and *J.D.B.* reject alternatives to non-categorical rules about age when the result has the potential to undermine the constitutional protections afforded to juveniles.[122] Both decisions find that age is relevant to ensure adherence to separate, but equally important, constitutional considerations.

IV. IMPLICATIONS OF *J.D.B.* FOR SECURING MEANINGFUL DUE PROCESS RIGHTS FOR JUVENILES

When children are held to a "reasonable adult standard" to assess whether their constitutional rights were violated, they are denied adequate protection under the law. To ignore the real differences between adults and children fails to ensure the procedural safeguards *Gault* intended. A child's constitutional

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take sufficient account of the age of a juvenile offender.").

[118] *Id.*

[119] *Id.* at 2032.

[120] *J.D.B.*, 131 S. Ct. at 2408.

[121] *Id.* at 2406 ("The State and its *amici* offer numerous reasons that courts must blind themselves to a juvenile defendant's age. None is persuasive.").

[122] *See* Birckhead, *supra* note 46, at 71 ("In both opinions [*Roper* and *Graham*] Justice Kennedy concluded that a case-by-case approach could not reliably separate out those juveniles with the capacity for change; only a categorical rule that drew a bright line between childhood and adulthood was sufficient to avoid the imposition of punishment disproportionate to the crime.").

rights should be delivered and protected in ways commensurate with the well-settled understanding about characteristics of youth.[123] *J.D.B.*, the latest case in the developing body of Supreme Court jurisprudence on youth status, has the potential to reshape the way the law secures constitutional rights for juveniles. The Court distinguished age from "other personal characteristics that, even when known to police, have no objectively discernible relationship to a reasonable person's understanding of his freedom of action."[124] Future cases will determine whether the standard being applied adequately accounts for the immutable characteristics of youth.

Scholars will opine on the various ramifications of *J.D.B.* over the coming months and perhaps years. Although the breadth and depth of that subject is beyond the scope of this Article, this Part sketches a few areas of juvenile justice that are ripe for reconsideration after *J.D.B.* Specifically, waiver of right to counsel, *Terry* stops of juveniles, and the attorney-client relationship are areas in which an adolescent's normal developmental impairments may dictate a different analytical framework in which to evaluate whether children are being provided the full scope of procedural safeguards to which they are entitled.

In the wake of *Roper*, *Graham*, and *J.D.B.*, the deleterious practice of children waiving counsel at arraignment and proceeding pro se should be curtailed. Research indicates that waiver of counsel is significantly higher among juveniles than adults.[125] The well-founded belief that a juvenile's lack of

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[123] *Roper*, *Graham* and *J.D.B.* affirm the fundamental differences between adults and children and pave the way for juvenile and criminal justice reform. *See* Birckhead, *Juvenile Justice*, *supra* note 79, at 19–20 (discussing the extent and limitations of the juvenile justice reforms these decisions could facilitate); *see also* Emily Buss, *Failing Juvenile Courts, and What Lawyers and Judges Can Do About It*, 6 NW. J.L. & SOC. POL'Y 318, 332 (2011) (discussing how proposed dramatic juvenile justice reform would not require a substantial change in the law or policy of the juvenile court).

[124] *J.D.B.*, 131 S. Ct. at 2404.

[125] *See* Hillary B. Farber, *Do You Swear to Tell the Truth, the Whole Truth, and Nothing but the Truth Against Your Child?*, 43 LOY. L.A. L. REV. 551, 570 n.95 (2010).

maturity and sense of responsibility causes him or her to make impetuous and ill-considered decisions is equally relevant to challenging the validity of a juvenile's uncounseled waiver of representation. A child's lack of appreciation for long term consequences impairs his or her ability to make sound decisions regarding legal strategy, perhaps most significant is the waiver of one's right to counsel. A 2006 study by the National Juvenile Defender Center estimates that up to seventy-five percent of juveniles in some counties in Florida waive their right to counsel in delinquency proceedings.[126] Other states such as Virginia, Ohio, and Georgia had waiver of counsel rates as high as fifty to ninety percent in certain counties.[127]

The "commonsense conclusions about behavior and perception"[128] that the Court categorically applied to youth in *J.D.B.* are equally applicable in the Fourth Amendment context. Accordingly, the legal rubric used to assess a *Terry* stop of a juvenile is ripe for reconsideration after *J.D.B.* Under *Terry* and its progeny, not every police encounter with a civilian implicates

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[126] *See* PATRICIA PURITZ & CATHRYN CRAWFORD, NAT'L JUVENILE DEFENDER CTR., FLORIDA: AN ASSESSMENT OF ACCESS TO COUNSEL & QUALITY OF REPRESENTATION IN DELINQUENCY PROCEEDINGS 27–28 (2006), *available at* http://www.njdc.info/pdf/Florida%20Assessment.pdf.

[127] *See* AM. BAR ASS'N JUVENILE JUSTICE CTR. ET AL., GEORGIA: AN ASSESSMENT OF ACCESS TO COUNSEL AND QUALITY OF REPRESENTATION IN DELINQUENCY PROCEEDINGS 1 (Patricia Puritz et al. eds., 2001), *available at* http://www.njdc.info/pdf/georgia.pdf (in some jurisdictions, up to ninety percent of children waive the right to counsel in delinquency proceedings); AM. BAR ASS'N JUVENILE JUSTICE CTR. ET AL., JUSTICE CUT SHORT: AN ASSESSMENT OF ACCESS TO COUNSEL AND QUALITY OF REPRESENTATION IN DELINQUENCY PROCEEDINGS IN OHIO 25 (Kim Brooks et al. eds., 2003), *available at* http://www.njdc.info/pdf/Ohio_Assessment.pdf (up to eighty percent waiver rate in some jurisdictions); AM. BAR ASS'N JUVENILE JUSTICE CTR. ET AL., VIRGINIA: AN ASSESSMENT OF ACCESS TO COUNSEL AND QUALITY OF REPRESENTATION IN DELINQUENCY PROCEEDINGS 23 (Patricia Puritz et al. eds., 2002), *available at* http://www.njdc.info/pdf/Virginia%20Assessment.pdf (more than fifty percent waived the right to counsel in one jurisdiction); PURITZ & CRAWFORD, *supra* note 126 (up to seventy-five percent waive the right to counsel in some Florida jurisdictions).

[128] *J.D.B.*, 131 S. Ct. at 2403 (quoting Yarborough v. Alvarado, 541 U.S. 652, 674 (2004) (Breyer, J., dissenting)).

the Fourth Amendment.[129] Police officers may question civilians without the encounter amounting to a "seizure" if a reasonable person in that situation would feel he was free to walk away.[130] Thus, in such instances, an individual's participation is viewed as consensual. However, that same police-civilian encounter will implicate the Fourth Amendment if a reasonable person would not feel free to leave."[131] The fact that adults and children perceive their relationship with authority differently is well settled after *J.D.B.*[132] The way that juveniles think, reason, and relate to authority figures implies that a youth might not understand nor appreciate his right to walk away from an officer and therefore be subject to police questioning during a "consensual encounter."[133] Thus, placed in stressful situations, young people are more deferential to authority.[134] For most

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[129] Whether an encounter constitutes a seizure for Fourth Amendment purposes rests on the level of restraint exercised by the police. *See* United States v. Mendenhall, 446 U.S. 544, 553–54 (1980); Terry v. Ohio, 392 U.S. 1, 16 (1968).

[130] *See* Florida v. Royer, 103 S. Ct 1319, 1326 (1983); *Mendenhall*, 446 U.S. at 554; *Terry*, 392 U.S. at 16.

[131] *Mendenhall*, 446 U.S. at 554.

[132] *See J.D.B.*, 131 S. Ct. at 2403 ("[A] reasonable child subjected to police questioning will sometimes feel pressured to submit when a reasonable adult would feel free to go.").

[133] *See e.g.* People v. Lopez, 892 N.E.2d 1047, 1061 (Ill. 2008) ("When assessing whether a juvenile was seized for purposes of the fourth amendment, [it is appropriate to] . . . modify the reasonable person standard to consider whether a reasonable juvenile would have thought that his freedom of movement was restricted."); *see also* Lourdes M. Rosado, *Minors and the Fourth Amendment: How Juvenile Status Should Invoke Different Standards for Searches and Seizures on the Street*, 71 N.Y.U. L. REV. 762, 794 (1996).

[134] *See* Barry Feld, *Police Interrogation of Juveniles: An Empirical Study of Policy and Practice*, 97 J. CRIM. L. & CRIMINOLOGY 219, 230 (2006) (citing Gerald P. Koocher, *Different Lenses: Psycho-Legal Perspectives on Children's Rights*, 16 NOVA L. REV. 711, 716 (1992)) (noting that children are socialized to obey authority figures); Thomas Grisso et al., *Juveniles' Competence to Stand Trial: A Comparison of Adolescents' and Adults' Capacities as Trial Defendants*, 27 LAW & HUM. BEHAV., 333–63 (2003) (psychosocial characteristics such as compliance with authority, risk appraisal, and future orientation were found to influence adolescents' decision making in three different legal scenarios: confessing to police, accepting a

people, young or old, questioning by police of suspected criminal activity is stressful. Juveniles often feel they must comply with requests and answer truthfully.[135] While adults may be more likely to invoke their right to walk away when it would be in their self-interest, the cognitive, emotional, and social development of a youth may well render a different response. Failure to consider the "youth status" of the defendant illustrates the gap in Fourth Amendment protection. Logically, it follows from *J.D.B.* that an assessment of whether a reasonable person in the defendant's position would have felt free to leave must include age as a relevant factor.[136]

The unique needs of children raise a conundrum for many lawyers who represent children.[137] The Court noted in *Graham*

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plea agreement, and disclosing to an attorney); Marty Beyer, *Immaturity, Culpability & Competence of Juveniles: A Study of 17 Cases*, CRIM. JUST. MAG., Summer 2000, at 26, 29 (arguing that because of their immature thought processes, juveniles do not believe they have a choice when talking to the police).

[135] *See* Beyer, supra note 134, at 29.

[136] Some states and federal courts do include age in the *Terry* determination. *See e.g.*, United States v. Little, 18 F.3d 1499, 1505 n.7 (10th Cir. 1994) ("Of course age, gender, education and intelligence may be relevant in any *particular* case, to the extent they are objectively apparent."). In a 1983 claim where a sixteen-year-old girl claimed wrongful seizure, the Tenth Circuit took age into account by viewing her "encounter through the eyes of a reasonable sixteen-year-old." Jones v. Hunt, 410 F.3d 1221, 1226 (10th Cir. 2005). Two concurring judges in *In re J.M.* concluded "that the majority's application of the hypothetical 'reasonable person' test for adults to a child is misconceived." *In re* J.M., 619 A.2d 497, 504 (D.C. 1992). Even before *J.D.B.*, the concurring justices considered characteristics of youth when they noted that a reasonable child test would ensure that "young citizens are not denied constitutional protection by reason of their age and immaturity." *Id.* at 506. *J.D.B.* made it clear that consideration of a suspect's age would not require "anticipating the idiosyncrasies" or the subjective state of mind of the person being interrogated by police. *J.D.B.*, 131 S. Ct. at 2402.

[137] *See* Laura Cohen & Randi Mandelbaum, *Kids Will Be Kids: Creating a Framework for Interviewing and Counseling Adolescent Clients*, 79 TEMP. L. REV. 357, 358 (2006) ("The challenge for lawyers who represent young people age twelve and over is clear: Can we create a paradigm for legal interviewing and counseling that affords these clients the autonomy that the ethical rules—and, one might argue, moral obligations—demand, but, at the

that the features that distinguish juveniles from adults make them less likely than adults to work effectively with their lawyers to aid in their defense."[138] The *Roper*, *Graham*, *J.D.B.* trilogy provides support for tailoring the attorney-client relationship to the unique needs of juvenile clients. A juvenile's lack of experience and judgment may create a greater risk of not understanding the role of defense counsel, the long-term consequences of their legal decisions, or the concept of the attorney-client privilege. [139] It may take more time to educate the juvenile client on his options and subsequently have the client direct the goals of representation.[140] Children may require more time building a rapport and trust with their attorney than an adult client in the same situation. [141] In order to help young clients understand their choices and the legal process, lawyers need to simplify concepts and have more frequent discussions with clients that reinforce the long term consequences of their decisions.

Roper and *Graham* only considered juvenile distinctions under the Eighth Amendment. *J.D.B.* applied that same line of reasoning to the *Miranda* custody analysis. Together, these cases have far-reaching implications on how youth status can be applied in substantive and procedural criminal jurisprudence. For instance, every area of criminal law that uses a "reasonable

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same time, compensates for their immature decision-making abilities?" (citations omitted)).

[138] Graham v. Florida, 130 S. Ct. 2011, 2032 (2010). Characteristics attributable to children such as impetuous decision making and mistrust of authority figures pose obstacles to the attorney-client relationship. *See id*.

[139] *See* Kristin Henning, *Loyalty, Paternalism, and Rights: Client Counseling Theory and the Role of Child's Counsel in Delinquency Cases*, 81 NOTRE DAME L. REV. 245, 259 (2005) ("[R]eal cognitive and psychosocial limitations among children and adolescents continue to frustrate the relationship between the attorney and his child client.").

[140] *See* MODEL RULES OF PROF'L CONDUCT R. 1.2(a) (2011) ("[A] lawyer shall abide by a client's decisions concerning the objectives of representation and, as required by Rule 1.4, shall consult with the client as to the means by which they are to be pursued.").

[141] PATRICIA PURITZ ET AL., AM. BAR ASS'N JUVENILE JUSTICE CTR., A CALL FOR JUSTICE: AN ASSESSMENT OF ACCESS TO COUNSEL AND QUALITY OF REPRESENTATION IN DELINQUENCY PROCEEDINGS 50 (1995).

person" standard creates an opportunity for the establishment of a "reasonable child" standard.[142] Likewise, when a police officer attains tangible evidence via a consent search, consideration for whether the child legally consented should be determined according to whether a "reasonable child" would have greater difficulty knowingly and voluntarily consenting to a search. The next big set of questions addresses the degree to which courts approach the application of criminal procedure and criminal law differently as applied to the age of the accused.

CONCLUSION

J.D.B. v. North Carolina is the first time the Court addressed the relevance of age in determining custody for *Miranda* purposes. Much rests on the result. The decision has the potential to reinvigorate the spirit of *In re Gault*.[143] The intent of the Court in *Gault* was to provide greater due process protections for youth.[144] The decision paved the way for procedural justice for juveniles in the delinquency context.[145] For its part, *J.D.B.* has the potential to bring due process rights for juveniles into the twenty-first century by ensuring consideration of youth in the investigation and adjudication phases of the prosecution of a juvenile.

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[142] *See* Levick, *supra* note 12, at 756 ("Examples abound where the characteristics of youth might dictate a different view of the 'reasonableness' of the defendant's conduct, his capacity or mental state, or otherwise require different treatment of youth. These include such matters as self-defense, duress, provocation, negligent or reckless homicide, voluntariness of waivers of rights, arrest and intent generally, strict liability and accomplice liability, and jury instructions. Many of these purport to ascribe blame or degree of blame, or to determine outcomes, on the basis of either an objective test or a test with both subjective and objective components.").

[143] *In re* Gault, 387 U.S. 1 (1967).

[144] *Id.* at 1, 6 (holding that juvenile proceedings must comply with the Fourteenth Amendment, giving juveniles the right to notice of charges, to counsel, to confrontation and cross-examination of witnesses, and to privilege against self-incrimination).

[145] *Id.* at 1.