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I. INTRODUCTION

Throughout roughly the last decade a controversy over the interrogation of America's children has been quietly yet persistently occurring in the courtrooms across the nation.[1] It centers upon the safeguards to be provided juveniles subjected to police custodial interrogation and the admissibility of confessions elicited from a juvenile subject to such questioning. The issue of juvenile interrogation first received attention in 1948 when the United States Supreme Court decided that minors prosecuted in adult criminal proceedings could not be interrogated by methods offensive to due process.[2] During the next fourteen years the movement for reform of methods used to obtain confessions encompassed suspects of every age. The movement centered on dissatisfaction with the voluntariness test used to determine the admissibility of confessions. Reform adherents believed this test was inadequate to protect suspects from coercive interrogation techniques often used by police.[3]

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1. For a sampling of cases which contain good discussions of the rights of juveniles subject to police custodial interrogation, see Fare v. Michael C., 442 U.S. 707 (1979); Matter of C. P., 411 A.2d 643 (D.C. 1980); State *ex rel.* Dino, 359 So. 2d 586 (La. 1978); Commonwealth v. Smith, 372 A.2d 797 (Pa. 1977); People v. Lara, 62 Cal. Rptr. 586 (1967).

2. In Haley v. Ohio, 332 U.S. 596 (1948), a 15-year-old boy was arrested around midnight on a murder charge and confessed after being questioned by police for about five hours. Justice Douglas, writing for the Court, declared:

> The age of petitioner, the hours when he was grilled, the duration of his quizzing, the fact that he had no friend or counsel to advise him, the callous attitude of the police towards his rights combine to convince us that this was a confession wrung from a child by means which the law should not sanction. Neither man nor child can be allowed to stand condemned by methods which flout constitutional requirements of due process of law.

Id. at 600-01. This decision was reaffirmed fourteen years later in *Gallegos v. Colorado*, 370 U.S. 49 (1962). In *Gallegos* a 14-year-old boy was arrested for assault and robbery. After his victim died the boy was charged with first degree murder. He was convicted largely on the strength of a formal confession which he had given before the victim's death, prior to appearing before a judge, and after he had been held for five days without seeing an attorney, parent, or other friendly adult, even though his mother had tried to see him. Justice Douglas, delivering the opinion for the Court, said that a 14-year-old boy "cannot be compared with an adult in full possession of his senses and knowledgeable of the consequences of his admissions . . . . A lawyer or an adult relative or friend could have given the petitioner the protection which his own immaturity could not." *Id.* at 54. On the basis of the totality of the circumstances in this case, the petitioner's confession was found to have been obtained in violation of due process and his conviction was reversed. *Id.* at 55.

3. *See generally* Broderick, *Interrogations and Confessions*, in CRIMINAL DEFENSE TECHNIQUES 3-1 to 3-80 (R. Cipes ed. 1969).

Since the test was applied by examining the totality of the circumstances, the discretion of the trial judges made difficult the prediction of which circumstances would be found involuntary.[4] The reform movement reached its peak in 1966 when the Court, in *Miranda v. Arizona*, set forth specific criteria by which voluntariness was to be measured.[5] Whether the protection was extended to juveniles was left uncertain,[6] but the next year the Court offered the hope that full *Miranda* safeguards would be extended to minors as well as adults.[7] At this point, the controversy over juvenile interrogations began to gain momentum. Questions raised in the controversy included whether a juvenile had the right to confer with a parent prior to interrogation or to have a parent or other adult present during questioning, whether a juvenile's request for a trusted adult was equivalent to an invocation of his right to remain silent, and whether the totality-of-the-circumstances approach was an effective or appropriate method to determine whether a minor's confession or waiver of his constitutional rights was voluntary. After many years, considerable litigation, and widespread and sometimes heated disagreement in the courtrooms, the United States Supreme Court in 1979 was finally presented with a case which offered the potential to settle most of the disputes.[8]

Following a brief outline of the development of the constitutional issues, this comment will examine the Supreme Court's latest statement on the privilege against self-incrimination as it applies to juveniles. In addition, the approaches of the various states

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4. *Id.*

5. 384 U.S. 436 (1966).

6. *See* Altman, *The Effect of the Miranda Case on Confessions in the Juvenile Court*, 5 AM. CRIM. L.Q. 79 (1967).

7. *In re* Gault, 387 U.S. 1 (1967). The Supreme Court stated:

> We conclude that the constitutional privilege against self-incrimination is applicable in the case of juveniles as it is with respect to adults. We appreciate that special problems may arise with respect to waiver of the privilege by or on behalf of children, and that there may well be some differences in technique—but not in principle—depending upon the age of the child and the presence and competence of parents. The participation of counsel will, of course, assist the police, Juvenile Courts and appellate tribunals in administering the privilege. If counsel was not present for some permissible reason when an admission was obtained, the greatest care must be taken to assure that the admission was voluntary, in the sense not only that it was not coerced or suggested, but also that it was not the product of ignorance of rights or of adolescent fantasy, fright or despair.

Id. at 55. Thus, through *Gault* the full fifth amendment privilege was extended to juveniles. Indeed, the Court noted that it would "be surprising if the privilege against self-incrimination were available to hardened criminals but not to children." *Id.* at 47.

8. Fare v. Michael C., 442 U.S. 707 (1979).

will be analyzed. Particular attention will be given to Florida's approach to juvenile interrogation. Finally, the subject of juvenile interrogation will be reviewed as a whole in order to analyze the history of the present doctrine and to predict what is probable, and perhaps preferable, in the future.

II. CONSTITUTIONAL ISSUES

The gravamen of the interrogation cases is an individual's constitutional privilege against self-incrimination. This privilege is rooted in early common law[9] and has always enjoyed a favored position in American jurisprudence.[10] Substantial case law has developed in the effort to preserve this privilege.[11] The common law required that a confession be given voluntarily before it was admissible in evidence against an accused.[12] This concept is embodied in the fifth amendment to the United States Constitution, which provides in pertinent part, "No person . . . shall be compelled in any criminal case to be a witness against himself."[13] Almost every state constitution has long contained a provision basically equivalent to this amendment.[14] Nevertheless, in the 1936 case of *Brown v. Mississippi*[15] the United States Supreme Court provided for federal constitutional restraints upon state interrogation procedures which were inconsistent with fundamental principles of liberty and justice.[16]

In reviewing objections to methods applied to elicit a confession, the Supreme Court has applied the voluntariness test, examining the totality of the circumstances of each case to determine whether the confession was the product of the subject's free will.[17] The re-

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9. *See generally* L. LEVY, ORIGINS OF THE FIFTH AMENDMENT, THE RIGHT AGAINST SELF-INCRIMINATION 46 (1968). *See also* Andersen v. Maryland, 427 U.S. 463 (1976); Note, *Self-Incrimination*, 72 MICH. L. REV. 84 (1973). Levy provides an excellent account of the struggles of the common law courts and Parliament to establish the privilege against self-incrimination. L. LEVY, *supra*, 43-108.

10. As evidenced by its specific inclusion in the Bill of Rights.

11. *See generally* J. WIGMORE, EVIDENCE § 2252 (McNaughton rev. ed. 1961).

12. For a discussion of the common law rules regarding voluntariness of confessions, see Comment, *Developments in the Law—Confessions*, 79 HARV. L. REV. 935, 954 (1966).

13. U. S. CONST. amend. V. *See, e.g.*, Counselman v. Hitchcock, 142 U.S. 547 (1892); Bram v. United States, 168 U.S. 532 (1897).

14. *See* J. WIGMORE, *supra* note 12, § 2252 at 319-24.

15. 297 U.S. 278, 286 (1936). *See* U.S. CONST. amend. XIV.

16. *See generally* Ritz, *Twenty-Five Years of State Criminal Confession Cases in the U.S. Supreme Court*, 19 WASH. & LEE L. REV. 35 (1962); Comment, note 12 *supra*.

17. For just a few notable examples, see Gallegos v. Colorado, 370 U.S. 49 (1962); Culombe v. Connecticut, 367 U.S. 568 (1961); Rogers v. Richmond, 365 U.S. 534 (1961);

sulting case law established that either physical[18] or psychological[19] pressure could be found to be coercive, thereby rendering a confession involuntary. Factors considered important by the Court in determining whether such pressures were applied included the use of verbal threats,[20] the length of the interrogation,[21] the physical and mental characteristics of the subject,[22] and whether the subject was kept incommunicado.[23]

The voluntariness test was the sole safeguard until the Court, in *Malloy v. Hogan*,[24] applied the self-incrimination clause of the fifth amendment to the states by reason of the fourteenth amendment. *Malloy* set the stage for *Escobedo v. Illinois*,[25] in which the Court abandoned the voluntariness test. The holding in *Escobedo* was, however, given a narrow reading. The Court finally laid the test to rest in *Miranda*. Once the privilege against self-incrimination became enforceable against the states, the Court began adding other protections against coercive interrogation techniques.[26] In *Escobedo v. Illinois*,[27] the sixth amendment right to counsel was extended to the interrogation process.[28] Then, in *Miranda*, the Su-

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Spano v. New York, 360 U.S. 315 (1959); Watts v. Indiana, 338 U.S. 49 (1949); Haley v. Ohio, 332 U.S. 596 (1948); Lisenba v. California, 313 U.S. 537 (1941); Chambers v. Florida, 309 U.S. 227 (1940); Brown v. Mississippi, 297 U.S. 278 (1936).

18. *See, e.g.*, Brown v. Mississippi, 297 U.S. 278 (1936).

19. *See, e.g.*, Rogers v. Richmond, 365 U.S. 534 (1961); Chambers v. Florida, 309 U.S. 227 (1940).

20. *See, e.g.*, Lynumn v. Illinois, 372 U.S. 528 (1963).

21. *See, e.g.*, Davis v. North Carolina, 384 U.S. 737 (1966); Culombe v. Connecticut, 367 U.S. 568 (1961).

22. *See, e.g.*, Blackburn v. Alabama, 361 U.S. 199 (1960); Fikes v. Alabama, 352 U.S. 191 (1957).

23. *See, e.g.*, Haynes v. Washington, 373 U.S. 503 (1963); Spano v. New York, 360 U.S. 315 (1959); Payne v. Arkansas, 356 U.S. 560 (1958).

24. 378 U.S. 1 (1964).

25. 378 U.S. 478 (1964).

26. For instance, under the *McNabb-Mallory* rule, the Court provided that confessions were inadmissible in federal trials if obtained by federal officers during a period of "unnecessary delay" in presenting a suspect before a United States Magistrate for arraignment. It should be noted that this rule was exercised under the Court's supervisory capacity over federal courts, was never extended to the states, and was repealed by the Omnibus Crime Control and Safe Streets Act of 1968, 18 U.S.C. § 3501(a) (1976). *See generally* McNabb v. United States, 318 U.S. 332 (1943); Mallory v. United States, 354 U.S. 449 (1957).

27. 378 U.S. 478 (1964).

28. Prior to *Escobedo*, when the Court applied the totality-of-the-circumstances test to determine the admissibility of confessions, not much emphasis was placed upon whether the accused was permitted to have an attorney present during interrogation. Although this factor gained significance in Crooker v. California, 357 U.S. 433 (1958); Spano v. New York, 360 U.S. 315 (1959); and Massiah v. United States, 377 U.S. 201 (1964), it was not until *Escobedo* that a custodial confession was actually held inadmissible because the sixth amendment right to counsel was violated. This was the first hint of a constitutional per se rule and

preme Court concluded that custodial interrogation of persons suspected or accused of crimes is inherently coercive. The Court declared that "protective devices" are necessary to dispel the compulsion inherent in these circumstances[29] and established four explicit warnings which must be given to an accused prior to interrogation.[30] The Court further ordered that once these warnings are given,

> If the individual indicates in any manner, at any time prior to or during questioning, that he wishes to remain silent, the interrogation must cease. At this point he has shown that he intends to exercise his Fifth Amendment privilege; any statement taken after the person invokes his privilege cannot be other than the product of compulsion, subtle or otherwise. . . . If the individual states that he wants an attorney, the interrogation must cease until an attorney is present.[31]

As the quoted language suggests, a suspect has an absolute right to postpone questioning by requesting an attorney. If the questioning proceeds without the request being scrupulously honored, any statement taken thereafter must be presumed to be a product of compulsion.[32]

In deciding *Miranda* a closely divided Court established a set of rigid prophylactic rules.[33] Supporters of *Miranda* contend that the rigidity of these rules provides police and courts with precise guidance on the manner in which a custodial interrogation may be conducted.[34] On the other hand, critics of the decision claim that the inflexibility of the *Miranda* rules induces lower courts to develop their own "interpretations" of *Miranda*.[35]

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the abandonment of the voluntariness test. In *Miranda* the hint became a full fledged reality.

29. 384 U.S. at 458.

30. The Court mandated that: "Prior to any questioning, the person must be warned that he has a right to remain silent, that any statement he does make may be used as evidence against him, and that he has a right to the presence of an attorney, either retained or appointed." *Id.* at 444. An early study of the ramifications of *Miranda* is found in Comment, *Interrogations in New Haven: The Impact of Miranda*, 76 YALE L.J. 1519 (1967).

31. 384 U.S. at 473-74.

32. *Id.* at 473. *See, e.g.*, United States v. Priest, 409 F.2d 491 (5th Cir. 1969) (statement by 19-year-old inadmissible due to disregard of absolute right to delay interrogation by requesting counsel).

33. The Court's decision was 5-1-3 with Justice Clark concurring in part and dissenting in part and Justices Harlan, Stewart and White dissenting.

34. Fare v. Michael C., 439 U.S. 1310, 1314 (1978).

35. Fare v. Michael C., 439 U.S. 1310 (1978). Justice Rehnquist, in his stay of enforce-

The rationale of *Miranda*, however, is to protect an individual from interrogation in overbearing circumstances where a truly voluntary confession is not likely to be obtained. With this perspective the application of *Miranda* warnings or other further protections to juveniles is not viewed by many courts as an *extension* of *Miranda* but rather as a logical step necessary to comply with the spirit and purpose of the *Miranda* rule.[36] Support for this view seems evident in the *Miranda* Court's adoption of the California Supreme Court's language regarding right to counsel: "We cannot penalize a defendant who, not understanding his constitutional rights, does not make the formal request [for an attorney] and by such failure demonstrates his helplessness."[37] Certainly, this consideration could not be more relevant than to a juvenile in trouble questioned while in police custody and burdened with the fears and immaturity of youth.

III. CONSTITUTIONAL ISSUES APPLIED TO JUVENILES

The unsettled constitutional issues regarding custodial interrogation of juveniles focus primarily upon the restraints imposed on questioning. However, they also involve the validity of a waiver of the right to remain silent and to have counsel available to help a defendant effectuate his fifth amendment privilege against self-incrimination.[38] The essence of the rationale of the privilege against

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ment of judgment, acknowledged this problem and discussed the Court's rationale and its efforts to ensure that *Miranda* not be extended beyond the limits imposed by the Court. *Id.* at 1314-15. As examples of restricting *Miranda* to its "doctrinal moorings" Justice Rehnquist cited Oregon v. Mathiason, 429 U.S. 492, 495 (1977) *(Miranda* requires narrow definition of "custodial interrogation"); Beckwith v. United States, 425 U.S. 341, 348 (1976) (whether investigation had "focused" on the defendant is not relevant to whether he was entitled to *Miranda* warnings); Michigan v. Mosley, 423 U.S. 96, 104-05 (1975) (where an accused has asserted his right to remain silent in one questioning, he may under certain circumstances be interrogated again); Oregon v. Hass, 420 U.S. 714, 719 (1975) ("a state may not . . . impose greater *[Miranda]* restrictions as a matter of *federal constitutional law* when this court specifically refrains from imposing them" (emphasis in original)); and Michigan v. Tucker, 417 U.S. 433, 452 (1974) (evidence which is the fruit of statements made without full *Miranda* warnings will not necessarily be excluded at the subsequent state criminal trial). *But c.f.* Doyle v. Ohio, 426 U.S. 610, 618 (1976) (prosecution may not mention that the accused asserted his right to remain silent during questioning).

36. *See, e.g.*, Gallegos v. Colorado, 370 U.S. 49 (1962); People v. Burton, 99 Cal. Rptr. 1 (1971).

37. 384 U.S. at 471 (quoting People v. Dorado, 42 Cal. Rptr. 169, 177-78 (1965)).

38. For the validity of waiver of constitutional rights see Levy & Skacevic, *Valid Juvenile Waivers*, 6 PEPPERDINE L. REV. 767 (1979); for discussion of the other constitutional issues, see Ferster & Courtless, *The Beginning of Juvenile Justice, Police Practices, and the Juvenile Offender*, 22 VAND. L. REV. 567, 591-98 (1969); Comment, *Recent Developments—Criminal Law*, 1972 UNIV. ILL. L. FORUM 625; and Comment, *Interrogation of*

self-incrimination and of the prophylactic safeguards of *Miranda* is that individuals must be protected from and the judicial system expunged of coercive and offensive means of obtaining confessions. As Justice Goldberg wrote for the Court in *Escobedo*, "[A] system of criminal law enforcement which comes to depend on the 'confession' will, in the long run, be less reliable and more subject to abuses than a system which depends on extrinsic evidence independently secured through skillful investigation."[39] If this is so for adults, it must apply a fortiori to juveniles, who usually have neither the maturity nor the experience to cope with a situation which the Supreme Court has found inherently coercive.

Despite this reasoning and the Court's positive actions to protect adults from the potential evils of custodial interrogations, the constitutional protections provided in *Miranda* are apparently inapplicable, or at least not constitutionally mandated when the subject is a juvenile. The distinction arose because juvenile proceedings were historically based upon the doctrine of parens patriae, and hence were deemed to be of a civil nature, designed to treat and rehabilitate the delinquent child.[40] The privilege against self-incrimination, however, is a shield only in criminal prosecutions.[41] When the distinction between "criminal" and "civil" process was taken at face value, juveniles did not enjoy the benefit of the substantial protections which developed under criminal procedure, although they were not without the protections of due process of law.[42]

Juveniles: The Right to a Parent's Presence, 77 DICK. L. REV. 543 (1972-73).

39. 378 U.S. at 488-89. The same train of thought was pursued earlier by the Court in Rogers v. Richmond, 365 U.S. 534 (1961), in which the Court maintained that involuntary confessions must be disallowed "not because such confessions are unlikely to be true but because the methods used to extract them offend an underlying principle in our criminal law: that ours is an accusatorial and not an inquisitorial system." *Id.* at 540-41.

40. Juvenile court systems were first established at the turn of the century. Illinois adopted the first juvenile court act in 1899. An Act to Regulate the Treatment and Control of Dependent, Neglected and Delinquent Children, §§ 1, 21, 1899 Ill. Laws 131 (current version at Juvenile Court Act, ILL. REV. STAT. ch. 37, §§ 701-08 (1971)). The Illinois statute was formulated on the theory that youthful offenders should be treated differently than adults. Applying the parens patriae doctrine (assuming guardianship over persons under a disability) Illinois sought to protect the child's best interests. Using the Illinois statutory model, other states began enacting similar laws. For an overview of the development of the juvenile court see THE PRESIDENT'S COMMISSION ON LAW AND ENFORCEMENT AND ADMINISTRATION OF JUSTICE, TASK FORCE REPORT: JUVENILE DELINQUENCY AND YOUTH CRIME 2 (1967).

41. For a discussion of the origins and some effects of the rule making the fifth amendment applicable to criminal proceedings only, see Comment, *Immunity and Subsequent Informal Punishment*, 69 J. CRIM. L. & C. 322 (1968).

42. For a treatment of the problems that this deficiency caused as well as citations to

In *In re Gault*, the Supreme Court recognized the actual position of juveniles by holding that juvenile proceedings are "criminal" for purposes of the privilege against self-incrimination.[43] Since *Gault* a child has had the right to assert his privilege—that is, if he were fortunate enough to comprehend what the privilege was and when it ought to be asserted. Whether a minor has the capacity to understand his rights, or the ability to assert those rights in the face of authoritarian adult opposition *(i.e.,* the police and sometimes his parents), and whether he can ever be said to have truly waived his rights voluntarily in the absence of guidance from an attorney or other informed adult interested in the child's welfare, were all issues which *Gault* left open.

IV. THE JUVENILE INTERROGATION CONTROVERSY SINCE *Miranda* AND *Gault*

Although the United States Supreme Court in *Gault* did not decide whether *Miranda* warnings must be given prior to questioning a juvenile, it indicated approval of that policy.[44] Indeed, some authorities suggest that children should be afforded even greater protections under the logic of *Miranda* than adults.[45] Since *Miranda,*

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many related commentaries, see *In re* Gault, 387 U.S. 1 (1967).

43. *Id.* at 49-50. The Court in *Gault* also held to be required: notice to the juvenile and to his parents or guardians, *id.* at 31-34; opportunity for confrontation and cross-examination, *id.* at 56-57; and the assistance of counsel, *id.* at 34-42. Later, in *In re* Winship, 397 U.S. 358 (1970), it was held that a standard of proof beyond a reasonable doubt was also required. To determine whether a juvenile proceeding was sufficiently "criminal" in nature to necessitate these procedural safeguards, the Court applies a balancing approach between the individual and governmental interests involved. 387 U.S. at 27-28. Using the same approach in McKeiver v. Pennsylvania, 403 U.S. 528, 549 (1971), the Court found that a trial by jury was not required in juvenile proceedings.

44. The Court said that participation of counsel would assist the police in administering the privilege against self-incrimination and that great care must be taken in the absence of counsel to assure that an admission was voluntary; that is, that it was neither coerced nor suggested, nor the product of ignorance or adolescent fantasy, fright or despair. *In re* Gault, 387 U.S. at 55.

There are many justifications for extending the *Miranda* rule to minors, including the questionable trustworthiness of confessions made by children; the difficulty of reconciling many police practices with the concept of the state as parens patriae; the doubtful validity of the contention that confessing is of therapeutic value to a child; and the belief that juveniles should not be subject to any lesser standard of justice than are adults. *See* Ferster & Courtless, *supra* note 38, at 594-95.

45. Ferster & Courtless, *supra* note 38, at 596. Some suggestions are that juveniles be turned over to probation officers before questioning; that they be questioned at home; that parents or counsel be present at questioning in all cases; that a juvenile not be allowed to waive his *Miranda* rights without first conferring with parents (or other adults interested in the child's welfare) or counsel; and that a child's request for someone other than counsel be

some states have responded to these suggestions by adopting legislation which places various limitations upon police interrogation of juveniles.[46] The courts have also played a role. Throughout the last decade the judicial system has been struggling to formulate the safeguards necessary to protect a juvenile who becomes subject to police custodial interrogation and to articulate standards which should be applied to determine the admissibility of a juvenile's confession resulting from such questioning.[47] In light of the high percentage of serious crimes committed by minors, it is vital that these fundamental questions of criminal procedure be definitively settled.[48]

A. *The Various Approaches*

Courts have adopted various approaches to mitigate disadvantages arising from the immaturity, inexperience, or ignorance of the juvenile. Such approaches aim to insure that the juvenile's age will not serve to hinder the free exercise of his right to remain silent and of his right to the assistance of counsel. The most common and generally accepted approach is to examine the totality of the circumstances of each case retrospectively in order to decide whether a confession was freely given or was the product of some form of coercion. This was the approach adopted by the Supreme Court in two juvenile cases[49] preceding *Miranda*, but at the time the Court was using the totality-of-the-circumstances approach to determine the admissibility of adult confessions. Widespread dissatisfaction with decisions applying this approach led to its abandonment with regard to adults in *Miranda*. In its stead, police and courts were provided with clear, mandatory rules. If a statement was obtained in violation of these rules, it was inadmissible as evidence regardless of whether it would have been admissible under the traditional voluntariness criteria. In the juvenile system, how-

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construed as an invocation of his right to remain silent and to confer with counsel prior to further questioning. *Id.*

46. *See, e.g.*, CAL. WELF. & INST. CODE § 625 (West Supp. 1979); COLO. REV. STAT. § 19-2-102 (1978); OKLA. STAT. ANN. tit. 10, § 1109 (West Supp. 1979). *See also* Ferster & Courtless, *supra* note 38, at 592.

47. *See* cases discussed *infra*.

48. Nationally, of all persons arrested in 1978, 7% were under the age of 15, 23% were under the age of 18, and 40% were under the age of 21. If only the crime index offenses (murder, forcible rape, robbery, aggravated assault, burglary, larceny-theft and motor vehicle theft) are considered, a staggering 58% of all people arrested in that year were under the age of 21. U.S. DEPARTMENT OF JUSTICE, CRIME IN THE UNITED STATES 1978 184, 185 (1979).

49. Gallegos v. Colorado, 370 U.S. 49 (1962); Haley v. Ohio, 332 U.S. 596 (1948).

ever, the infinitely variable voluntariness test still reigns, complete with all the pitfalls which were complained of prior to *Miranda*. It is paradoxical that in trying to alleviate the injustices that can accompany custodial interrogations, the Court has left children, who are most vulnerable to coercive pressures, without relief.

One popular approach, that of placing great emphasis upon the presence or absence of a friendly adult during questioning, grew out of *Gallegos v. Colorado*.[50] In that case, a fourteen-year-old child was held incommunicado for five days, then finally succumbed to custodial interrogation and confessed. The Supreme Court responded, "A lawyer or an adult relative or friend could have given the petitioner the protection [against the unequal footing between the interrogators and himself] which his own immaturity could not."[51] By this language, the Court seemed to recognize that a minor in trouble will usually seek the aid of some adult, and that the adult could be his parents, an attorney, a person with a legal relationship with the child or even a friend.

This approach was adopted by the California Supreme Court in *People v. Burton*.[52] In *Burton*, a sixteen-year-old minor was taken into custody on suspicion of murder and, after being advised of his *Miranda* rights, was interrogated without the presence of an attorney. Prior to questioning, the accused asked to consult with his parents. This request was denied and a confession subsequently obtained from the accused was used against him at trial.[53] On appeal from conviction, the California Supreme Court applied the *Miranda* rule that if an individual indicates in any manner that he wishes to remain silent, interrogation must cease. The California Supreme Court had held previously in an adult interrogation case that any conduct which "reasonably appears inconsistent with a present willingness on the part of the suspect to discuss his case freely and completely with police *at that time*" constitutes an invocation of the fifth amendment privilege.[54] Continuing that line of reasoning, the *Burton* court held that it would be a severe restriction of the protective devices of *Miranda* if the only call for help by a minor which would invoke his privilege was a call for an attor-

50. 370 U.S. 49 (1962).

51. *Id.* at 54. A sentence later the Court said that without "some" adult protection a juvenile would be unable to know, let alone assert, his constitutional rights. *Id.*

52. 99 Cal. Rptr. 1.

53. *Id.* at 4.

54. People v. Randall, 83 Cal. Rptr. 658, 663 (1970) (emphasis in original).

ney.[55] Indeed, the court considered it "fatuous" to expect a minor in custody to call an attorney for assistance and unrealistic to attach no significance to his call for help from persons to whom he normally looks when he is in trouble—that is, his parents or guardians.[56]

Another way to protect a juvenile from coercive interrogations is to require that his rights be conveyed to him in simplified language which he is capable of understanding.[57] An empirical study was conducted to discover whether the *Miranda* rights could be simplified for a juvenile and whether a minor has the capacity to knowingly and intelligently waive those rights.[58] The results were discouraging, if not surprising, in that no significant increase in comprehension was detected between minors given the formal *Miranda* rights and those presented with the simplified version.[59]

A third approach emphasizes the capacity of a juvenile to knowingly and intelligently waive his rights. Under this approach various prerequisites are imposed before a valid waiver is recognized. For example, in *State ex rel. Dino,*[60] the court held invalid a murder confession by a thirteen-year-old boy. The boy had been advised of his *Miranda* rights but had waived them. The court held that the state has a heavy burden to demonstrate that the waiver was knowingly and intelligently made.[61] To sustain this burden, the court required a showing that the juvenile consulted with an attorney or an adult before waiver, that the attorney or adult was interested in the juvenile's welfare, or, if the adult consulted was not an attorney, that the adult was fully advised of the juvenile's rights.[62] As stated by a judge in a similar case, "I cannot fathom

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55. 99 Cal. Rptr. at 5.

56. *Id.* at 9.

57. *See* Levy & Skacevic, *supra* note 38, at 776-78.

58. Ferguson & Douglas, *A Study of Juvenile Waiver,* 7 SAN DIEGO L. REV. 39 (1969).

59. *Id.* at 48. One area, analogous because of its concern over the comprehension of recipients of important legal information, and which has been the object of many empirical studies, is that of devising jury instructions. Tests have shown that even college students (including a study using law students) have considerable difficulty understanding jury instructions. Simplification of the instructions was found to have very little positive impact upon comprehension. *See, e.g.,* Aitken, *Jury Instruction Process* 49 MARQUETTE L. REV. 137-48 (1965); O'Mara & Eckartsberg, *Proposed Standardization of Instructions,* 48 PA. B.A.Q. 542-56 (1977). If college students cannot understand simple legal instructions, it is difficult to believe that juveniles can appreciate the meaning and significance of their rights.

60. 359 So. 2d 586 (La. 1978).

61. *Id.* at 594.

62. *Id.* A similar rule was established by a series of decisions in Pennsylvania, outlined in Commonwealth v. Smith, 372 A.2d 797, 803 (Pa. 1977). In *Smith,* the conviction of a 17-year-old boy for the murder of a 14-year-old girl and the shooting of her friend, both inno-

how a minor, who lacks the capacity to sell, mortgage, donate or release (who could not even contract with the lawyer whose services he waives) can be said to possess the capacity to waive constitutional privileges and lose his freedom as a consequence."[63] In the *Dino* case, the juvenile did not consult with an attorney or other adult prior to waiving his rights.[64]

Thus, self-incrimination by a juvenile typically raises related issues of coercion, and of capacity, in connection with assessing the effect of a formal waiver of the privilege.[65] Prior to *Dino*, the California Supreme Court in *People v. Lara*[66] treated the issue thoroughly and concluded that minors were not incompetent as a matter of law to waive their privilege. In *Lara*, a seventeen-year-old was convicted of kidnapping and murder, in part on the basis of incriminating confessions given after the defendant waived his rights.[67] He contended upon appeal that he lacked the capacity to make a voluntary confession or to understandingly and intelligently waive his rights. The court disagreed, stating:

> We cannot accept the suggestion of certain commentators . . . that every minor is incompetent as a matter of law to waive his constitutional rights to remain silent and to an attorney unless the waiver is consented to by an attorney or by a parent or guardian who has himself been advised of the minor's rights.[68]

Rather, the court claimed that with respect to criminal acts of minors, there was no blanket presumption of incapacity. A juvenile's immaturity was seen simply as one element among many which must be considered to determine his liability; the totality-of-the-circumstances approach was endorsed.[69]

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cent bystanders to a youth gang war, was reversed on the grounds that the waiver of his *Miranda* rights was ineffective since it was given without consultation with an informed adult interested in the juvenile's welfare. *Id.*

63. State *ex rel.* Holifield, 319 So. 2d 471, 475 (La. App. 1975) (Fedoroff, J., concurring).

64. 359 So. 2d at 594.

65. *See, e.g.*, Levy & Skacevic and Comment, *Recent Developments—Criminal Law*, note 38 *supra*.

66. 62 Cal. Rptr. 586 (1967).

67. *Id.* at 590, 591.

68. *Id.* at 596 (citing Comment, *Miranda Guarantees in the California Juvenile Courts*, 7 SANTA CLARA LAW. 114 (1967); Comment, *The Juvenile Offender and Self-Incrimination*, 40 WASH. L. REV. 189 (1965)).

69. 62 Cal. Rptr. at 597.

B. *The United States Supreme Court's Answer:* Fare v. Michael C.

In *Fare v. Michael C.*,[70] the United States Supreme Court had an opportunity to settle virtually all of the self-incrimination issues which had arisen with respect to juveniles since *In re Gault*. Essentially three issues were presented: (1) whether the juvenile's request to see his probation officer constituted an invocation of his right to remain silent, and, if so, whether further interrogation was only permissible if his right to cut off questioning was scrupulously honored; (2) whether the juvenile's request to see his probation officer constituted the legal equivalent of an invocation of his right to counsel to effectuate his fifth amendment privilege against self incrimination, and if so, whether all interrogation must cease until his attorney or probation officer was present; and (3) assuming no invocation of a right to remain silent or a right to the equivalent of counsel, was there a valid waiver of fifth amendment rights; *i.e.*, how much weight is to be given to the fact that before talking he asked to see his probation officer.

Respondent Michael C., a sixteen-year-old minor, was implicated in a murder which occurred during a robbery of the victim's home.[71] He was taken into custody and interrogated by the police at the Van Nuys police station.[72] At the time the respondent was on probation to the juvenile court and had been so since the age of twelve.[73] After being advised of his *Miranda* rights the accused asked if he could have his probation officer present at the questioning. He was told that he could not have his probation officer there at that time but that he did have a right to an attorney. Michael C. then asked, "How I know you guys won't pull no police officer in and tell me he's an attorney?"[74] Without answering his question, the police ascertained who his probation officer was, repeated that he would not be called at that time and that the respondent did not have to talk to the police without an attorney present. The respondent stated that he understood this right and agreed to talk to the police. In response to police questioning he subsequently made statements and drew sketches that incriminated him in the murder.[75]

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70. 442 U.S. 707 (1979), *rev'g* 146 Cal. Rptr. 358 (1978).
71. 442 U.S. at 709.
72. 146 Cal. Rptr. at 359.
73. 442 U.S. at 710.
74. *Id.*
75. *Id.* at 727-28.

Presented with a minor who had been read his *Miranda* rights, had not requested an attorney, but had requested the presence of a trusted adult (his probation officer),[76] the question of Michael C.'s capacity to comprehend the *Miranda* warnings and to knowingly and intelligently waive his constitutional rights was squarely raised. The trial court concluded on the basis of the totality-of-the-circumstances approach that Michael C.'s confession was voluntary.[77] Michael C. was adjudged to be a ward of the court and committed to the Youth Authority.[78]

On appeal, the California Supreme Court held that a minor's request at the commencement of interrogation to see his probation officer was a per se invocation of his fifth amendment rights under *Miranda*.[79] The court found the probation officer in this instance to be a trusted guardian figure. Respondent's probation officer testified at trial that he had instructed Michael C. to contact him immediately at any time that he had police contact. Thus, it was considered a "normal reaction" for Michael C. to seek the advice of his probation officer.[80] By analogy to *Burton*, then, respondent's "call for help" via his request for his probation officer was deemed to be an indication that he intended to invoke his fifth amendment privilege.[81]

On the record before it in *Michael C.*, the United States Supreme Court could reach the merits of all the issues involved in the controversy over the safeguards to be afforded a juvenile subject to police custodial interrogation. Unfortunately, the court in a five to four decision chose to use *Michael C.* as a vehicle to prevent the extension of *Miranda*. It held that a determination as to whether the respondent waived or invoked his fifth amendment privilege is an issue of fact dependent upon the totality of the circumstances surrounding the interrogation.[82]

Three dissenting justices of the United States Supreme Court found the California Supreme Court's decision in *In re Michael C.*

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76. *Id.* at 710.

77. *Id.* at 712.

78. 146 Cal. Rptr. at 364, n.1. Judge Martin issued the opinion of the trial court. Her sensitivity to constitutional issues is evidenced by her publication of widely used handbooks on search and seizure issues. *See, e.g.*, MARTIN, COMPREHENSIVE CALIFORNIA SEARCH & SEIZURE (1971).

79. 146 Cal. Rptr. at 360.

80. *Id.* at 361.

81. *Id.* at 360-61.

82. 442 U.S. at 728.

to be convincing.[83] In fact, they were inclined to pursue this rationale to an even greater extent. They noted that the United States Supreme Court has consistently recognized that "the greatest care" must be taken to ensure that a juvenile will not be subject to overbearing interrogation tactics and that any alleged confessions are actually voluntarily made.[84] Further, they endorsed the view espoused in *Gallegos* that a juvenile suspect may not be equated with an adult who is in full possession of his senses and knowledgeable of the consequences of his admissions.[85] The Court in *Gallegos* recognized that a minor will seek aid from some adult, but it did not limit the minor's choices to his parents, an attorney, or a person with a legal relationship such as a probation officer, as did the California court.[86]

These dissenting justices believed it was especially critical when dealing with juveniles that *Miranda*'s requirements be construed broadly enough to fulfill the intent of eliminating the compulsion inherent in custodial interrogations. The minimum requirement to even raise an issue of voluntary confession should be the availability of legal counsel, and any intimation of a minor's desire to preclude questioning must be scrupulously honored. Continuing this thought, Justice Marshall concluded that a juvenile's request for an adult who is obligated to represent his interests is both an attempt to obtain advice and an invocation of the fifth amendment right to silence. At the very least, the request for adult assistance is inconsistent with a present desire on the part of the suspect to speak freely with the police.[87] Hence, the request should be deemed a per se assertion of the minor's constitutional rights and *Miranda* should require that the interrogation cease whenever such a request is made.[88] As suggested by the Fifth Circuit, in *Chaney v. Wainwright*,[89] to hold otherwise would protect the knowledgeable accused who realizes he must ask for an attorney while abandoning the juvenile who knows no more than to ask for a person he trusts.[90] In addition, an absolute standard would provide

83. Justice Marshall wrote the dissent in which Justice Brennan and Justice Stevens joined. 442 U.S. at 728. As an aside, it is interesting to note that Justice Brennan is the sole remaining justice of the *Miranda* Court and was with the majority in that case.

84. 442 U.S. at 729.

85. *Id.*

86. 370 U.S. at 54.

87. 442 U.S. at 730.

88. *Id.* at 729-30.

89. 561 F.2d 1129 (5th Cir. 1977).

90. 442 U.S. at 730.

clear-cut guidelines for interrogations.

Justice Powell, also dissenting, would have affirmed the California Supreme Court's decision although he believed that court misconstrued *Miranda*. His disagreement with the California court was with its holding that a juvenile's request for his probation officer constitutes a per se invocation of his fifth amendment rights. Justice Powell agreed with the majority that the totality of the circumstances of the interrogation should be examined to determine whether the accused invoked his privilege. He believed that the record clearly revealed that the admission was not the product of a fair interrogation free from inherently coercive circumstances.[91]

But the majority in *Michael C.* continued a policy of restricting the *Miranda* exclusionary rule to its original doctrinal moorings.[92] They maintained that the per se rule established in *Miranda* was based on the Court's perception that an attorney occupies a critical position in our legal system because of his unique ability to protect the fifth amendment rights of a client facing custodial interrogation. While reaffirming this view and reciting the sound reasons for affording an attorney this special status, the Court refused to equate a probation officer with a lawyer and especially rejected the contention that any adult could provide a minor with the same protection as could counsel.[93]

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91. *Id.* at 734.

92. *See also* Michigan v. Mosley, 423 U.S. 96, 104-07 (1975); Oregon v. Hass, 420 U.S. 714, 719 (1975); Michigan v. Tucker, 417 U.S. 433, 446-52 (1974); Harris v. New York, 401 U.S. 222, 225-26 (1971).

93. 442 U.S. at 722. The Court's position represents a retreat from its earlier language in *Gault* and *Gallegos*, in which it was intimated that any informed adult interested in a particular juvenile's welfare could provide the minor the assistance needed to be at parity with his interrogators. *See Gault*, 387 U.S. at 55; *Gallegos*, 370 U.S. at 54. The Court's current stand, however, is consistent with the reality seen in some cases, in which a parent or trusted adult fails to serve the child's best interests. As pointed out by one commentator there are a variety of reasons why the presence of a juvenile's parents or other concerned adult will not necessarily help safeguard the minor's rights. Adults also may not understand the *Miranda* warnings or may be intimidated by police surroundings, especially adults who are themselves law abiding citizens with little or no exposure to the judicial system other than an occasional traffic citation. Additionally, the juvenile may feel pressured to confess in order to exonerate himself before his parent. Finally, an adult may insist that the juvenile cooperate because it is the "right" thing to do. Comment, *Recent Developments—Criminal Law*, *supra* note 38, at 631. There is considerable case law supporting this last point. Some cases from Florida are illustrative, *e.g.*, Postell v. State, 383 So. 2d 1159, 1160 (Fla. 3d Dist. Ct. App. 1980) (13-year-old girl convicted of second-degree murder, burglary and robbery, largely on the basis of her confession which was given after her mother told her to "tell the police everything"); Anglin v. State, 259 So. 2d 752, 752 (Fla. 1st Dist. Ct. App. 1972) (15-year-old boy confessed after his mother told him to tell "the truth" or "she would clobber him"). The court, in *Anglin*, found the mother's concern for the basic precepts of morality

From their premises regarding the special status of lawyers, the Court considered it error to find that a juvenile's request to speak with his probation officer constituted per se an invocation of his fifth amendment rights. It admitted that the request was a factor to be taken into account, but declined to find it dispositive.[94]

The Court then determined that the totality-of-the-circumstances approach was adequate to ascertain whether a minor has waived his fifth amendment rights prior to interrogation. On the record before them the Court found that the respondent voluntarily and knowingly waived his rights and consented to continued interrogation, thereby rendering his admissions valid and admissible in court against him.[95]

The majority's main concern in *Michael C.* was to squelch what it perceived as an unwarranted expansion of *Miranda* through judicial interpretation by lower courts.[96] While most jurisdictions have allowed a minor to waive his fifth amendment privileges without an adult's guidance and have followed a totality-of-the-circumstances approach to determine the admissibility of a minor's confession and the validity of his waiver, several jurisdictions have held otherwise.[97] In *Michael C.*, the majority limited *Miranda* to its specific holding and sent a message to lower courts that it will not tolerate a state's imposing greater *Miranda* restrictions when the Supreme Court refrains from imposing them.[98] To those who

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to be commendable and did not consider her admonition to constitute a threat or coercion. *See also* Daniels v. State, 174 S.E.2d 422 (Ga. 1970); Mack v. State, 188 S.E.2d 828 (Ga. Ct. App. 1972); Driver, *Confessions and the Social Psychology of Coercion*, 82 HARV. L. REV. 42 (1968); Comment, *Interrogation of Juveniles: The Right to a Parent's Presence*, 77 DICK. L. REV. 543 (1972-73).

94. 442 U.S. at 719-24.

95. *Id.* at 726-27. *See also* North Carolina v. Butler, 441 U.S. 369 (1979). In *Butler* the suspect agreed to talk to his interrogators but refused to sign a written waiver form. The Court held that an express waiver of *Miranda* rights is not necessary. It found that in certain circumstances a waiver may be inferred from the actions and words of the suspect. 441 U.S. at 373. Justices Brennan, Marshall and Stevens dissented, arguing that *Miranda* should be interpreted to require an express waiver. *Id.* at 377.

96. *See also* Fare v. Michael C., 439 U.S. 1310 (1978) (application for stay pending filing of petition for certiorari).

97. *See generally* Levy & Skacevic, note 38 *supra*.

98. The Court delivered essentially the same message recently in Rhode Island v. Innis, 100 S. Ct. 1682 (1980). That case dealt mainly with the definition of "interrogation." While the Court acknowledged that "the *Miranda* safeguards were designed to vest a suspect in custody with an added measure of protection against coercive police practices" the Court defined interrogation narrowly, finding that "since the police surely cannot be held accountable for the unforeseeable results of their words or actions, the definition of interrogation can extend only to words or actions on the part of police officers that they *should have known* were reasonably likely to elicit an incriminating response." *Id.* at 1690 (emphasis in

believed that juveniles need and are entitled to at least equal, if not greater, protections than most adults, the Court's reply was: not at the expense of expanding *Miranda*.[99]

V. THE JUVENILE INTERROGATION CONTROVERSY IN FLORIDA

Florida, like several other states,[100] has adopted a statute providing certain protections to juveniles who become subject to police custodial interrogation. The approach used in Florida to determine the admissibility of confessions made by juveniles during such questioning has been predicated largely on statutory construction without reaching the constitutional issues involved.[101] Legislative changes of the statute over time[102] and differences of opinion over

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original). Interestingly, the three dissenting justices who joined in *Michael C.* and *Butler* against the majority's restrictive interpretation of *Miranda* (Justices Marshall, Brennan and Stevens), also dissented in *Innis* apparently for the same reasons. *Id.* at 1692, 1693. However, in *Innis*, Justice Stevens wrote a separate dissent. *Id.* at 1693.

99. In an interesting article, Streib, *From Gault to Fare and Smith: The Decline in Supreme Court Reliance on Delinquency Theory*, 7 PEPPERDINE L. REV. 801 (1980), it is established that the Court has reached its recent conclusions regarding juveniles without reliance upon delinquency research. The article concludes, "Particularly in the instance of *Fare*, the Court has regressed to narrow, legalistic conclusions and broad, seat-of-the-pants conjecture." *Id.* at 826. While Streib's article does not focus especially upon the interrogation of juveniles, it does do a thorough job of examining the Court's use of delinquency research in arriving at its holdings in juvenile cases. The footnotes of this article are a virtual bibliography of all the sources which have been relied upon in juvenile cases which have been heard by the Court since *Gault*.

100. The legislative protections provided by several other states are discussed in Ferster & Courtless, *supra* note 38 at 592-94.

101. FLA. STAT. § 39.03(3) (1979) provides:

> If the person taking the child into custody determines, pursuant to 39.032(2), that the child should be detained or placed in a crisis home, that person shall make a reasonable effort to immediately notify the parents or legal custodians of the child and shall, without unreasonable delay, deliver the child to the appropriate intake officer or, if the court has so ordered, to a detention home or crisis home.

It was preceded by several other versions, the most notable of which is discussed *infra*.

In Florida, it is apparently a matter of common practice, although not a requirement, to read a juvenile the *Miranda* warnings whenever it would be appropriate for adults. Also, pursuant to FLA. STAT. § 39.03(3) (1979) and its predecessors, until very recently most cases held that the parent or guardian of a minor had to be notified and provided with an opportunity to confer with the child prior to interrogation. *See generally* 8 FLA. ST. UNIV. L. REV. 99 (1980) which analyzes the recent decision of Davis v. Page, 442 F. Supp. 258 (S.D. Fla. 1977). The case-by-case approach argued for in this note is fairly consistent with the rationale of *Michael C.* The Florida Supreme Court is definitely shy of a per se or absolute rule when it involves interrogation. *See* Doerr v. State, 383 So. 2d 905 (Fla. 1980); Davis v. Page, 442 F. Supp. 258 (S.D. Fla. 1977). The Fifth Circuit would be most in step with the United States and Florida Supreme Court rulings by adopting the case-by-case rather than the absolute approaches to a juvenile's right to appointed counsel. 8 FLA. ST. UNIV. L. REV. at 101.

102. There have been several minor changes in this statute over time. However, the only

the construction and the rationale or purpose of the statute have resulted in divergent views among the district courts of appeal.[103] The dispute has recently climaxed in *Doerr v. State*[104] a case arising out of the Second District Court of Appeal and decided by the Florida Supreme Court on May 8, 1980. The court based its decision squarely upon its interpretation of section 39.03(3), Florida Statutes.[105]

A. Section 39.03(3): The Interpretations of the District Courts of Appeal

Florida courts generally agree that for a confession to be admissible in evidence in a juvenile case it must be voluntarily made, as measured by the totality-of-the-circumstances method of determining voluntariness and not by the *Miranda* rules.[106] However, when the question is raised whether a juvenile's confession is admissible if it was given prior to notification of his parents, the agreement among the courts ends.

The former version of the statute explicitly provided:

> The person taking and retaining a child in custody shall notify the parents . . . and shall, without delay for the purpose of investigation or any other purpose, deliver the child, by the most direct practicable route, to the court of the county or district where the child is taken into custody.[107]

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significant revision was made between 1971 and 1973, with the deletion of the words "without delay for the purpose of investigation or any other purpose" (ch. 71-355, § 10, 1971 Fla. Laws 1597; ch. 71-130, § 2, 1971 Fla. Laws 337) and their replacement with the milder requirement that the police "immediately notify the parents . . . and . . . without unreasonable delay, deliver the child to the appropriate intake officer." Ch. 73-231, §§ 4-9, 1973 Fla. Laws 527 (current version at FLA. STAT. § 39.03(3) (1979)).

103. *Compare* Doerr v. State, 348 So. 2d 938 (Fla. 2d Dist. Ct. App. 1977), *aff'd*, 383 So. 2d 905 (Fla. 1980) *with* Fields v. State, 377 So. 2d 223 (Fla. 1st Dist. Ct. App. 1979).

104. 383 So. 2d 905 (Fla. 1980).

105. (1979).

106. *See In re* G. G. P., 382 So. 2d 128 (Fla. 5th Dist. Ct. App. 1980). *See also* C.J. v. State, 376 So. 2d 911 (Fla. 3d Dist. Ct. App. 1979); Tennell v. State, 348 So. 2d 937 (Fla. 2d Dist. Ct. App. 1977); T. B. v. State, 306 So. 2d 183 (Fla. 2d Dist. Ct. App. 1975); J. D. D. v. State, 268 So. 2d 457 (Fla. 4th Dist. Ct. App. 1972); Arnold v. State, 265 So. 2d 64 (Fla. 3d Dist. Ct. App. 1972). The general agreement over the use of the totality-of-the-circumstances test extends as well to the capacity of a minor to waive his rights under *Miranda*. The Second District Court of Appeal, in T. B. v. State, 306 So. 2d 183 (Fla. 2d Dist. Ct. App. 1975), cited *Gallegos* and *Lara* in support of these positions.

107. Ch. 59-441, § 1, 1959 Fla. Laws 1471 (current version at FLA. STAT. § 39.03(3) (1979)).

Judicial interpretation of this version was uniform. In *In re A.J.A.*,[108] a sixteen-year-old boy was picked up on a charge of robbery. Accompanied by his mother, he was taken by officers to the public safety department building. After a considerable wait, an officer informed the mother that the boy was under arrest and instructed her to go home, which she did. The boy was later interrogated for approximately two hours by two officers of the Public Safety Department, culminating in a signed confession to the offense charged.[109] The Third District Court of Appeal construed the above statute as a legislative directive that presumptively inexperienced juveniles suspected of criminal conduct must be treated differently from adults in a similar position and should not be exposed to the intimidating influences of a jail or a police station. For this reason the confession was found to be inadmissible and the lower court decision allowing its admission was reversed.[110] The Florida Supreme Court in *Roberts v. State*[111] adopted the rationale of *In re A. J. A.*, noting that the statutory language was controlling.[112]

The same year that *Roberts* was decided, however, the Florida Legislature revised the statute, substituting a milder and less explicit requirement:

> If the person taking the child into custody determines pursuant to section 39.03(3)(c), that the child should be detained or placed in shelter care, he shall notify immediately the parents or legal custodians of the child and shall, without unreasonable delay, deliver the child to the appropriate intake officer, or, if the judge has so ordered, to a detention home or shelter.[113]

Judicial uniformity collapsed in its wake. According to the First and Third District Courts of Appeal, the statute required that a parent be notified and permitted to consult with a juvenile prior to questioning.[114] The Second and Fourth District Courts of Appeal

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108. 248 So. 2d 690 (Fla. 3d Dist. Ct. App. 1971).

109. *Id.* at 691.

110. *Id.* at 692.

111. 285 So. 2d 385 (Fla. 1973).

112. *Id.* at 386. The court noted that it was compelled to take this position due to the explicit statutory language. That same year the Florida Legislature redrafted the statute substituting milder language. *See* note 102 *supra*.

113. Ch. 73-231, 1973 Fla. Laws 527, §§ 4-9.

114. Stokes v. State, 371 So. 2d 131 (Fla. 1st Dist. Ct. App. 1979); Sublette v. State, 365 So. 2d 775 (Fla. 3d Dist. Ct. App. 1978); Weatherspoon v. State, 328 So. 2d 875 (Fla. 1st Dist. Ct. App. 1976); Dowst v. State, 336 So. 2d 375 (Fla. 1st Dist. Ct. App. 1976).

contended that the revised statute merely requires notification of parents when a child is "taken into custody," and establishes no preconditions for interrogations.[115]

The First District Court of Appeal has heard the most litigation in this area.[116] In the earliest case, *Weatherspoon v. State*,[117] a seventeen-year-old youth was taken into custody for suspicion of robbery. His parents arrived at the police station within a half hour and requested to see the boy. They were forced to wait for approximately five hours, during which time the police officers extracted a confession from the juvenile.[118] Although *Miranda* warnings were given prior to questioning, the youth's conviction on two counts of robbery was reversed on grounds that his confession was inadmissible because it was obtained in violation of his rights under the statute.[119] Nine days later the same court heard a similar case, *Dowst v. State*,[120] in which a sixteen-year-old was arrested on suspicion of grand larceny. The boy requested permission to call his parents but was not allowed to do so until after he had been interrogated. Under questioning he made statements which led to his conviction.[121] Citing the statute, the court said:

> The purpose of the Statute is too clear to call for interpretation or construction. The Legislature has *commanded* with clear words that a juvenile's parents *shall be* notified immediately, and it is not left to the discretion of the arresting or interrogating officer to suspend the operation of this legislative mandate until after he obtains confessions from the youth. In such posture, the giving of the Miranda rights to the Defendant was to no avail.[122]

The court held that the defendant's request to call his parents constituted a continuous assertion of his privilege against self-incrimination[123] and that his confession, given after denial of his request, was inadmissible in evidence.[124] *In re A. J. A.* and *Roberts* were

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115. Doerr v. State, 348 So. 2d 938 (Fla. 2d Dist. Ct. App. 1977), *aff'd*, 383 So. 2d 905 (Fla. 1980); *In re* W.J.N., 350 So. 2d 119 (Fla. 4th Dist. Ct. App. 1977).

116. *See* cases discussed *infra*. By comparison, the other district courts have had no more than one case each on point.

117. 328 So. 2d 875 (Fla. 1st Dist. Ct. App. 1976).

118. *Id.* at 876.

119. *Id.*

120. 336 So. 2d 375 (Fla. 1st Dist. Ct. App. 1976).

121. *Id.* at 376.

122. *Id.* (emphasis in original).

123. *See also* People v. Burton, 99 Cal. Rptr. 1 (1971).

124. 336 So. 2d at 376.

cited as authority, even though they both had been decided on the basis of the prior version of the statute.[125]

Relying and expanding upon the rationale of *Dowst,* the First District Court of Appeal in *Stokes v. State*[126] held that where a parent requests to be present at an interrogation of his child, and the parent is reasonably accessible, then the statute requires that the parent be given a reasonable opportunity to be present and to confer with the child. In *Stokes,* the appellant cut another juvenile with a knife during an argument. The police took the appellant and all the witnesses to the Juvenile Justice Center for questioning. Before leaving for the Center the police informed the appellant's father that his son was being taken for questioning. The father told the officers that he wanted to be present at the questioning, and that he would get there as soon as he was able to calm his wife. Although the father arrived within a reasonable period of time, the officer waited only a few minutes before commencing interrogation without the father. The victim subsequently died and the appellant was convicted of manslaughter.[127] Appellant's motion to supress his statements made during questioning was denied.[128] His conviction was reversed on appeal due to the officer's failure to comply with the statute, thus rendering the juvenile's statements inadmissible.[129] The First District Court of Appeal has made it clear that *Stokes, Dowst* and *Weatherspoon* are controlling in the first district as to the question of admissibility of a juvenile's confession obtained after *Miranda* warnings are given, but prior to delivery of the minor to the intake officer of a juvenile detention center.[130] That court's position was maintained despite a

125. *Id. But c.f. In re* R. L. J., 336 So. 2d 132, 138 (Fla. 1st Dist. Ct. App. 1976) (lower court decision reversed because statements made by minor in sheriff's office were not the product of free choice). *R. L. J.* was decided only four months after *Dowst.* However, the court also noted in dicta that under the revised statute it was evident that the legislature removed statutory impediments to juvenile custodial interrogation which is not offensive to the United States or Florida Constitutions. 336 So. 2d at 137. But this language is inconsistent with other First District Court of Appeal interpretations. *See, e.g.,* K. L. C. v. State, 379 So. 2d 455 (Fla. 1st Dist. Ct. App. 1980); Fields v. State, 377 So. 2d 223 (Fla. 1st Dist. Ct. App. 1979); Stokes v. State, 371 So. 2d 131 (Fla. 1st Dist. Ct. App. 1979).

126. 371 So. 2d 131, 132 (Fla. 1st Dist. Ct. App. 1979).

127. *Id.* at 132.

128. *Id.*

129. *Id.*

130. K. L. C. v. State, 379 So. 2d 455, 455 (Fla. 1st Dist. Ct. App. 1980); Fields v. State, 377 So. 2d 223, 224 (Fla. 1st Dist. Ct. App. 1979). The court in *K. L. C.* maintained that the police have an obligation under the statute to notify the parents when a juvenile is arrested, but need only offer a conference opportunity if either the parent or child requests it. 379 So. 2d at 456.

holding to the contrary by the Second District Court of Appeal.

The contrary second district case was *Doerr v. State*,[131] in which a sixteen-year-old minor was charged with three counts of burglary. A police officer, seeking to arrest Doerr, first advised Doerr's mother of his intentions. Later that evening Doerr was arrested by the officer. Petitioner's rights were read to him once in the patrol car enroute to the juvenile detention center, and again prior to his interrogation at the detention center. In response to questioning, Doerr confessed to participation in several burglaries and provided the officer with substantiating details. Later, Doerr's motion to supress his statements made to the arresting officer was denied and he pled nolo contendere.[132] On appeal, Doerr argued that under the statute his confession was automatically inadmissible since his parents were not notified prior to his interrogation.[133] The Second District Court of Appeal disagreed. *Dowst* was distinguished on its facts, since there the juvenile requested that the police contact his parents whereas here no such request was made.[134] Finally, the court also distinguished *Roberts* on the ground that the statute on which the *Roberts* decision rested had been revised and the court was not bound by the Florida Supreme Court's interpretation of the former section's stricter language.[135] The court noted that while the fact that a juvenile's confession was given prior to his conferring with a parent or attorney is a factor militating against its admissibility, this fact alone does not preclude a finding of voluntariness on the basis of the other circumstances under which the confession was made.[136]

The Fourth District Court of Appeal, in *In re W. J. N.*,[137] adopted the rationale of the second district court and declared that a delay in notification of a juvenile's parents is merely one factor to be considered by the trial court in making its determina-

131. 348 So. 2d 938 (Fla. 2d Dist. Ct. App. 1977), *aff'd*, 383 So. 2d 905 (Fla. 1980).

132. *Id.* at 939.

133. *Id.* at 939-40.

134. *Id.* at 940.

135. *Id.* at 941. As support, the court cited *In re R. L. J.*

136. *Id.* at 940-41.

137. 350 So. 2d 119 (Fla. 4th Dist. Ct. App. 1977). Interestingly, the court in *W. J. N.* cited *In re* R. L. J., 371 So. 2d 131 (Fla. 1st Dist. Ct. App. 1979), as primary support for its holding and Doerr v. State, 348 So. 2d 938 (Fla. 2d Dist. Ct. App. 1977), *aff'd*, 383 So. 2d 905 (Fla. 1980), as merely "[s]ee also." Yet, the supportive language in *R. L. J.* was dicta whereas the supportive language in *Doerr* was essential to the holding in that case. The only explanation for this is that the court in *W. J. N.* wanted to emphasize the only First District Court of Appeal case which supported the view that no statutory requirement of notification of a parent prior to custodial interrogation of a minor exists.

tion of voluntariness.[138] The appellant, age sixteen, arguing that his confession should have been suppressed, relied upon *In re A. J. A.*, *Roberts v. State* and *B. M. v. State*.[139] The court declared the first two cases inapplicable because they were based upon an earlier version of the statute.[140] In *B. M. v. State, the current version of the statute was found to be a legislative directive that juveniles must be treated differently from other suspected criminals in that they shall not be taken to a police station or to jail for interrogation.*[141] *The Fourth District Court of Appeal found this language to be merely dicta.*[142]

The Third District Court of Appeal in Sublette v. State,[143] meanwhile aligned itself with the first district's interpretation. In *Sublette,* as in *Dowst,* the police refused to grant the juvenile's request to contact his father until after questioning. During the ensuing interrogation the minor made statements which were instrumental in convicting him for first degree murder, robbery, burglary and petty larceny.[144] On appeal the appellant's request for his father was found to be a continuous assertion of his privilege against self-incrimination and denial of the request was found to be contrary to the requirements of the statute, thereby rendering his subsequent statements inadmissible as evidence.[145] However, the decision was closely divided, the minority joining with the second district[146] which, in *Doerr,* had arrived at a contrary interpretation of the same statute under similar factual circumstances.

B. The Florida Supreme Court's Answer: Doerr v. State

As a result of *Doerr,* the Second District Court of Appeal certified the following question to the Florida Supreme Court for resolution: "Is any confession by a juvenile after he is taken into custody rendered inadmissible if it was given prior to notification of his parents . . . pursuant to section 39.03(3)(a), Florida Statutes

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138. 350 So. 2d at 120.
139. 337 So. 2d 423 (Fla. 3d Dist. Ct. App. 1976).
140. *Id.*
141. 337 So. 2d at 424.
142. 350 So. 2d at 120. This was a proper reading of *B. M.* The court remanded the case because the trial judge's conclusion that the confession was voluntary did not appear in the record with unmistakable clarity as required. *See* McDole v. State, 283 So. 2d 553 (Fla. 1973).
143. 365 So. 2d 775 (Fla. 3d Dist. Ct. App. 1978).
144. *Id.* at 776.
145. *Id.* at 777.
146. *Id.* at 778 (Pearson, J., dissenting in part).

(1975)?"[147] In a four to three decision, the supreme court concurred with the second district, answering the question in the negative. The majority adopted verbatim the district court's rationale,[148] which essentially was that the only purpose of the statute, as revised, is to keep parents advised of their child's whereabouts while the child is in state custody. The court categorically stated that "the statutory requirement of notification has nothing to do with interrogation."[149] It went on to say that "the admissibility of a juvenile confession depends upon the totality of circumstances under which it was made."[150] The court held specifically that the statute neither prohibits interrogation after a child is taken into custody but before a decision is made whether to detain him nor does it prohibit interrogation after a determination to detain is made.[151] Whether the child's parents are notified prior to questioning is simply one factor for the trial court to consider in determining the voluntariness of any child's confession.[152]

The Florida Supreme Court's decision was based solely upon construction of the statute.[153] The court's earlier decision in *Roberts*, under the previous version of that statute, was also grounded solely upon the statute involved. Although there are important constitutional issues underlying this statute, as is evident from the controversy in other states, the Florida courts have not yet found it necessary to reach these fundamental issues. For instance, in *Doerr* no mention was made at all to *Michael C.*, decided eleven months earlier. Yet the end result achieved in *Doerr* by the majority is essentially the same as that in *Michael C.* In both instances the totality-of-the-circumstances approach was endorsed and the question of whether a child has the right to see an adult prior to questioning, other than an attorney, was answered in the negative. Interestingly, the dissent in *Michael C.* cited *Gallegos* as partial support for the proposition that juveniles who request to see an adult prior to questioning should be deemed to have invoked their fifth amendment privilege.[154] They believed this result followed from the Court's language proposing adult aid as a safeguard

147. 383 So. 2d at 906.
148. *Id.* at 906-07. *See* Doerr v. State, 348 So. 2d 938, 940-41 (Fla. 2d Dist. Ct. App. 1977), *aff'd*, 383 So. 2d 905 (Fla. 1980).
149. 383 So. 2d at 907.
150. *Id.* (citing *Gallegos*).
151. *Id.* at 908.
152. *Id.*
153. *Id.* at 906.
154. 442 U.S. at 729.

against a minor's immaturity. Yet, in *Doerr*, the majority cited *Gallegos* as support for using the totality-of-the-circumstances approach.[155] Applying that approach the court found that the statute had nothing to do with interrogations and that a child's request for a parent is merely another circumstance for the trial court to consider in determining the voluntariness of a minor's confession.[156]

It is questionable whether the closely divided decision of the Florida court will end the controversy in Florida. However, it appears that the advocates of greater procedural protections for juveniles now will face an uphill battle. They have only two alternatives. First, they can continue to challenge the court's interpretation of the statute, either hoping for a current justice to change his opinion or waiting for a new justice with views in accord with their own. Second, they can switch their attack from statutory to constitutional grounds. In light of the Supreme Court's decision in *Michael C.* this avenue does not offer much chance for success.

Considering the closely divided decisions of both *Doerr* and *Michael C.*, the arguments which eventually heralded the demise of the voluntariness test for adults, and the paradoxical situation in which children who are most in need of protection are given the most inferior type, ample justification appears to exist for continuation of the controversy.

VI. CONCLUSION

The question of what procedural safeguards should be afforded to juveniles subject to police custodial interrogation has been a major source of controversy in juvenile law since *Miranda* and *Gault* were decided. In *Michael C.* the Supreme Court had the opportunity to settle the matter, but chose instead to direct its efforts at curbing the heretofore active judicial expansion of *Miranda*.

Although *Michael C.* was decided by a closely divided Court, it is still likely to have a negative impact upon those jurisdictions which have attempted to protect juveniles by requiring that a minor have adult guidance before his confession or his waiver of constitutional rights would be deemed valid. It is also likely to deter other jurisdictions from venturing forward in this troubled area. While *Michael C.* specifically held that a minor's request for his probation officer was not equivalent to a request for an attorney or a desire to invoke his right to remain silent, it seems clear from the

155. 383 So. 2d at 907.
156. *Id.*

Court's language and rationale that the same result would have been reached if a parent or other adult had been requested. Yet it seems that the interpretation most consistent with the intent of *Miranda* would be to consider a juvenile's request for an adult as equivalent to a request for an attorney. The Court is correct in its decision not to allow a nonattorney to substitute for counsel, since only a lawyer is adequately trained to provide a person with the guidance and protection needed. However, the Court is in error to attach no per se significance to a juvenile's plea for help via his request for some trusted adult.

Nevertheless, until *Michael C.* is reversed or states enact clear, protective legislation, those members of our society with the least ability to protect themselves from oppressive police practices also command the least protection from the courts.