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MIRANDA IN A JUVENILE SETTING: A CHILD'S RIGHT TO SILENCE*

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I. THE SETTING

Fourteen year old S.D. was arrested by police for the armed robbery of a local grocery store. Immediately after the arrest, he was taken to police headquarters and, after being read the *Miranda* warnings from the standard form, subjected to custodial interrogation. Within minutes, S.D. confessed to the robbery.

The juvenile court judge permitted the arresting officer to testify as to the content of the juvenile's confession, finding that the police questioning was conducted in accordance with the highest standards of due process and fundamental fairness. Additionally, the judge found that the procedural requirements of *Miranda* were met. S.D. was adjudged delinquent upon a finding that he robbed the grocery store while brandishing a loaded .38 caliber revolver; this crime, if committed by an adult, would constitute first degree robbery.

On appeal, S.D. contends that the confession should have been excluded from his delinquency hearing because he did not understand the *Miranda* warnings. He further asserts that the police officer merely read him the warnings from a standardized adult *Miranda* card and made no attempt to explain the warnings in language he could understand.

Hypothetical

To date, the United States Supreme Court has not specifically held the procedural safeguards enunciated in *Miranda* [1] applicable to the juvenile justice system. The issue this article addresses is: if a law enforcement officer must administer the *Miranda* warnings to a youth suspect prior to any custodial interrogation, must that officer modify those warnings so that their administration takes on a form

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

comprehensible to the youth, and, if so, how should the officer modify such warnings?

The foundation supporting the American juvenile justice system is "rooted in social welfare philosophy rather than in *corpus juris*."[2] In theory, the mission of the juvenile court is to ascertain the needs of the child while, at the same time, balancing the necessity for societal protection. Instead of acting as prosecutor and judge, the juvenile court officials take on the role of *parens patriae*.[3] This approach theoretically adds a more therapeutic-counseling atmosphere to juvenile hearings than does the more traditional adversarial environment of adult criminal trials. In fact, juvenile court officials possess greater discretion to use the law in numerous ways not generally available in other forums. As one commentator stated:

> For them, law is not merely a code of conduct that children must be made to obey; it is a code whose violation is taken as symptomatic of an interior disorder and used to identify those children to be taken into custody and 'helped'. The discovery of a violation represents an opportunity to teach new lessons.[4]

Acting as *parens patriae*, the juvenile court proceeds with a general program for the best interests of the youth while balancing the general interests of the community at large. In this respect, the child is not "considered an enemy of society but society's child who needs understanding, guidance and protection. The goals of the program are rehabilitation and protection from the social conditions that lead to crime."[5] Accordingly, the issues faced by the juvenile court are not criminal culpability, determinations of guilt or innocence, and punishment, but are instead sensitivity, understanding, guidance, and protection.[6]

In the majority of cases, a law enforcement official refers the youth offender to the juvenile court.[7] Therefore, the youth's first

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2 Kent v. United States, 383 U.S. 541, 554 (1966).

3 This latin term literally means "parent of the country," signifying the role a state takes as the guardian of persons who are under some form of legal disability. In this context, the disability concerns those persons under the age of 18.

4 Note, *Juvenile Delinquents: The Police, State Courts, and Individualized Justice*, 79 HARV. L. REV. 775, 804 (1966).

5 Handler, *The Juvenile Court and the Adversary System: Problems of Function and Form*, 1965 WIS. L. REV. 7, 10.

6 *Id.*

7 *See supra* note 4, at 776 n.5, for statistics showing that over 98% of the Chicago juvenile court cases were referred by law enforcement agencies. Judge Steven Perskie of the Atlantic County, New Jersey Superior Court recently stated that the amount of law enforcement referrals in the Southern New Jersey area in 1985, 1986 and early 1987 was probably even higher than the 98% reported for the Chicago area.

contact with the juvenile justice system is achieved through some sort of interaction with the police (or juvenile) officer in the field. If the contact necessitates taking the youth into custody,[8] the formal procedural requirements of the juvenile justice system are invoked.[9] Thus, from initial contact to formal invocation of juvenile procedure, the law enforcement official plays a vital role in the path the youth will take.

It is this "vital role" which mandates the extrapolation of the juvenile court's perceptions of "understanding, guidance, and protection" back to the moment of initial law enforcement intervention. Should the intervention necessitate taking the youth into custody, these perceptions should require at least the same procedural safeguards afforded persons in similar and parallel stages of adult investigation. As one commentator writes, "even greater protection might be required where juveniles are involved, since their immaturity and greater vulnerability place them at a greater disadvantage in their dealings with the police."[10]

While it is arguable that some juveniles experienced in the "sys-

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[8] Personal experience indicates that many police contacts merely end with a warning to the juvenile and transportation home to his or her parents or guardian without any formal or offical record made of the contact, other than a brief entry in the communications log and the officer's vehicle log. The field-officer may, however, write up an informal "field-interview card" about the contact and, after transporting the youth home, deliver the card to the department's juvenile division.

[9] For example, in Atlantic City, when a juvenile is taken into custody following his alleged commission of a crime, the juvenile detective must immediately contact the juvenile's parents or guardian. If contact is not immediately made, the officer must formally document the time and place of each contact attempt. The officer must also contact the Atlantic County Juvenile Intake Office, where on-call superior court staff personnel are informed of the circumstances of the instant case and the juvenile's record and make a determination as to whether the child should be placed in a juvenile detention center, a JINS (Juvenile in Need of Supervision) facility, or released into parental custody. If the Intake Office official determines that detention in a juvenile facility is warranted, the officer must execute a formal written request for detention and delineate the reasons for the detention therein. The officer then prepares a formal juvenile "petition," which is the charging instrument, and attaches to it the relevant custody and investigation reports. Next, he formally logs the time-in, time-out, and the destination location and, finally personally escorts the juvenile to one of the twenty-one available juvenile facilities. Interview with James Kelly, Atlantic City Police Juvenile Detective, in Atlantic City, New Jersey (March 15, 1987).

[10] Grisso, *Juveniles' Capacities to Waive Miranda Rights: An Empirical Analysis*, 68 CALIF. L. REV. 1134, 1137 (1980) (citing In re Gault, 387 U.S. 1, 55 (1967), in which Justice Fortas in his discussion of juvenile admissions stated: "[T]he 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 that it was not the product of ignorance of rights or of adolescent fantasy, fright or dispair.") *See also* State v. Nicholas S., 444 A.2d 373 (Me. 1982)(in which Justice Carter of the Supreme Judicial Court of Maine stated: "[C]ourts should never lose sight of the fact that a juvenile's vulnerability and immaturity places him at a greater disadvantage than an adult when dealing with the police." *Id.* at 377).

tem" have the ability to fend for themselves when questioned by a police official, most youths lack the proper faculties to comprehend the official inquiry or foresee the path down which it may lead.[11] This problem of juvenile comprehension has been highlighted in empirical studies which focus on the ability of juveniles to understand and waive their *Miranda* rights.[12]

Miranda [13] specifically discusses "the admissibility of statements obtained from an individual who is subjected to custodial interrogation[14] and the necessity for procedures which assure that the individual is accorded his privilege under the Fifth Amendment to the Constitution not to be compelled to incriminate himself."[15] In *Miranda*, Chief Justice Warren, writing for the five-member majority, established "concrete consitutional guidelines for law enforcement agencies and courts to follow."[16] The majority fashioned the guidelines into specific procedural requirements which must be adhered to before any statements made by an individual during custodial interrogation may be used against him.

> [U]nless other fully effective means are devised to inform persons of their right of silence and to assure a continuous opportunity to exercise it, the following measures are required. 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. The defendant may waive effectuation of these rights, pro-

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11 A question naturally arises as to whether the majority of adult laymen have the ability to stand on equal footing with a questioning law enforcement official. A 1967 Yale study of draft protesters indicated that even highly intelligent, well-educated, and extremely willful suspects—twenty-one Yale faculty and staff members and students—who were advised of their rights by FBI agents in their own homes or offices failed to understand the nature and function of the constitutional rights at stake and could not "turn off" their "interviewers" even when they indicated that they did not want to be questioned. Griffiths & Ayres, *A Postscript to the Miranda Project: Interrogation of Draft Protestors*, 77 YALE L.J. 300 (1967). *Accord* Driver, *Confessions and the Social Psychology of Coercion*, 82 HARV. L. REV. 42 (1968). *See also infra* note 41 and accompanying text.

12 *See* Grisso, *supra* note 10, at 1134 (arguing that doubts surrounding a youth's ability to comprehend the *Miranda* warnings are fortified "by the fact that despite receiving the warnings, most juveniles in pretrial proceedings waive rather than invoke their rights"); Grisso & Pomicter, *Interrogation of Juveniles: An Empirical Study of Procedures, Safeguards, and Rights Waiver*, 1 L. & HUM. BEHAV. 321 (1977)(discussing a study of a large random sample of juvenile arrests for alleged felonies in which approximately 10% of the juveniles informed of their *Miranda* rights chose not to waive them). *See also* Furguson & Douglas, *A Study of Juvenile Waiver*, 7 SAN DIEGO L. REV. 39 (1970).

13 384 U.S. 436.

14 "Custodial interrogation" is defined by the Court as "questioning initiated by law enforcement officers after a *person* has been taken into custody or otherwise deprived of his freedom of action in any significant way." *Id.* at 444 (emphasis added).

15 *Id.* at 439.

16 *Id.* at 432.

> vided the waiver is made voluntarily, knowingly, and intelligently. If, however, he indicates in any manner and at any stage of the process that he wishes to consult with an attorney before speaking there can be no questioning. Likewise, if the individual is alone and indicates in any manner and at any stage of the process that he does not wish to be interrogated, the police may not question him. The mere fact that he may have answered some questions or volunteered some statements on his own does not deprive him of the right to refrain from answering any further inquiries until he has consulted with an attorney and thereafter consents to be questioned.[17]

By means of the above procedural safeguards, the Court sought to rectify the evils of "incommunicado interrogation" in a coercive "police-dominated atmosphere, resulting in self-incriminating statements without full warnings of constitutional rights."[18] The safeguards, as a prophylactic device, were intended to dispel the compulsion inherent in custodial surroundings and ensure that any statement obtained by police questioning is truly a product of free choice.[19]

In its discussion of the fifth amendment, the Court "readily perceive[s] an intimate connection between the privilege against self-incrimination and police custodial questioning"[20] and concludes that "the privilege is fulfilled only when the person is guaranteed the right to remain silent unless he chooses to speak in the unfettered exercise of his own will."[21] Accordingly, the privilege was held to be fully applicable during periods of police custodial interrogation.[22] Further, Chief Justice Warren emphatically stated:

> There can be no doubt that *the Fifth Amendment privilege is available outside of criminal court proceedings and serves to protect persons in all settings* in which their freedom of action is curtailed in any significant way from being compelled to incriminate themselves.[23]

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17 *Id.* at 444-45.

18 *Id.* at 445.

19 *Id.* at 458. *See also* Oregon v. Elstad, 470 U.S. 298 (1985) and New York v. Quarles, 467 U.S. 649 (1984)(both recognizing the prophylactic nature of the *Miranda* warnings).

20 384 U.S. at 458.

21 *Id.* at 460 (citing Malloy v. Hogan, 378 U.S. 1, 8 (1964)(fifth amendment privilege to be free from self-incrimination is, by reason of the fourteenth amendment, fully applicable to the states).

22 *Id.* at 461. The Court further observed that "all the principles embodied in the privilege apply to informal compulsion exerted by law enforcement officers during in-custody questioning. An individual swept from familiar surroundings into police custody, surrounded by antagonistic forces and subjected to [inherently coercive] techniques of persuasion . . . cannot be otherwise than under a compulsion to speak. As a practical matter, the compulsion to speak in the isolated setting of the police station may well be greater than in courts or other official investigations, where there are often impartial observers to guard against intimidation or trickery." *Id.* at 461.

23 *Id.* at 467 (emphasis added). *See* Tinker v. Des Moines Indep. Community School

Within one year following the *Miranda* decision, the Court decided *In re Gault*,[24] in which Justice Fortas, speaking for the majority, determined that "the constitutional privilege against self-incrimination is applicable in the case of juveniles as it is with respect to adults."[25] Although the Court briefly mentioned *Miranda* in this juvenile adjudicatory setting,[26] the question necessarily arises whether such a reference is misplaced. The Court specifically limited its holding to adjudicatory proceedings before a juvenile court.[27] Furthermore, there was no admission on the record elicited by police custodial interrogation. Rather, the admissions at issue were elicited and relied upon by the juvenile court itself.[28] Nonetheless, Justice Fortas stated:

> [T]*he privilege against self-incrimination is, of course related to the* question of the *safeguards* necessary to assure that admissions or confessions are reasonably trustworthy, that they are not the mere fruits of fear or coercion, but are reliable expressions of the truth. . . . It would indeed be surprising if the privilege against self-incrimination were available to hardened criminals but not to children.[29]

As a result, *Gault* may, on the one hand, be interpreted as delivering no constitutional precedent on the applicability of *Miranda* to pre-adjudicatory police-juvenile custodial interrogation. On the other hand, the citation to *Miranda* in reference to the juvenile court may have been purposely included; it may very well be a harbinger to the lower courts suggesting one of the factors to be considered when a court is determining whether a juvenile's admissions which resulted from custodial police interrogation should be admitted in a delinquency proceeding with the consequence that the youth may be committed to a correctional institution.

Dist., 393 U.S. 503, 511 (1969)(recognizing children as "persons" under the United States Constitution). *See also* Planned Parenthood v. Danforth, 428 U.S. 52, 74 (1976)(in which the Court noted that "[c]onstitutional rights do not mature and come into being magically only when one attains the state-defined age of maturity.").

24 387 U.S. 1 (1967).

25 *Id.* at 55.

26 *See id.* at 44.

27 *Id.* at 13, 22 n.30 ("We consider only the problems presented by this case. These relate to proceedings by which a determination is made as to whether a juvenile is a delinquent as a result of alleged misconduct on his part, with the consequence that he may be committed to a state institution." *Id.* at 13.).

28 Here, the Court observed that while no alleged admissions made by the defendant to the probation officer appeared in the record, that record did contain admissions made by him to the juvenile court judge. As a result, the Court stated: "We shall assume that [the defendant] made [the] admissions [at issue to the juvenile court judge]." *Id.* at 43.

29 *Id.* at 47 (emphasis added).

II. The Judicial Response

In *West v. United States*,[30] the sixteen-year-old appellant urged the Court of Appeals for the Fifth Circuit to "extend" *Gault* and hold that "the pre-interrogation warnings commanded in all criminal cases by *Miranda* also apply to pre-judicial stages of federal juvenile delinquency proceedings."[31] Although the court found it unnecessary to decide this issue due to the arresting officer's administration of all the *Miranda* requirements,[32] its use of the word "extend" suggests the conclusion that to so hold would require extrapolation of the *Gault* Court's application of the fifth amendment privilege back to the moment of police custodial interrogation.[33]

Conversely, many jurisdictions do not approach the issue as requiring an "extension" of *Gault*, but construe *Gault* as mandating the administration of the *Miranda* warnings in pre-adjudicatory juvenile settings through rationales which impel

> the inescapable conclusion . . . that *Gault* requires that in a hearing to determine whether a juvenile has committed an offense for which he may be confined in a correctional institution, admissions made by the juvenile during in-custody questioning may not be introduced in evidence unless it is first shown that the *Miranda* warnings were given, and the privilege against self-incrimination was intelligently waived.[34]

With similar reasoning, the Texas Court of Civil Appeals in *Leach v. State*,[35] interpreted *Gault* as requiring appellate courts to "regard appeals in juvenile cases more strictly in a case where delinquency proceedings may lead to commitment in a state institution."[36] In *Leach*, a probation officer interrogated a twelve-year-old girl without an attorney present and without the administration of the *Miranda* warnings. Although a question arose whether this juvenile could understand the warnings even if given, the court nonethe-

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30 399 F.2d 467 (5th Cir. 1968), *cert. denied*, 393 U.S. 1102 (1969).

31 *Id.* at 468.

32 *Id.* at 468 n.6. The court, in a narrow holding, decided only that a juvenile's confession obtained outside the presence of his or her parents is not per se inadmissible. Rather, a juvenile's waiver of his *Miranda* rights will be assessed by the "totality of the circumstances" to determine whether it was truly voluntary and intelligent. *Id.* at 469.

33 *Cf.* Comment, *Juvenile Miranda Waiver*, 49 Temp. L.Q. 704, 710 (1975)(interpreting *Gault* as providing no constitutional basis for procedures or rights applicable to pre-judicial stages of the juvenile process).

34 In re Creek, 243 A.2d 49-51 (D.C. 1968)(presenting a situation in which the investigating police detective failed to administer the *Miranda* warnings prior to engaging in custodial interrogation of the juvenile suspect. The court reasoned that "[s]ince *Gault* makes the *Miranda* rules applicable to the Juvenile Court, and appellant's *Miranda* rights were clearly violated here, the judgment of the Juvenile Court must be reversed.").

35 428 S.W.2d 817 (Tex. Ct. App. 1968).

36 *Id.* at 819.

less held, on due process grounds, that the failure to warn the juvenile of her *Miranda* rights warranted reversal.[37]

Other jurisdictions focus on the juvenile's age, education, intelligence, and experience to determine whether the juvenile's admissions were truly voluntary. In *State v. R.W.*,[38] the Appellate Division of the New Jersey Superior Court was presented with an appeal challenging the adjudication of delinquency of twelve-year-old R.W. for possession of stolen property. The public defender asserted that the confession relied upon by the juvenile court was improperly admitted because the police detective failed to administer all the *Miranda* warnings by not advising the youth of his right to a court appointed attorney if he were an indigent. Holding the confession admissible on a due process and fundamental fairness standard,[39] the court pointed out that, even if each of the *Miranda* warnings had been perfectly administered, "this boy did not have the age, mentality, schooling (he was in the third grade) or experience to understand them well enough to knowingly and intelligently choose whether or not to talk or ask for a lawyer."[40] Judge Gaulkin further noted:

> Juvenile courts deal with children as young as eight. Children of tender years may understand each word of the *Miranda* warnings when plainly and clearly given; they may have street or movie knowledge about the right to keep silent and to demand a 'mouthpiece,' but nevertheless, up to a certain age they cannot be deemed to be able to waive the *Miranda* privileges.[41]

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[37] *Id.* at 821. Also contributing to the court's decision to reverse was the fact that the probation officer made no attempt to provide the juvenile with counsel to safeguard her rights. *Id.* Other jurisdictions have interpreted *Gault* as mandating the administration of the *Miranda* warnings in the pre-adjudicatory stages of the juvenile proceeding. *See generally* Ball v. Ricketts, 779 F.2d 578 (10th Cir. 1985); In re Dennis M., 70 Cal. 2d 444, 450 P.2d 296, 75 Cal. Rptr. 1 (1969); In re Teters, 264 Cal. App. 2d 816, 70 Cal. Rptr. 749 (1968); State v. Benoit, 490 A.2d 295 (N.H. 1985); In re Meyers, 25 N.C. App. 555, 214 S.E.2d 268 (1975). *Cf.* State v. Tim S., 41 Wash. App. 60, 701 P.2d 1120 (1985)(admissions from custodial interrogation of juvenile without administration of *Miranda* are only available to impeach prior inconsistent statement so long as admissions were made without coercion and are trustworthy).

[38] 115 N.J. Super. 286, 279 A.2d 709 (App. Div. 1971), *aff'd mem.*, 60 N.J. 118, 293 A.2d 182 (1972).

[39] *Id.* at 301, 279 A.2d at 717. The court upheld the admissibility of the confession finding that there was absolutely no claim of "threats, force, prolonged interrogation or improper means or influence exerted on the boy, or that the confession was untrue." *Id.* at 288, 279 A.2d at 710. "[T]he test is due process and fundamental fairness and the giving of the *Miranda* warnings is not an absolute necessity in every case but an important element in determining whether the admission was truly voluntary." *Id.* at 301, 279 A.2d at 717. Here, the confession was voluntary and was obtained with "due process and fundamental fairness." *Id.* at 301, 279 A.2d at 717, 718.

[40] *Id.* at 713.

[41] *Id. See also* Gallegos v. Colorado, 370 U.S. 49, 54 (1962) (a juvenile cannot be

Although the court in *R.W.* did acknowledge in its discussion of *Gault* that pre-adjudicatory admissions were not at issue, it nonetheless cautioned the New Jersey courts:

> [A]lthough *Gault* . . . probably made it necessary to give juveniles (and their parents, if present) the *Miranda* warnings, we think that, at least with reference to pre-adjudicatory interrogation, it does not fasten upon the juvenile court all of the automatic and mechanical results of noncompliance with *Miranda* which follow in the criminal courts.[42]

Accordingly, the court concluded with an instruction to law enforcement officials that, if the youth's parents or guardian cannot or will not come to his side, "*the warnings should be given anyway*, as a practical matter against the possibility that the youth might understand them and act upon them."[43]

The appellate division's rationale in *R.W.* was approved by the New Jersey Supreme Court in *State in Interest of S.H.*[44] In *S.H.*, a juvenile delinquency complaint charged that ten-year-old S.H. caused the drowning death of his six-year-old playmate by pushing him into a canal. When S.H. was brought to the police station, his father was already there. Before the police officials conducted any questioning of S.H., however, they sent Mr. H. home. Then, after reading and fully explaining the *Miranda* warnings, the officers pro-

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compared with an adult in full possession of his senses and knowledgeable of consequences of his admissions); Haley v. Ohio, 332 U.S. 596, 599 (1948)(noting that a child is an easy victim of the law and cannot be judged by more exacting standards of maturity). *Cf.* Belloti v. Baird, 443 U.S. 622, 640 (1979)(the Court, in a case involving a child's right to an abortion, explained that "immature minors often lack the ability to make fully informed choices that take into account both immediate and long-range consequences."). This author believes, however, that, as the age of the youth approaches majority, the juvenile-adult distinction for purposes of *Miranda* become nothing but a legal fiction. In over eight years of police investigations, this author encountered few adults who truly comprehended the nature and significance of their rights. Many demanded the rights as they were accustomed to hearing on television, but few truly listened. This observation has been confirmed by Temple University Professor Marina Angel and Northfield Defense Attorney and former police legal advisor D. William Subin, who both question whether the majority of adult laymen have the sufficient faculties to make an informed and intelligent decision to waive the privilege against self-incrimination. As Judge Gaulkin explained in *R.W.*, choosing to waive the privilege necessarily involves "an understanding of the charge, the possible defenses, the nature of the evidence against the defendant and how it was obtained, the presumption of innocence, the burden of proof, etc., which only those trained in crime or law possess." 115 N.J. Super. at 293, 279 A.2d at 713. *See also* State v. Michael L., 441 A.2d 684, 690 (Me. 1982)(Carter, J., dissenting)(questioning whether the deficient mental or intellectual capabilities of an adult raises doubts as to the adult's understanding of the *Miranda* warnings).

42 *R.W.*, 115 N.J. Super. at 295-96, 279 A.2d at 714.

43 *Id.* (emphasis added).

44 61 N.J. 108, 293 A.2d 181 (1972).

ceeded to interrogate S.H. for 90 mintues, leading to S.H.'s confession.

In addition to holding the confession invalid due to the coercive tactics, Justice Proctor, speaking for a unanimous court, observed generally that the administration of *Miranda* warnings to a ten-year-old "even when they are explained is undoubtedly meaningless. Such a boy certainly lacks the capability to fully understand the meaning of his rights. Thus, he cannot make a knowing and intelligent waiver of something he cannot understand."[45]

As a result, when *R.W.* and *S.H.* are considered as a unit, law enforcement officials are instructed that, "if the child is not old enough to understand and waive, and the parents cannot be found or cannot or will not attend,"[46] ". . . the questioning may go forward, even if it is obvious the [child] does not understand his rights if the questioning is conducted with the utmost fairness and in accordance with the highest standards of due process and fundamental fairness."[47]

The New Jersey Supreme Court, nevertheless, did caution the police officials in *S.H.* that sending Mr. H. away prior to their questioning of the boy, coupled with their ninety minute custodial interrogation, represented an offensive practice that would not be tolerated in the future.[48]

State in Interest of J.P.B. [49] presents a set of circumstances in which a juvenile was adjudicated delinquent based upon a confession obtained without administration of the *Miranda* warnings. The offense was of such a degree that it is likely that the juvenile would have been committed to a correctional institution. This juvenile, in contrast to ten-year-old S.H. or twelve-year-old R.W., was over seventeen years old. Additionally, the confession in *J.P.B.*, as in *S.H.*, was the product of seemingly coercive custodial interrogation.[50] As

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[45] *Id.* at 115, 293 A.2d at 184-85. It was ultimately held that the remaining evidence was sufficient to establish delinquency, but insufficient to establish murder.

[46] *R.W.*, 115 N.J. Super. at 296, 279 A.2d at 714.

[47] *S.H.*, 61 N.J. at 115, 293 A.2d at 185. The court also approved the instruction in *R.W.*, that "[u]nless the case clearly appears to be one which will be transferred to the criminal courts, we do not think counsel must be assigned at this point simply because the parents cannot be present, although it is always desirable to have counsel present if one is readily available." 115 N.J. Super. at 296, 279 A.2d at 714.

[48] *S.H.*, 61 N.J. at 115, 293 A.2d at 184-85.

[49] 143 N.J. Super. 96, 362 A.2d 1183 (1976).

[50] J.P.B. was committed to the Highfields Residential Group Center which is a state institution to which juveniles are committed as a condition of probation upon an adjudication of delinquency. As part of the program, he was required to participate in discussions with state staff personnel. Participants are encouraged to "bare their souls," that is, to reveal all prior antisocial activity, including criminal acts. It is understood that a

a result, the court held "on *Miranda* grounds" that the confession obtained "was not properly admissible in his trial for juvenile delinquency."[51]

Therefore, the test in New Jersey to determine the admissibility of a juvenile confession is "due process and fundamental fairness."[52] The administration of *Miranda* warnings is strongly advised, but an absence of these warnings will not automatically and mechanically exclude admissions or confessions obtained. Administration of the warnings, however, remains an important element in the totality-of-the-circumstances determination of whether an admission is truly voluntary,[53] not only in the sense that it is not a product of police overreaching,[54] but also in the sense that any waiver of *Miranda* is truly a voluntary and intelligent relinquishment of a known constitutional right. Moreover, as the age of the juvenile offender approaches majority,[55] and his intelligence, level of education, and experiences increase,[56] failure to administer the *Miranda* warnings coupled with the slightest hint of official coercion will most likely cause any admissions to be excluded from a delinquency proceeding which could result in the juvenile being committed to a correctional institution.

III. The Legislative Response

Legislatures of numerous jurisdictions have responded to *Mi-*

failure to participate results in undesirable sanctions. The confession at issue derived from one of these "group" sessions which was devoted entirely to J.P.B. The court determined that the session constituted "custodial interrogation" conducted by "state officials." *Id.* at 101, 104, 362 A.2d at 1186, 1188.

51 *See id.* at 104, 362 A.2d at 1188.

52 *Accord* Rone v. Wyrick, 764 F.2d 532 (8th Cir. 1985); West v. United States, 399 F.2d 467 (5th Cir. 1968).

53 *See also* Fare v. Michael C., 442 U.S. 707 (1979)(in which the Court delineated the following factors relevant to the determination of whether a juvenile has waived his or her rights: (1) age; (2) level of education; (3) knowledge as to the substance of the charge, if any has been filed; (4) whether he or she was given *Miranda* warnings; (5) whether he or she was held incommunicado or allowed to consult with relatives, friends, or an attorney; (6) whether the questioning occurred before or after the initiation of formal charges; and (7) the methods used in, and length of, the interrogation. *Cf.* State v. Tim S., 41 Wash. App. 60, 701 P.2d 1120 (1985)(in which the court remanded the case for a determination of whether the child's admissions were voluntary for impeachment purposes despite the *Miranda* warnings); State v. Prater, 77 Wash. 2d 256, 463 P.2d 640 (1970); West v. United States, 399 F.2d 467 (5th Cir. 1968).

54 In *S.H.*, 61 N.J. 108, 293 A.2d 181, the *Miranda* warnings were given and explained fully for over ten minutes. However, the coercive and overbearing interrogation by the police was fatal to the admissibility of the confession.

55 *See supra* notes 49-51 and accompanying text.

56 *See also* Clewis v. Texas, 386 U.S. 707 (1967); Commonwealth v. Cain, 361 Mass. 224, 279 N.E.2d 706 (1972).

randa and *Gault* by implementing new, and revamping old, legislative schemes for the administration of juvenile justice. In particular, many enactments now require the administration of *Miranda*-type warnings to juveniles in custody.[57] For federal prosecutions, and as a model for the states, the Federal Juvenile Justice and Delinquency Prevention Act of 1974[58] is demonstrative. The history of the legislation[59] shows that Congress found that it was

> necessary to amend the Federal Juvenile Delinquency Act to guarantee certain basic procedural and constitutional protections to juveniles under Federal jurisdiction. The Committee believes that the Act should provide for the unique characteristics of a juvenile proceeding and the constitutional safeguards fundamental to our system of justice. Six years after the Supreme Court in *In re Gault* decried the lack of certain due process protections in juvenile proceedings, the Federal Juvenile Delinquency Act has not changed to reflect those due process rights. . . . [S]ince the Federal code is often considered a model for state statutes . . . [p]erhaps the . . . Act can exercise an important influence on state and local progress toward a higher standard of juvenile justice.[60]

The resulting amendment, section 503 of the 1974 Act, provides, in pertinent part:

> Whenever a juvenile is taken into custody for an alleged act of juvenile delinquency, *the arresting officer shall immediately advise such juvenile of his legal rights, in language comprehensive to a juvenile,* and shall immediately notify the Attorney General and the juvenile's parents, guardian, or custodian of such custody. The arresting officer shall also notify the parents, guardian, or custodian of the rights of the juvenile and of the nature of the alleged offense.[61]

Subsequent judicial interpretations of the above provision and its legislative history suggest that the Act is "intended to guarantee the basic procedural and constitutional protections to juveniles under federal jurisdiction, *as mandated by the Supreme Court's decision in In re Gault.*"[62]

Thus, while the Federal Juvenile Delinquency Act, as enacted in June of 1948, contained no provision for the admonition to the juvenile (or his parents) of his rights by the arresting officer,[63] the

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57 *See infra* notes 60-64 and accompanying text.

58 18 U.S.C. § 5033 (1974).

59 S. REP. No. 93-1011, 93rd Cong., 2nd Sess., *reprinted in* 1974 U.S. CODE CONG. & ADMIN. NEWS 5023.

60 *Id.* at 5312.

61 18 U.S.C. § 5033 (1974)(emphasis added).

62 United States v. White Bear, 668 F.2d 409, 411 (8th Cir. 1982)(emphasis added). *See also* United States v. Indian Boy X, 565 F.2d 585 (9th Cir. 1977).

63 The predecessor statute, 18 U.S.C. § 5033 (1974), provided in pertinent part:

> Whenever a juvenile is arrested for an alleged violation of any law of the United

addition of this provision in 1974 not only provided implicit recognition of the rights accorded juveniles by the United States Supreme Court in *Gault*, but expressly extrapolated those rights back to the moment of initial law enforcement intervention.

Numerous states have also enacted statutory provisions similar to the Federal Juvenile Justice and Delinquency Prevention Act of 1974. Illustrative in this regard is § 7A-595 of the North Carolina General Statutes, which provides in pertinent part:

> (a) Any juvenile in custody must be advised prior to questioning:
>
> (1) That he has the right to remain silent; and
>
> (2) That any statement he does make can be and may be used against him; and
>
> (3) That he has a right to have a parent, guardian, or custodian present during questioning;[64] and
>
> (4) That he has a right to consult with an attorney and that one will be appointed for him if he is not represented and wants representation.
>
> * * * * * *
>
> (d) If the juvenile indicates in any manner and at any stage of questioning pursuant to this section that he does not wish to be questioned further, the officer shall cease questioning.[65]

IV. THE NECESSITY OF MODIFICATION

Assuming that *Miranda* warnings should, as a matter of course,

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States, the arresting officer shall immediately notify the Attorney General. If the juvenile is not forthwith taken before a committing magistrate, he may be detained in such juvenile home . . . to insure his safety or that of others.

64 This particular provision is usually absent from the statutes of the majority of jurisdictions.

65 N.C. GEN. STAT. § 7A-595 (1979). This section has been construed as prescribing mandatory procedures which must be followed prior to any questioning. The failure of law enforcement officials to comply with its provisions results in the inadmissibility of any statement so obtained. In re Riley, 61 N.C. App. 749, 301 S.E.2d 750 (1983). For similar statutory provisions, see CAL. WEL. & INST. CODE § 625, 627.5 (Deering 1967); COLO. REV. STAT. § 19-2-102(3)(c)(i) (1974); GA. CODE ANN. § 24A-2002(b) (1973); N.D. CENT. CODE § 27-20-27(2) (1974); TENN. CODE ANN. § 37-227 (1973). *Cf.* N.J. STAT. ANN. § 2A:4A-40 (West Supp. 1983)("All rights guaranteed to criminal defendants by the Constitution of the United States and the Constitution of this State, except the right to indictment, the right to trial by jury and the right to bail, shall be applicable to cases arising under this [Juvenile Justice] Code." This provision has been construed as paralleling the New Jersey judiciary's implicit recognition of the rights accorded juveniles by the United States Supreme Court in *Gault*. State in Interest of R.P., 198 N.J. Super. 105, 108, 486 A.2d 873, 876 (App. Div. 1984).

be administered by law enforcement officers prior to any questioning of juveniles in custody,[66] a question necessarily arises whether the officer must modify those warnings to make their administration comprehensible to the youth.

In 1969, the California Supreme Court in *In re Dennis M.*[67] mixed the rationales of *Miranda* and *In re Gault* to conclude that juvenile admissions may not be admitted into evidence unless the prosecution meets its burden of establishing at trial that full and complete *Miranda* warnings were given.[68] Justice Mosk, speaking for the court, was adamant about the necessity of the warnings and further stated that "a police officer's conclusory testimony that he gave the questionee advice 'per accordance with the *Miranda* decision' is inadequate to discharge such burden."[69] Rather, the requirement of "full and complete warnings"[70] in the context of juvenile interrogation means not only that the law enforcement officer advise the youth of the full panoply of rights as delineated in *Miranda*, but also that those rights must be given in terms the youth can comprehend. Accordingly, Justice Mosk provided California peace officers with the following recommendation:

> To avoid future conflicts on this issue, we recommend that juvenile officers and police be prepared to give their compulsory *Miranda* warnings in terms that reflect the language and experience of today's juveniles.[71]

In June of 1980, the United States Department of Justice received the *Report of the National Committee for Juvenile Justice and Delinquency Prevention*.[72] The Report[73] contains the "Standards for the

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66 *See, e.g.*, Fare v. Michael C., 442 U.S. 707 (1979)(in which the Supreme Court "assumed without deciding that the *Miranda* warnings apply to pre-adjudicatory custodial interrogation of minors in order to decide whether the warnings given by the officials were voluntarily and knowingly waived by a sixteen-and-a-half-year-old juvenile prior to his questioning concerning the circumstances surrounding a Van Nuys, California murder.").

67 70 Cal. 2d 444, 450 P.2d 296, 75 Cal. Rptr. 1 (1969).

68 *Id.* at 462, 450 P.2d at 306, 75 Cal. Rptr. at 12 (construing *Miranda*, 384 U.S. at 479).

69 *Id.* When the trial court asked the officer to paraphrase from memory the warnings given, it became apparent that the officer failed to mention the required warning that anything the youth said could and would be used against him in court. *Id.* at 462, 450 P.2d at 306, 75 Cal. Rptr. at 11-12.

70 The "full and complete" requirement was held fulfilled due not only to the fact that a deputy district attorney supplemented the officer's *Miranda* administration, but particularly because the youth's attorney failed to pose a timely and appropriate objection to the officer's testimony at trial. *Id.*

71 *Id.* at 480 n.13, 450 P.2d at 308 n.13, 75 Cal. Rptr. at n.13.

72 Standards for the Administration of Juvenile Justice, *Report of the National Advisory Committee for Juvenile Justice and Delinquency Prevention* (1980) [hereinafter Report]. The Committee "consists of twenty-one members appointed by the President to four-year

Administration of Juvenile Justice" and is prepared in accordance with the provisions of § 247 of the Juvenile Justice and Delinquency Prevention Act.[74] At § 2.247 of the Report, entitled "Procedures Applicable to the Interrogation of Juveniles,"[75] the National Advisory Committee recommends not only that *Miranda* warnings be administered to juveniles in custody, but also that officials not question such juveniles, nor accept any formal oral or written statements, unless the full panoply of *Miranda* warnings have been administered and "explained in language understandable by the juvenile,"[76] taking into account his or her intellect and maturity.

In 1982, the Supreme Judicial Court of Maine in *State v. Nicholas S.* [77] reversed a district court's[78] denial of a juvenile's motion to suppress his confession due to the inadequate administration of the *Miranda* warnings by the investigating officers. Although the testimony indicated that one officer read the fourteen-year-old the warnings from the standard *Miranda* card while the other officer attempted to elaborate upon them, when the juvenile court judge asked the officer to specify the extent of the elaboration, the officer was unable to recall the words used, "beyond the conclusory statement that [he] did elaborate upon the standard *Miranda* reading."[79] The Supreme Judicial Court admonished the officers' actions, stating:

> Law enforcement officials would be well advised to fully explain the rights enunciated in the *Miranda* warning when dealing with juvenile offenders in order to assure adequate comprehension of these important safeguards.[80]

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terms, and included individuals with special knowledge of delinquency prevention and treatment, the administration of juvenile justice, school violence, vandalism, or learning disabilities, as well as representatives of private voluntary organizations and community based programs." *Id.* at ix.

73 The Report, as a reflection of the basic principles and policies of the Juvenile Justice and Delinquency Prevention Act, *see infra* note 73, offers specific strategies, criteria and approaches that can be used in accomplishing some of the important objectives of the Act.

74 42 U.S.C. § 5601 (1978).

75 Report, *supra* note 71, at 213.

76 *Id.*

77 444 A.2d 373 (Me. 1982).

78 The district court sat as a juvenile court for the adjudicatory hearing.

79 *Id.* at 378.

80 *Id.* The court held the confession inadmissible and remanded the case to the trial court for further proceedings in which the confession would be excluded. The factors which entered into the court's finding of an invalid waiver included: (1) the absence in the record indicating how the officers elaborated upon the formal *Miranda* warnings; (2) the failure of the officers to give the "fifth" *Miranda* warning, that is, to inform the accused of his or her right to terminate questioning at any time; (3) the failure to readminister the *Miranda* warnings when the interrogation was resumed following a long interruption; (4) the fact that the officers focused their remarks to the juvenile's mother who, in turn, told the juvenile to "tell the police the truth"; (5) the juvenile's limited

In 1985, the Supreme Court of New Hampshire in *State v. Benoit*[81] created a presumption of inadequate explanation of *Miranda* rights in finding that the juvenile defendant was "not given a statement of his or her rights in a simplified fashion."[82] In this respect, the Court stated:

> . . . [T]he record established that the interrogating officer read the defendant his rights from the standard adult *Miranda* form. The officer did not explain any of the rights, nor did he discuss [with the fifteen year old] . . . the possibility of his being tried as an adult for armed robbery. Accordingly, on remand for retrial the confession should be suppressed.[83]

As a result, the New Hampshire Supreme Court concluded:

> [B]efore a juvenile can be deemed to have voluntarily, knowingly and intelligently waived his or her fundamental constitututional rights . . . he or she *must be informed, in language understandable to a child, of his or her rights* . . .[84]

V. SUMMARY

In light of the foregoing analysis, it is apparent that depending on the specific jurisdiction, appellate resolution of the introductory hypothetical could be decided either way. If the officer advised S.D. of his *Miranda* rights and included an explanation of each in terms the youth could comprehend, the confession would, given the other findings of the juvenile court judge, undoubtedly be admissible in all jurisdictions.[85] Moreover, if the officer had access to, and utilized, a carefully constructed "Youth Rights Form" which set forth the *Miranda* warnings with accompanying simplified explanations, his testimony naturally would be bolstered by this corroborating piece of documentary evidence. Without such a form, the officer is left with the standard adult *Miranda* exposition and any creativity he can muster at the time if creative at the time he so feels.

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education; and (6) his very limited prior experience with the criminal justice system. *Id.* at 378-79.

81 490 A.2d 295 (N.H. 1985).

82 *Id.* at 304.

83 *Id.* The officer testified that he at no time made any attempt to explain any of the *Miranda* warnings, but merely asked the fifteen-year-old if he understood them. *Id.* at 298.

84 *Id.* at 304 (emphasis added). In addition to the simplified explanation of rights, inquiry into all the circumstances surrounding the giving of the statement is also necessary for the ultimate determination that the waiver was made voluntarily, intelligently, and with full knowledge of the consequences. One such circumstance includes a determination of whether the juvenile was informed of the possibility and consequences of standing trial as an adult criminal. *Id.* at 302, 304.

85 This assumes the presence of a parent or interested adult for jurisdictions which so require.

VI. PRESENTATION OF THE YOUTH RIGHTS FORM

A. INTRODUCTION

As Justice Douglas of the New Hampshire Supreme Court stated, ". . . because accused citizens must understand their rights in order to effectuate a valid waiver, the greatest care must be taken to assure that children fully understand the substance and significance of their rights."[86]

In 1980, Thomas Grisso undertook an empirical study to determine the ability of juveniles to comprehend the meaning and significance of their *Miranda* rights.[87] He found that juveniles under fifteen years of age do not adequately comprehend the formal *Miranda* warnings;[88] 30% to 50% of the fifteen-year-olds tested did not adequately understand the formal *Miranda* warnings;[89] 55.3% of all the children tested demonstrated deficient understanding of at least one of the formal warnings;[90] 63.3% misunderstood at least one of the crucial words used in the standard *Miranda* form;[91] and only 20% of all the youths tested demonstrated an adequate understanding of the entire set of formal *Miranda* warnings.[92]

Little information, however, is available on the efficacy of administering a simplified set of *Miranda* warnings to juveniles. One study indicates that younger or less experienced youths respond favorably to a simplified *Miranda* form.[93] This study concludes that the great majority of juveniles "should be advised and counseled

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86 *Benoit*, 126 N.H. at 18, 490 A.2d at 304.

87 Grisso, *supra* note 10. The method employed by Grisso required the development of "objective, reliable methods for measuring comprehension." *Id.* at 1143. The methods encompassed the measurement of two indicia of comprehension: first, whether the youth understands the words and phrases employed in the standard *Miranda* form, and second, whether he or she accurately perceives the function and significance of the rights conveyed in the warnings. *Id.* To facilitate the methods, two tests were administered: a "Vocab Test," which tested the research subjects' comprehension of words in the formal *Miranda* warning, such as "consult," "attorney," "interrogation,' ' "appoint," "entitled," and "right"; and a "Rights Test," consisting of a questionnaire which asked the research subject to paraphrase each *Miranda* warning. The responses were then assigned to a particular scoring criterion, and the results were correlated.

88 *Id.* at 1160.

89 *Id.*

90 *Id.* at 1153-54.

91 *Id.*

92 *Id.* at 1153. *See also* Grisso & Pomicter, *supra* note 12, at 339 (in which an empirical study indicated that, overall, only 9-11% of the juveniles interrogated refused to waive their rights to avoid potential self-incrimination, as contrasted with a study of adult interrogation in which 40% refused to waive their rights). *But see supra* notes 11 and 41 and accompanying text (suggesting that few adult laymen fully comprehend the nature and extent of the consequences of waiving their rights).

93 Furguson and Douglas, *supra* note 12.

carefully if they are to understand their rights competently."[94] It is, however, specifically noted in the study that the simplified *Miranda* form used failed to significantly increase understanding.[95] One of the problems with the study, according to Furguson and Douglas, is that the simplified form may be inadequate.[96]

In 1985, the Supreme Court of New Hampshire offered a more comprehensive form for New Hampshire juvenile officers and police.[97] Its effectiveness, however, remains to be seen. More importantly, the court declared that the failure to use the simplified form results in a presumption of inadequate explanation of the juvenile's rights.[98]

B. METHODOLOGY

As a preliminary step, a simplified version of the *Miranda* warnings was constructed using each formal warning followed by a simplified version or explanation of the formal warning. This version was constructed by synthesizing the model used by the *Benoit* Court[99] and the Ferguson and Douglas model.[100]

The resulting version was then tested by interviewing twenty-five juveniles taken into custody for various offenses at the Atlantic City Police Department's Juvenile Bureau. The responses and experiences gained from the initial interviews formed the basis for further modification of the Youth Rights Form.[101] The Form was then

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94 *Id.* at 54.

95 The Furguson and Douglas "Simplified Warning" devised for the purpose of their study stated:

> You don't have to talk to me at all, now or later on, it is up to you. If you decide to talk to me, I can go to court and repeat what you say, against you. If you want a lawyer, an attorney, to help you to decide what to do, you can have one free before and during questioning by me now or by anyone else later on. Do you want me to explain or repeat anything about what I have just told you? Remembering what I have just told you, do you want to talk to me?

Id. at 40.

96 *Id.* Although it is difficult to speculate as to why Furguson and Douglas believed their form to be inadequate, it is the author's belief that their form is too simple. Such oversimplification has necessarily subtracted the extended explanation of each warning which the author has found to be critical to the child's comprehension.

97 *See Benoit*, 126 N.H. 22, 490 A.2d at 306-307.

98 *See supra* notes 81-84 and accompanying text.

99 *See supra* notes 80 and 97.

100 *See supra* note 95.

101 Each youth was first read the formal *Miranda* warnings and asked whether he or she understood the warnings. If the answer was no, the youth was then read the modified form. Nine of the juveniles interviewed responded by saying they did not fully understand the formal warning. After being read their rights from the modified form, all nine responded by saying that they now understand. If the answer was yes, the youth was asked to explain what each warning meant. The varying responses aided in the further revision of the *Youth Rights Form*. Of the sixteen youths who responded by saying

presented to a juvenile court judge of the New Jersey Superior Court, Family Division,[102] and, after consultation, was modified further.

The next step involved sending the Youth Rights Form to twenty law-enforcement agencies across the United States requesting that officials who have day-to-day contacts with juvenile offenders insert their comments, changes, and modifications for further revision and refinement of each warning. The comments, changes, and modifications received reflected the collective personal experiences of professional law enforcement officials presently active in the field of juvenile justice. Moreover, many of the responses included insertions depicting simplified *Miranda* warning explanations the particular responding official had found to be most effective. The final step involved the synthesis of all the recommendations received into a comprehensive, readily understandable document: *The Youth Rights Form.*[103]

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that they understood the formal warnings, only three were able to fully explain the significance of each warning.

Before any of the juveniles were read the modifed version, each was asked, after the reading of the standard adult *Miranda* form, whether they thought they must speak to the police. Seven of the juveniles felt that speaking to the police was mandatory, believing that a failure to do so would result in some sort of punishment; three felt that it was a gcod idea, believing that speaking would expedite their release; five gave equivocal responses; and ten indicated that they knew that they did not have to speak to the police. After reading the modified form, only three of the youths still believed that speaking to the police was required—two who originally thought speaking was mandatory to avoid punishment, and one who originally thought that speaking to the police would expedite his release.

[102] Judge Steven Perskie of the New Jersey Superior Court, Family Division, who, in an average week, will hear approximatley 50 juvenile delinquency proceedings.

[103] Naturally, the efficacy of the Youth Rights Form remains to be seen. Further empirical research incorporating its use is highly encouraged. The author would like to express his gratitude to the Honorable Steven Perskie, Judge, New Jersey Superior Court, Family Division; Northfield Defense Attorney, D. William Subin (formerly Assistant U.S. Attorney for the District of New Jersey and Police Legal Advisor for the County of Atlantic); and the following law enforcement professionals for their time and invaluable contribution to the formation of the Youth Rights Form: Denise Clayton, Juvenile Detention Manager, Philadelphia Human Services, Youth Study Center, Philadelphia, PA.; George B. Collins III, Chief Probation Officer, Juvenile Court Fulton County, Atlanta, Georgia; Harold Kaufman, Investigator Sergeant, Atlantic County Major Crimes Squad, Atlantic County, New Jersey; James Kelly, Juvenile Police Detective, Atlantic City Police Department, Atlantic City, New Jersey; Carol Anne Krementz, Juvenile Police Detective, Vineland Police Department, Vineland, New Jersey; Anthony P. Librizzi, Detective Lieutenant, Ventnor Police Department, Ventnor, New Jersey; Patrick Madamba, Juvenile Police Detective, Atlantic City Police Department, Atlantic City, New Jersey; Charles M. Morvay, Principal Probation Officer (t/a), Atlantic County, New Jersey; Leslie E. Nolan, Youth Detention Counselor, Philadelphia Human Resources, Youth Study Center, Philadelphia, Pennsylvania.

APPENDIX

YOUTH RIGHTS FORM

Youth in custody: _____. Age: _____. DOB: _____.
Place: _____. Date: _____.
Day of week: _____. Time child taken into custody: _____.
Time this form was read: _____. Official: _____.
Parent (Guardian or Custodian) present: _____.
[If other than parent, indicate relationship.]
Parent (Guardian or Custodan) *not* present. _____ Unable to contact after
[Check]
_____ attempts [See last page for times and places of contact attempts.];
[Number]
or, _____ contact made, unwilling to attend.
[Check]

[The following must be read and explained by the officer, and, the youth (and parent, guardian, or custodian) shall read it before signing.]

Before I am allowed to ask you any questions, you must understand that you have certain important rights, or protections, that have been given to you by our laws in these situations. These rights will make sure that you will be treated fairly. You will not be punished for deciding to use these rights. I will read these rights to you, and explain each of them to you if you don't understand them, or think you may not understand them. You may ask questions as we go along so that you can completely understand what your rights are.

Do you understand me so far ? Yes _____. No _____.
Parent (Guardian or Custodian) Yes _____. No _____.

1. You have the right to remain silent or the right to talk to us about this matter. This means that you do not have to write or say anything; not with me or anyone else, not now or later on. You will not be punished for deciding not to talk to us.

   Do you understand this right ? Yes _____. No _____.
   Parent (Guardian or Custodian) Yes _____. No _____.

2. If you give up your right to remain silent, anything you say can be and may be used against you in court. This means that if you decide to talk to me or answer questions, I can go to court and tell the judge what you said. This also means that if you say or write anything, what you say or write can be used in a court to prove that you may have broken the law.

   Do you understand this ? Yes _____. No _____.
   Parent (Guardian or Custodian) Yes _____. No _____.

[Note: The following provision has been included for those jurisdictions which include the presence of a parent or interested adult as a prerequisite to any constitutional questioning of a juvenile.]

2a. You have the right to have your parent, guardian, or custodian present here with you before we talk to you or ask you any questions. This means that before we ask you anything about this matter, you can, and should, call your parents (guardian or custodian) so they can be here with you to help you.

   Do you understand this right ? Yes _____. No _____.

3. You have a right to talk to an attorney, a lawyer, before any questioning. You have the right to have the lawyer here with you while you are being questioned. The lawyer will help you. If you decide that you want a lawyer, we will not question you or talk to you at all until you speak to the lawyer.

   Do you understand this right ? Yes _____. No _____.
   Parent (Guardian or Custodian) Yes _____. No _____.

4. You have the right to stop talking to us at any time. You also have the right to ask for a lawyer to be here with you at any time. This means that if you decide, at any time during questioning, that you do not want to talk any more, you may tell us to stop and we will not ask you any more questions. Also, if you decide you would like to talk to a lawyer at any time during questioning, you will not be asked any more questions until a lawyer is here with you and you have talked with him.

   Do you understand this right ? Yes _____. No _____.
   Parent (Guardian or Custodian) Yes _____. No _____.

5. If you want to talk to a lawyer and you and your family do not have the money to pay for one, you can still have a lawyer for free before any questioning about this matter begins.

   Do you understand this right ? Yes _____. No _____.
   Parent (Guardian or Custodian) Yes _____. No _____.

6. [*For serious crimes only*] There is a possibility that you may not be brought to juvenile court, but, instead, will be treated as an adult in an adult criminal court. If that happens, the procedures— the way your case will be handled— will be different. However, you will still keep and have all the rights I have explained to you. You must also understand that anything you may say to me by talking with me or answering my questions could be used to decide whether you are treated as a juvenile or as an adult. If you are to be treated as an adult, we, or the court, will explain the adult procedures and results which could include jail or prison if you are found guilty.

   Do you understand this right ? Yes _____. No _____.
   Parent (Guardian or Custodian) Yes _____. No _____.

7. You must always understand that if you decide to exercise or use any or all of your rights, you will not be hurt or punished in any way at all. These are your rights and my rights and our laws given them to you and I in the same way.

   Do you have any questions so far? Yes _____. No _____.
   Parent (Guardian or Custodian) Yes _____. No _____.

   If yes (nature of question): _____
   _____
   _____
   _____.

[The Official should make sure the following portion is read by the youth.]

8. I can read and understand English. Yes _____. No _____.

   I go to school. No _____. Yes _____; Present Grade _____.

APPENDIX

ATTORNEY REQUEST

After listening to my rights and reading my rights, I fully understand what my rights are. At this time I would like to have a lawyer.

Signature of Youth: _____. Date _____. Time _____.
Signature of Parent (Guardian or Custodian): _____.
Signature of Official: _____.

GUARDIAN OR CUSTODIAN

EXPLAIN NATURE OF RELATIONSHIP AND SOURCE OF THE GUARDIAN'S OR CUSTODIAN'S AUTHORITY TO "GUIDE" OR "COUNSEL" THE YOUTH IN THIS CASE, AND, WHETHER THE GUARDIAN OR CUSTODIAN HAS "LEGAL CUSTODY" OF THE YOUTH.

_____

_____.

WAIVER

I have been read and I have read my rights as listed above. I fully understand what my rights are. I am willing to give up my right to remain silent. I am willing to answer questions. I give up my right to have a lawyer present. I do not wish to speak to a lawyer before I answer any questions. No promises or threats or special offers have been made to me to make me give up my rights. I understand that I may change my mind at any time and say that I want to use my rights. I also understand that if I change my mind, it will not effect what I have already said or done.

Signature of Youth: _____.
Signature of Parent (Guardian or Custodian): _____.
Witness [Type or Print]: _____.
Signature of Witness: _____. Telephone: _____.
Official's Name [Type or Print]: _____. Date: _____.
Signature of Official: _____. Time: _____.

DOCUMENTATION OF OFFICIAL ATTEMPTS TO CONTACT PARENT (GUARDIAN OR CUSTODIAN) OF YOUTH

Date: _____. Time: _____.
Method: _____.
Response: _____.

Date: _____. Time: _____.
Method: _____.
Response: _____.

Date: _____. Time: _____.
Method: _____.
Response: _____.

Date: _____. Time: _____.
Method: _____.
Response: _____.

Date: _____. Time: _____.
Method: _____.
Response: _____.