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Miranda, Please Report to the Principal's Office

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MIRANDA, PLEASE REPORT TO THE PRINCIPAL'S OFFICE

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> [N]either the Fourteenth Amendment nor the Bill of Rights is for adults alone.[1]

The age of an alleged criminal offender undoubtedly affects his or her ability to appreciate the consequences of confessing to criminal behavior. Courts have long accepted that youth and inexperience impact an individual's ability to make a voluntary confession.[2] Accordingly, this Article addresses whether *Miranda v. Arizona*—the seminal Fifth Amendment decision providing procedural rights to those enduring custodial interrogation[3]—should apply to students interrogated by school officials during school hours.[4] To answer this difficult question, this Article first provides a brief overview of the law of minors and confessions. Next, it considers the increasing law enforcement presence on our school campuses and evaluates how this presence affects the role of school officials. Finally, the high level of cooperation between law enforcement and school officials in criminal law enforcement are considered to determine whether *Miranda* should apply in the principal's office.[5]

A. MIRANDA'S APPLICABILITY TO JUVENILES

The prosecution may not use statements, whether exculpatory or

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1. *In re* Gault, 387 U.S. 1, 13 (1967).
2. *See id.* at 14.
3. 384 U.S. 436, 478–79 (1966).
4. *Id.*
5. While due process considerations remain important in any confession or interrogation analysis, this article will maintain a narrow focus on the application of *Miranda* to questioning by school officials in schools.

> inculpatory, stemming from custodial interrogation of the defendant unless it demonstrates the use of procedural safeguards effective to secure the privilege against self-incrimination. By custodial interrogation, we mean questioning initiated by law enforcement officers after a person has been taken into custody or otherwise deprived of his freedom in any significant way.[6]

On at least five occasions, the United States Supreme Court has considered cases involving minors and confessions.[7] The Court's jurisprudence can be easily categorized into two main areas: cases involving Due Process or voluntariness challenges to confessions, and cases addressing purported *Miranda* violations in obtaining confessions. In both contexts, however, the Court has clearly indicated that there exists a distinction between minors and their adult counterparts in evaluating whether the confession should be utilized in criminal proceedings. As the Court emphasized in *Gault*, "admissions and confessions of juveniles require special caution."[8]

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6. *Miranda*, 384 U.S. at 444.

7. Yarborough v. Alvarado, 541 U.S. 652, 663 (2004) (holding in a five-four plurality decision that the *Miranda* custody inquiry relies on an objective test); Fare v. Michael C., 442 U.S. 707, 728 (1979) (assessing, under the "totality of the circumstances" test, whether sixteen-year-old juvenile waived his *Miranda* rights); *In re* Gault, 387 U.S. 1, 55 (1967) (concluding that "the constitutional privilege against self-incrimination is applicable in the case of juveniles as it is with respect to adults"); Gallegos v. Colorado, 370 U.S. 49, 55 (1962) (prohibiting use, under "totality of the circumstances" test, of confession obtained from fourteen-year-old boy who was held by police for five days without access to his mother or other adult advisor); Haley v. Ohio, 332 U.S. 596, 601 (1948) (precluding, on Due Process grounds, admission of confession garnered through holding fifteen-year-old boy incommunicado for more than three days, during which time his lawyer twice tried to gain access to him).

The Court's most recent pronouncement in *Alvarado* evaluated the *Miranda* custody question through the very limited prism of federal habeas corpus review. *Alvarado*, 541 U.S. at 655. Because the Antiterrorism and Effective Death Penalty Act severely delimits federal review of state habeas claims, the Court did not consider the custody question squarely and without constraint. *Id.* at 665. Rather, much of the opinion focuses on the narrow question of whether the lower courts unreasonably applied federal law. *Id.* at 666-69. The important component of *Alvarado*, however, remains Justice O'Connor's one-paragraph concurring opinion. *Id.* at 669. Although four Justices found that while the youth of an individual may be relevant to the Due Process voluntariness issue, they were unwilling to hold that age, standing alone, affects the *Miranda* custody issue. *Id.* at 666-68. Justice O'Connor's brief concurrence left open the possibility that "[t]here may be cases in which a suspect's age will be relevant to the *Miranda* 'custody' inquiry." *Id.* at 669 (O'Connor, J., concurring). Justice O'Connor's hesitation regarding the consideration of age and its effect on custody inquiries prevented *Alvarado* from becoming binding authority on lower courts. *Id.* As her opinion reveals, Justice O'Connor's reticence to incorporate age as a variable in the *Miranda* custody issue in *this* particular case was due to the fact that Alvarado was nearly eighteen years old at the time of the interview. *Id.*

8. *Gault*, 387 U.S. at 45.

Lowers courts, also, have distinguished between youthful offenders and their more senior peers.[9] These same courts, however, have increasingly been willing to broach the germane issue of *who* should be evaluated when assessing the voluntariness and admissibility of a minor's confession.[10] Under *Miranda* and its progeny, the consideration has been strictly limited to law enforcement officers—usually police officers. But, with the increased police presence in both public and private schools, courts must now address the relationship between school resource officers (SROs) (those police officers that are regularly scheduled to work at schools in both a school disciplinary and law enforcement capacity) and the teachers and principals who work in conjunction with SROs to maintain safety, order, and discipline on campuses.

Lower courts have addressed this sensitive and synergistic relationship in the *New Jersey v. T.L.O.* search and seizure context,[11] but have not been as forthcoming in the confession arena where students need greater protection.[12] Just two years ago, Justice Breyer resurrected the concept of *in loco parentis* as it relates to the intersection of school discipline and school law enforcement.[13] Generally, the transition in modern times has been to move away from the more liberal approach taken in *Tinker v. Des Moines*[14] and toward an increasingly restrictive notion of students' rights in the overlapping criminal law and school discipline context.[15] Students may retain their Fourth Amendment rights, though somewhat diluted, but their Fifth Amendment rights more readily fall victim to the dual capacity of school official as part teacher, part state actor.[16] While courts recognize

9. *In re* Andre M., 88 P.3d 552, 555–56 (Ariz. 2004) (en banc) (reversing the lower court's opinion that a sixteen-and-a-half-year-old's confession was voluntary because his mother was barred from the interrogation that occurred on school premises).

10. *In re* R.H., 791 A.2d 331, 333 (Pa. 2002) (finding juvenile should have received *Miranda* warnings prior to questioning by SRO at school); *In re* G.S.P., 610 N.W.2d 651, 658 (Minn. Ct. App. 2000) (finding twelve-year-old "in custody" where principal informed student he must answer questions proffered by police officer).

11. 469 U.S. 325 (1985).

12. *Miranda* specifically noted that modern confession protections are geared toward psychological manipulation rather than physically oriented violations. *Miranda*, 384 U.S. at 448. Observing the shortcomings of confession tactics, the Court observed, "[i]nterrogation still takes place in privacy. Privacy results in secrecy and this in turn results in a gap in our knowledge as to what in fact goes on in the interrogation rooms." *Id.*

13. Bd. of Educ. of I.S.D. No. 92 v. Earls, 536 U.S. 822, 840 (2002) (Breyer, J., concurring).

14. 393 U.S. 503 (1969).

15. *See* Vernonia Sch. Dist. 47J v. Acton, 515 U.S. 646, 664-65 (1995) (finding that random urine testing on students participating in extracurricular athletics does not offend the Fourth Amendment protection against unreasonable searches and seizures).

16. Commonwealth v. Ira I., 791 N.E.2d 894, 900–901 (Mass. 2003) (stating that school

that school teachers and principals are cloaked with power as state actors in the Fourth Amendment scenario, their power as state actors in the Fifth Amendment context is murky, at best. Coupled with this fickle state actor role status is the dilemma that SROs continue to work in conjunction with school officials to question students for law enforcement purposes—not simply for school discipline purposes.[17]

At this juncture our modern precedent proves increasingly deficient. School officials who question children in a custodial fashion, having pulled the child out of classes where they must otherwise be present, should not be able to shed their state actor status in order to extract a confession that will be used by law enforcement officers for criminal prosecution.[18] While school officials should remain entitled to question students for school disciplinary purposes, these disciplinary purposes frequently become subterfuges, if not pretext, for the quick referral of minors to the local police department and criminal prosecution.[19]

Courts should take greater care in distinguishing the role of educators and SROs who engage in questioning of juveniles at schools. While school "custody" may differ from police station custody, courts must begin addressing whether school principal and SRO questioning is the functional equivalent of "custodial interrogation."[20] Let us now assess the nature of the relationship between school officials and their minor charges. If *in loco parentis* permits stricter discipline and more invasive searches, then courts should apply this same stringency to the questioning of minors and delimit the collaboration allowed between school officials and law enforcement when the confession of a minor is at issue. Either school officials are state actors for Constitutional purposes or they are not. If courts permit school officials and law enforcement to have it both ways, whereby principals may

officials acting within their capacity as educators and not as instruments of the police are not required to provide *Miranda* warnings) (citing Commonwealth v. Snyder, 597 N.E.2d 1363, 1369 (Mass. 1992)).

17. *In re* R.H., 791 A.2d 331, 332-33 (Pa. 2002); *In re* R.J.E., 630 N.W.2d 457, 459 (Minn. Ct. App. 2001), *rev'd on other grounds*, 642 N.W.2d 708 (Minn. 2002); *In re* G.S.P., 610 N.W.2d 651, 653-54 (Minn. Ct. App. 2000).

18. *Miranda*, 384 U.S. at 478 (summarizing the Court's holding as follows: "when an individual is taken into custody *or otherwise deprived of his freedom by the authorities* in any significant way and is subjected to questioning, the privilege against self-incrimination is jeopardized") (emphasis added). While *Miranda*'s "in custody" assessment generally uses more restrictive language focusing squarely on police officers, this more broad language provides ample guidance for other authorities that also assist law enforcement with custodial interrogation.

19. *See, e.g.*, *In re* Angel S., 758 N.Y.S.2d 606, 607 (App. Div. 2003) (student questioned by principal in presence of fire marshals).

20. *See In re* D.J.B., No. C3-02-731, 2003 WL 175546, at *7 (Minn. Ct. App. Jan. 17, 2003) (unpublished opinion).

search as state actors yet question criminal suspects *without* being considered state actors, then the final vestiges of *Tinker*'s promise that students do not shed their constitutional rights at the schoolhouse gate has vanished.[21]

B. THE STATUS OF THE LAW: APPLICATION OF THE TOTALITY OF THE CIRCUMSTANCES

> Today, then, 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.[22]

In many, if not most cases, courts have been reluctant to view school officials—even those individuals employed at schools as SROs—as state actors falling within the ambit of *Miranda*. Rather than considering the inherently coercive and custodial nature of the school setting, courts frequently focus only on whether a reasonable student would feel he or she was free to exit the interview.[23] It is naïve to assume that an individual pulled involuntarily out of class would feel capable of exercising the right simply to return from where he or she was removed. This dogmatic application, while consistent with the literal *Miranda* "custody" requirement,[24] turns a blind eye to the reality that most students do not recognize, much less exert, an ability to rebuff the school official's inquisitorial advances. Thus, courts continue to take a constrained view of *Miranda*'s applicability in schools by assessing, under the totality of the circumstances, whether a particular juvenile believed he or she was "in custody" while being questioned by school officials.

A relevant, oft-cited opinion, is *In re Killitz*.[25] Decided in 1982, this opinion considered whether a junior high student's incriminating

21. *Tinker*, 393 U.S. at 506. ("It can hardly be argued that either students or teachers shed their constitutional rights *to freedom of speech or expression* at the schoolhouse gate.") (emphasis added). Courts and commentators, however, continually omit the specific First Amendment references from the renowned quote and simply reference *Tinker* as a shorthand citation for the protection of students' Constitutional rights at school. *See, e.g.*, *Earls*, 536 U.S. at 829; *Acton*, 515 U.S. at 655-56; New Jersey v. T.L.O., 469 U.S. 325, 348 (1985).

22. *Miranda*, 384 U.S. at 467.

23. *Cf. In re* Drolshagen, 310 S.E.2d 927, 927 (S.C. 1984) (finding there was no custody because the student voluntarily reported to the principal's office, even though the appearance was at the request of the investigating police officer).

24. Oregon v. Mathiason, 429 U.S. 492, 495 (1977) ("Miranda warnings are required only where there has been such a restriction on a person's freedom as to render him in custody.").

25. 651 P.2d 1382 (Or. Ct. App. 1982).

statements made to a police officer during a school interview violated *Miranda*.[26] At issue was whether the juvenile defendant had committed an off-campus burglary.[27] The principal summoned the student during school hours to the principal's office where an armed, uniformed police officer interviewed the student in the presence of the school principal.[28] Neither the school principal nor the officer informed the juvenile defendant that he was free to leave or disregard their questions.[29] Indeed, in finding that the juvenile was subjected to a custodial interrogation invoking the *Miranda* protections, the court emphasized that the defendant "was in school during regular hours, where his movements were controlled to a great extent by school personnel."[30] Further, that "defendant cannot be said to have come voluntarily to the place of questioning" because he would likely have been subjected to disciplinary actions had he refused the principal's command to come to his office.[31] Based upon all these factors, the court found that the juvenile had been subjected to a custodial interrogation, precluding the admission of his incriminating statements in subsequent criminal proceedings.[32]

Another significant opinion is *In re G.S.P.*, from the Minnesota Court of Appeals.[33] G.S.P., a twelve-year-old, was accused of bringing a gun to school when his backpack was left behind in the locker room after a football game.[34] The following morning, G.S.P. was removed from class by the assistant principal and the uniformed school liaison officer, Officer Johnson.[35] When G.S.P. asked why he was being taken out of class, the assistant principal said he would explain when they were in his office.[36] Once in the office, the assistant principal informed G.S.P. that he "had no choice but to answer the questions," and Officer Johnson informed G.S.P.

26. *Id.* at 1383 (setting forth the issue in the case as "invol[ving] the admissibility of incriminating statements made by a junior high school student while being questioned in the principal's office by a police officer").

27. *Id.*

28. *Id.*

29. *Id.* at 1383-84 (observing that "[n]either the police officer nor the principal said or did anything to dispel the clear impression communicated to the defendant that he was not free to leave").

30. *Id.*

31. *Id.* at 1384.

32. *Id.* In reaching its decision, the court also considered that the juvenile had been questioned as a suspect not merely as a witness. *Id.* at 1383. However, this consideration has not been uniform in school decisions and was not likely decisive.

33. 610 N.W.2d 651 (Minn. Ct. App. 2000).

34. *Id.* at 653.

35. *Id.* at 653-54.

36. *Id.* at 654.

that a tape recorder would be on.[37] The principal began by stating he was going to ask a few questions and then "turn it over to Officer Johnson."[38]

In finding the interview tantamount to a custodial interrogation the court emphasized that "where, as here, a uniformed officer summons a juvenile from the classroom to the office and actively participates in the questioning, the circumstances suggest the coercive influence associated with a formal arrest."[39] Further, the court noted "[t]he record reveals that G.S.P. was questioned for potential criminal conduct, not just for misbehavior at school. The questions were reasonably likely to elicit a criminally incriminating response."[40] Thus, while noting that there is nothing wrong with police officers participating in the investigation of school disciplinary issues, where the focus of questioning is to elicit criminally incriminating information from a suspect, the protections of the Fifth Amendment must be fully afforded.[41]

The crucial fact in *G.S.P.* was that the court found the school official to be working in concert with the police officer. The court believed that the interchange between the assistant principal, G.S.P., and Officer Johnson constituted a single episode rather than two distinct interviews.[42] Like the Oregon decision in *Killitz*, the Minnesota *G.S.P.* court held that "a *Miranda* warning must be given by all that use the power of the state to elicit criminally incriminating responses."[43]

Two state supreme courts have dealt directly with this issue.[44] In 2002, in *In re R.H.*, the Supreme Court of Pennsylvania considered whether SROs should be considered "law enforcement officers" within the purview of *Miranda*, where the SRO conducted a twenty-five minute school interview of a juvenile vandalism suspect.[45] The defendant was removed from class during school hours by the SRO.[46] During the interview, the SRO asked defendant to remove his shoe to compare it to footprints left in the vandalized classroom, and then informed the juvenile defendant that he was keeping the shoe for evidence.[47] Not until the juvenile admitted his

37. *Id.*
38. *Id.*
39. *Id.* at 658.
40. *Id.*
41. *Id.* at 659.
42. *Id.*
43. *Id.*
44. *In re* R.H., 791 A.2d 331, 333-34 (Pa. 2002); *In re* Andre M., 88 P.3d 552 (Ariz. 2004).
45. *In* re *R.H.*, 791 A.2d at 334.
46. *Id.* at 332.
47. *Id.*

involvement were his mother and the municipal police department contacted.[48]

Finding that the juvenile student was entitled to receive *Miranda* warnings under the circumstances presented, the Pennsylvania Supreme Court reversed the juvenile's adjudication of delinquency.[49] In a fractured opinion with two dissenting and two concurring opinions, the majority of the court agreed that because the interrogating school police officers were wearing uniforms and badges, and because "the interrogation ultimately led to charges by the municipal police, not punishment by school officials pursuant to school rules," the SROs were deemed to be law enforcement officers subject to the strictures of *Miranda*.[50]

The most persuasive opinion in *In re R.H.*, however, was authored by Justice Newman, who wrote that courts should extend *T.L.O.* "to the Fifth Amendment context and hold that the school officials should give the student *Miranda* warnings when the constitutional interests of the student outweigh the interest of the school in solving the crime."[51] In addition, Justice Newman announced a laudable test for determining whether juvenile interviews are custodial when occurring on school campuses:

> When weighing the constitutional interests of the student in this setting, courts should consider the following factors: (1) the age of the student to be questioned (the older the student is, the more likely the information elicited from him in an interrogation will be used against him in a court of law, rendering *Miranda* warnings more necessary); (2) the ability of the juvenile to understand the *Miranda* warnings, if they are given; (3) the gravity of the offense alleged (likewise, the more serious the offense the school officials are investigating, the more likely that he will be criminally charged); (4) the prospect of criminal proceedings, as opposed to merely school-related discipline; and (5) the extent of the coercive environment in which the questioning occurs.[52]

As Justice Newman noted, "recognizing that the school setting is *sui generis*, the school officials can demonstrate that the warnings are not necessary if, after balancing the factors articulated above, it was reasonable for them not to *Mirandize* the student."[53] Justice Newman's balancing test provides school officials with the necessary and time-honored latitude in dealing with disciplinary issues that are truly school-related. Where,

48. *Id.*
49. *Id.* at 333–34.
50. *Id.* at 334.
51. *Id.* at 348 (Newman, J., concurring).
52. *Id.*
53. *Id.*

however, the focus of the inquiry is more criminally-related, the Newman variables provide school officials with notice that *Miranda* is applicable and, accordingly, should be respected. Without painting a bright line, Justice Newman tactfully strikes the balance between the needs and protections afforded school officials under *T.L.O.*, and the increasingly active law enforcement role that school officials are voluntarily assuming in modern society. Under this view, it appears the traditional *Miranda* "totality of the circumstances" test may be inappropriate for use in school cases.

The only other state supreme court to consider the issue of schoolhouse confessions is Arizona, in *In re Andre M.*, an en banc opinion.[54] Although this case did not involve *Miranda* directly, the court did consider the repercussions of excluding a parent from a school interview where the parent has asked to be present during the questioning.[55] A sixteen-and-a-half-year-old juvenile was sent to his high school principal's office to be questioned about his suspected involvement in a fist fight.[56] The school initially contacted the juvenile's mother, who awaited further questioning of her son by the police.[57] Thereafter, the juvenile's mother left the room, having been assured that her son would not be questioned by the police unless she was present or a school principal was designated to sit in for her.[58] Despite these assurances, the juvenile was questioned by three police officers and the mother was prevented entry into the interview by another police officer, who was sitting outside the interview room.[59]

Applying the totality of the circumstances test, the Arizona Supreme Court found that the juvenile *In re Andre M.* had not voluntarily confessed to the police, yet refused to adopt the juvenile's invitation "to hold that if the police deliberately exclude a parent from his or her child's interrogation, without good cause to do so, any resulting statement must be suppressed."[60] The court did, however, place great emphasis on the fact that the juvenile's mother was intentionally excluded from the schoolhouse questioning.[61] While this decision may have little relevance to the more

54. *In re* Andre M., 88 P.3d 552, 555 (Ariz. 2004) (en banc).

55. *Id.* at 553 (wherein the court "granted review to consider the standard for determining the voluntariness of a juvenile's confession when a parent has been denied access to her child's interrogation").

56. *Id.*

57. *Id.*

58. *Id.* at 553-54.

59. *Id.* at 554.

60. *Id.* at 555.

61. *Id.* at 556. While the court recognized "that circumstances may justify, or even require, the exclusion of a parent" in certain cases, this case was not deemed to be one of

discrete *Miranda* analysis, the case is important because it found that the failures to "Mirandize" a student and to include a parent in an on-campus police interview resulted in the suppression of an involuntary confession. As previously discussed, confessions can be excluded from evidence either under *Miranda* or Due Process voluntariness grounds. *In re Andre M.* provides important guidance, because courts will continually grapple with the issue of student confessions.

Beyond the obvious factors of police/school entanglement, courts scrutinize school interviews and assess custody by considering: (1) the age of juvenile; (2) whether the law enforcement figure is in uniform, armed, and participating in the interview; and (3) whether the juvenile was informed that he or she had the right to leave the interview because they were not under arrest.[62] Curiously, however, courts do not seem concerned about the broad latitude given to school officials to question students on non-school offenses such as burglaries, sexual assaults or other off-campus behaviors. Courts should vigilantly assess whether school officials are working in concert with law enforcement and thereby abandoning their *in loco parentis* role. Likewise, courts should evaluate whether the school official is tending to or inquiring about matters related to the safety, order, and discipline of *campus*, not merely the business of students and their off-campus lives. Abandoning the narrow focus of custody and opting for a more scrutinizing assessment of why a particular juvenile is being interviewed on campus by school officials should preclude school officials and SROs from immunizing their pseudo-law enforcement activities under the guise of *T.L.O.* and its progeny.[63]

Where the behavior is school related and deals strictly with disciplinary issues, the Fifth Amendment poses no obstacle to school officials furthering the safety and order of their charges. Unfortunately, the current state of affairs often involves school officials with non-school-related offenses and asks them to "assist" in interviewing potential criminal

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them. As the court explained:

> When, however, the state fails to establish good cause for barring a parent from a juvenile's interrogation, a strong inference arises that the state excluded the parent in order to maintain a coercive atmosphere or to discourage the juvenile from fully understanding and exercising his constitutional rights.

Id. at 555-556 (citations omitted).

62. *In re* Welfare of R.J.E., 630 N.W.2d 457, 460-61 (Minn. Ct. App. 2001).

63. *But see* Jefferson v. State, 449 So. 2d 1280 (Ala. Crim. App. 1984). No problem is presented where a student voluntarily presents him or herself at the principal's office for purposes of confession to criminal behavior. *Id.* at 1281 (finding student voluntarily reported to the principal's office thereby negating any need for *Miranda* warnings). The focus of this article is the *compulsory* activity of school officials in requiring a student to report to the principal's office for purposes of an interview.

suspects. Where the purpose of the interview, even remotely, is to elicit evidence intended for use in criminal proceedings, the dynamic of the exchange transforms immediately into a setting where the Fifth Amendment and its full protections should be afforded and honored. It is this latter scenario where a silver platter doctrine equivalent should be applied to prevent school officials from unjustly stripping juveniles of their constitutionally guaranteed rights.[64] Schools should limit themselves and their investigations to school-related disciplinary issues. Nothing in *T.L.O.*, *Acton,* or *Earls* hinted that they enjoy any greater powers.

C. INCORPORATING THE SILVER PLATTER DOCTRINE INTO AN INCREASINGLY POLICE-LIKE SETTING

> To maintain a "fair state-individual balance," to require the government "to shoulder the entire load," to respect the inviolability of the human personality, our accusatory system of criminal justice demands that the government seeking to punish an individual produce the evidence against him by its own independent labors, rather than by the cruel, simple expedient of compelling it from his own mouth.[65]

The majority of cases assessing *Miranda*'s viability on school campuses bypass the important question of whether school officials are working in concert with police officers to effectuate criminal prosecutions of juveniles. The assumption is that school officials are not working, either tacitly or patently, as agents of the police. However, unlike the scenarios presented in *T.L.O.* and *Acton*, many modern cases illustrate that school officials do work in tandem with police to ensure that juveniles not only receive school penalties for misbehavior, but also face criminal prosecution for violating state criminal codes.[66] While juveniles should not escape criminal prosecution for criminal behavior, the mandates of criminal procedure should fully extend to juveniles who are interrogated by the same individuals likely to participate in their subsequent criminal prosecution. For better or worse, school officials are increasingly becoming active participants in the criminal process.

Supreme Court precedent supports "the conclusion that questioning by any government employee comes within *Miranda* whenever 'prosecution of the defendant being questioned is among the purposes, definite or contingent, for which the information is elicited.'"[67] In this holding,

64. *See generally* Elkins v. United States, 364 U.S. 206 (1960).
65. Miranda v. Arizona, 384 U.S. 436, 460 (1966).
66. *See* discussion *supra*, Part B.
67. *See* State v. Heritage, 61 P.3d 1190, 1194 (Wash. Ct. App. 2002).

Washington's Court of Appeals quoted Professor Wayne LaFave, who wrote that the "definite or contingent" purpose for which information is elicited "will often be manifested by the fact that the questioner's duties include the investigation or reporting of crimes."[68]

In recent years, schools have been legislatively required or have voluntarily consented to participate in programs requiring the reporting of any behavior that, while possibly violating a school rule, qualifies as a criminal offense.[69] Schools now routinely collaborate with police officers when a student is found to have drugs, drug paraphernalia, or weapons and offenses which clearly violate both school regulations and criminal law.[70] Schools also assist the police in investigating allegations relating to assaults (fighting)[71] and sexual assaults (incest or rape),[72] the majority of which occur *off-campus*. It is in these latter instances, particularly, that school involvement cannot encompass anything other than pseudo-police behavior. Non-school events that have predominantly, if not exclusively, non-school effects should disqualify school officials from working in concert with police officers without invoking traditional criminal procedure protections.

Frequently, local school districts employ police officers with dual assignments as both teacher and law enforcement officer.[73] Courts should not readily dismiss the police qualities these individuals possess and express while working on school campuses. Rather, courts should accept that these individuals possess the full arsenal of police powers: search,

68. *Id.* (citing 2 WAYNE R. LAFAVE ET. AL, CRIMINAL PROCEDURE § 6.10 (c), at 624 (2d ed. 1999)).

69. *See, e.g.*, DEL. CODE ANN. tit. 14 § 4112(b)(1) (2001).

70. *Id.*

71. Commonwealth v. Ira I., 791 N.E.2d 894, 897 (Mass. 2003) (assault and battery of fellow juvenile student off-campus).

72. There are many excellent examples of cases where sexual assaults occurred off-campus but were investigated by school officials and police officers in an on-campus interview. *See In re* J.A.S., No. A04-521, 2005 WL 44455 (Minn. Ct. App. Jan. 11, 2005) (unpublished opinion); *In re* D.J.B., No. C3-02-731, 2003 WL 175546 (Minn. Ct. App. Jan. 17, 2003) (unpublished opinion) (court held statements regarding off campus sexual assault must be suppressed because juvenile deemed to be in custody where SRO interviewed juvenile in a conference room at juvenile's school); State v. R.B., No. 41618-9-I, 1998 WL 729678 (Wash. Ct. App. Oct. 19, 1998) (unpublished opinion) (court found no custodial interrogation where seventeen-year-old was interviewed for six or seven minutes by a police detective at school despite fact that alleged rape took place off-campus); State v. Doe, 948 P.2d 166, 168 (Idaho Ct. App. 1997) (SRO requested ten-year-old juvenile be removed from class where he was interviewed by the SRO about an alleged sexual assault that had occurred off campus, and the court held that his statements during this interview must be suppressed under *Miranda*.).

73. *See* National Association School Resource Officers, http://www.nasro.org/about_nasro.asp (last visited Mar. 6, 2006).

seizure, arrest, and, most notably, interrogation. It is time that our jurisprudence reflect the growing reality that school officials, not just school resource officers, are taking on a greater and more active role in their communities' efforts to eradicate juvenile crime.

While the era of *T.L.O.* proved vital in making schools safe for learning purposes by empowering school officials with the ability to perform searches under the less stringent reasonable suspicion standard, the modern decisions of *Acton*[74] and *Earls*[75] reflect a concern that juvenile crime can best be quelled with the proactive assistance of school officials.[76] Yet, both *Acton* and *Earls* are remarkable in that each decision ratified the suspicionless urine searches at issue because the results were not turned over to law enforcement.[77] Instead, students testing positive for drug use in each instance were required to submit to non-criminal sanctions—a fact that should not go unnoticed.[78] As school officials and SROs take more initiative in eradicating crime on campuses, courts should recognize the limited reach of *T.L.O.*, *Acton,* and *Earls.*[79]

School safety can remain a paramount concern without resulting in simultaneous criminal prosecutions. If school safety *is* the true concern, something that is debatable at this point, then police involvement is not relevant because the sanctions should be limited to those required to keep students and school officials safe. But as school officials and SROs continue to take a more active role in working with police officers to provide police with information gleaned from schoolhouse interviews, courts should evaluate whether the "prosecution of the [student] being questioned is among the purposes, *definite or contingent*, for which the information is elicited."[80]

D. THE FUTURE OF SCHOOL QUESTIONING

> Assessments of the knowledge the defendant possessed, based on information as to his age, education, intelligence, or prior contact with the authorities, can never be more than speculation; a warning is a clearcut

74. Vernonia Sch. Dist. 47J v. Acton, 515 U.S. 646, 664-66 (1995).

75. Bd. of Educ. of Indep. Sch. Dist. No. 92 of Pottawatomie County v. Earls, 536 U.S 822 (2002).

76. *See generally* Meg Penrose, *Shedding Rights, Shredding Rights: A Critical Examination of Students' Privacy Rights and the "Special Needs" Doctrine After Earls*, 3 NEV. L.J. 411 (2002-03).

77. *See Earls*, 536 U.S. at 833; *Acton*, 515 U.S. at 658.

78. *Id.*

79. *See* Penrose, *supra* note 69, at 433.

80. Washington v. Heritage, 61 P.3d 1190, 1194 (Wash. Ct. App. 2002) (emphasis added) (citing United States v. D.F., 63 F.3d 671, 683 (7th Cir. 1995)).

fact.[81]

Chief Justice Warren summarized the decision in *Miranda* as holding that, "when an individual is taken into custody or otherwise deprived of his freedom *by the authorities* in any significant way and is subjected to questioning, the privilege against self-incrimination is jeopardized."[82] It is time to assess precisely what Justice Warren intended when he used the more amorphous language "by the authorities" in summarizing this landmark decision. The case was not likely intended to apply *solely* to law enforcement officers in the most narrow, traditional sense. We know this to be true through application of precedent extending *Miranda*'s protections to non-police scenarios such as *Mathis v. United States*[83] and *Estelle v. Smith*.[84] State courts have also mandated *Miranda* warnings when park security officers questioned juveniles regarding drug use[85] and where police interviewed a juvenile at a children's shelter.[86] Thus, extension of *Miranda* outside the narrow arena of police station questioning is neither revolutionary nor inconsistent with past decisions.

Courts must begin considering the heritage of this great opinion and evaluate whether present day school officials are more akin to law enforcement officers maintaining a custodial power over students' movements or sufficiently distinguishable because school officials lack the actual power of arrest. Courts likewise should assess whether school officials are working in tandem with police officers to transcend the traditional safety, order, and discipline environment of schoolhouses into the more accusatorial environment of police stations. If, as it appears, the

81. *Miranda*, 384 U.S. at 468–69.

82. *Miranda*, 384 U.S. at 478 (emphasis added).

83. 391 U.S. 1, 5 (1968) (finding Internal Revenue Service (IRS) civil investigator who questioned defendant while the defendant was in jail custody on another matter was required to provide defendant *Miranda* warnings for matters relating to the IRS investigation).

84. 451 U.S. 454 (1981) (holding *Miranda* applicable to psychiatric examination performed on defendant).

85. *See Heritage*, 61 P.3d at 1194-95 (relying heavily upon *Mathis* and *Estelle* to find that, because arrest of the juveniles was "at least a contingent purpose of the questioning, and one of the duties of the security guards was the investigation of criminal activities in the park," the guards were analogous to traditional police officers, mandating the application of *Miranda*). In *Heritage*, the park security guards were found to be acting within their official capacity as city employees and were "wearing bullet-proof vests under T-shirts bearing gold badges with the words 'Security Officer' on them. Although they did not carry firearms, each officer also wore a duty belt containing pepper spray, a collapsible baton, handcuffs, a radio, and a flashlight holder." *Id.* at 1195.

86. *In re* L.M., 993 S.W.2d 276, 289-91 (Tex. Crim. App. 1999) ("Appellant was isolated and alone during the police interrogation. This was despite the fact that the shelter, through the Department [of Protective and Regulatory Services], had the duty to care for and protect appellant.").

tide is turning and schoolhouses are becoming mere extensions of station houses, the time is upon us to realistically view school officials in their modern capacity as "the authorities," as fleetingly described in *Miranda*, and provide students the full panoply of Fifth Amendment rights protecting against self-incrimination. While school officials should not be limited where questioning centers solely on matters of school discipline, that world has seemingly passed us by. Now, in order to combat the pressures inherent in the school setting "and to permit a full opportunity to exercise the privilege against self-incrimination, the accused must be adequately and effectively appraised of his rights and the exercise of those rights must be fully honored."[87]

87. *Miranda*, 384 U.S. at 443.