**Suppressing Juveniles' Confessions**

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*This information is excerpted from Deja Vishny's upcoming book, Suppressing Evidence,to be published by James Publishing, which will cover suppression under the Fourth, Fifth, Sixth and Fourteenth Amendment.*

Juvenile clients have the same rights as adults under the Fifth and Sixth Amendment; in addition to the law cited above there are issues that can be raised pertaining to their age, maturity and education, given their level of cognitive and emotional development. The U.S. Supreme Court demonstrated this concern in two pre-Miranda cases. In *Haley v. Ohio*, 332 U.S. 596 (1948), the court suppressed the confession of a fifteen year old, stating, "He cannot be judged by the more exacting standards of maturity. That which would leave a man cold and unimpressed can overawe and overwhelm a lad in his early teens." *Id*. at 599. In *Gallegos v. Colorado*, 370 U.S. 49 (1962), the court suppressed a fourteen year old child's confession noting that the juvenile would not have a way to comprehend the consequences of his confession without being advised of his rights and he could not be fairly compared to an adult. The court reiterated this concern in *In Re Gault*, 387 U.S. 1 (1967), where it wrote the "greatest care must be taken to assure that the admission (of an adolescent) was voluntary, in the sense, not only that it was not coerced or suggested, but also that it was not the product of ignorance of rights or of adolescent fantasy, fright or despair". *Id*. at 55.

In *Fare v. Michael C.*, 442 U.S. 707 (1979), the court noted it had never formally applied *Miranda* to proceedings in juvenile court, *Id*. at 717, fn.4. Fare was a sixteen year old boy who asked for and was denied access to his probation officer before questioning. The court rejected the argument that Fare's request to speak with his probation agent was a *per se* request for counsel. The Court declined to create a special test for juvenile Miranda waivers and held the same "totality of circumstances" test should be applied to juvenile waivers of Miranda rights as it does for adults. In doing so, the Court mentioned that a court should conduct an inquiry into the juvenile's age, experience, education, background and intelligence and capacity to understand both the warnings and his Fifth Amendment rights and the consequences of waiving those rights. *Id*. at 725.

Most recently, in *Roper v. Simmons*, 543 U.S. 551 (2004) the U.S. Supreme Court barred the application of the death penalty to juveniles, stating that "juveniles are more vulnerable or susceptible to …outside pressures." *Id*. at 569.

The post- *Fare* cases pertaining to Miranda issues for juveniles cover a wide spectrum, as various courts wrestle with how to apply concerns about a juvenile in the context of a case. In general, the younger or more cognitively impaired the child, the more likely the case law is favorable for suppression.

When you have a juvenile client, think through the issues concerning Miranda through the lens of a person your client's age. How educated is your client? What is their vocabulary? How much knowledge do they have about the legal system? How do they view police? What is your

client's ability to reason abstractly? How mature is your client? To what degree is your client dependant on adults? How easily does your client succumb to directions and commands from authority figures like teachers or parents? What does your client believe occurs when he doesn't obey authority figures? What did your client think would happen as the result of giving a confession? These issues play out differently with children than adults.
Below are areas where you will find case law that takes into account a juvenile's age and level of development that you will want to consider in raising Miranda and other issues in suppressing confessions.

## A. Custody

In *JDB v. North Carolina*, ___U.S.___(2011), the U.S. Supreme Court held that a child's age "properly informs the Miranda custody analysis". *Id*. at ___. JDB was a 13 year old seventh grader who was called out of a class and interrogated by a police officer in a school conference room in the presence of another officer, the school principal and another school administrator. He was not informed of his Miranda rights, given an opportunity to contact his grandmother (who had custody of him), or told he was free to leave. The court took note of numerous cases in which it had ruled that children were less mature and responsible than adults (citing *Eddings v. Oklahoma*, 445 U.S. 104, 115-116 (1982)); often lack the experience, perspective, and judgment to recognize and avoid choices that could be detrimental to them (citing *Bellotti* v. *Baird*, 443 U.S. 622, 635(1979)); and "are more vulnerable or susceptible to … outside pressures", (citing *Roper v. Simmons*, 543 U.S. 551,569 (2005).

The Court distinguished *Yarborough v Alvarado*, 541 U.S. 652 (2004) noting *Yarborough's* application, which held that a state-court decision that failed to mention a 17-year-old's age as part of the *Miranda* custody analysis was not objectively unreasonable, was limited to the deferential standard of review set forth by the Antiterrorism and Effective Death Penalty Act of 1996 (AEDPA), Even in *Yarborough*, the court noted that fair minded jurists could disagree whether or not Alvarado was in custody. *Id*. at 664.

Other courts have held that age can be a factor in a court's determination of whether or not a person is in custody for Miranda purposes, particularly in cases when the child is younger. In *Murray v. Earle*, 405 F.3d 278, 287 (5th Cir. 2005), the court cited Justice O'Conner's concurrence in *Yarborough* that, "there may be cases in which a suspect's age will be relevant to the *Miranda* 'custody' inquiry" *Id*. at 2152, and held that an eleven year old girl was in custody when interrogated at a state run juvenile shelter. In *A.M. v. Butler*, 360 F.3d 787 (7th Cir. 2004), the court held that the defendant's young age (11) combined with his lack of prior experience with the criminal justice system, inability to leave the police station to go home without obtaining a ride from the police as well as never being informed that he was free to go or wasn't under arrest, all added up to a finding that the defendant reasonably believed himself to be in custody.

Court rulings on whether juveniles were in custody for *Miranda* purposes are very fact intensive and turn on very specific findings. For example, in *In Re Chad L*, 131 A.D.2d 760 (N.Y. App. Div. 2nd Dep't. 1987), the court held that police were required to read Miranda warnings to a ten year old boy who was questioned by two officers about a sexual assault and homicide in a

bedroom in his aunt's apartment. The door was almost closed, the boy was not told he could leave the room and there were police all over the home. The opposite result was reached in *In re Rennette B.*, 281 A.2d 78 (N.Y. App. Div. 1st Dep't. 2001), where police investigated the death of the infant child of a fifteen year old girl. The court held Miranda warnings were not required because it was not yet apparent that the baby's death was a crime and the juvenile chose the bedroom as a location for the interview. The *Rennette* court also determined that the questions did not constitute interrogation but were instead part of a medical investigation into an infant's death.

**B. Schools**

When a juvenile is questioned at school, courts generally do not require Miranda warnings if the questioning is done by school personnel and their actions are not at the request of police. Courts recognize that school principals, teachers and other personnel have responsibility for school safety and discipline and the scope of their employments authorizes then to question a student. See for example *Matter of Navajo County Juvenile Action No. JV91000058*, 901 P.2d 1247, 1249 (Ariz. 1995); *Commonwealth v. Ira I.,* 791 N.E.2d 894 (Mass. 2003). This is true even if when school personnel intended to turn over evidence or inform police about what was stated during questioning. *Commonwealth.v. Snyder*, 597 N.E.2d 1363 (Mass. 1992).

However when police officers question a student in a school office, Miranda warnings may be required even though the student is permitted to leave after questioning; this clearly would not be considered an arrest in the adult context. *JDB v. North Carolina*, ___U.S.___(2011) remanded the case to North Carolina for a determination as to whether the juvenile was in custody and Miranda warnings were required.

In *State v. D.R.*, 930 P.2d. 350 (Wash. App. 1997), a fourteen-year-old boy was found to be in custody for *Miranda* purposes when he was interviewed by a police officer in the presence of the assistant principal and a school social worker in the assistant principal's office. The Court found that an accusatory interview in principal's office creates a coercive atmosphere for fourteen year old; a child that age would reasonably think he was not free to leave when the police officer failed to inform him he was free to go. Similarly when a ten year old fifth grader was told to leave class and report to a faculty room where he had been disciplined before, a court held that the child was effectively in custody because he wasn't told until after questioning that he was free to go. *State v. Doe*, 948 P.2d 166 (Idaho 1997). In *In re Welfare of G.S.P.,* 610 N.W.2d 651 (Minn. Ct. App. 2000), the court held Miranda warnings were required when a twelve year old seventh grader was taken to the assistant principal's office where he was questioned by the principal in the presence of a police officer about a BB gun found in his backpack . The court noted that the principal told G.S.P. he had to answer questions and the officer said nothing to contradict that or inform G.S.P. that he was free to leave.

Be sure to research your own jurisdiction's case law in this area because other courts have reached opposite results. Some states have held the mere presence of a school assigned police officer during questionings of a student by school officials didn't require Miranda warnings. See for example *M.H. v. State*, 851 So.2d 233 (Fla. App. 2003); *J.D. v. Commonwealth.,* 591 S.E.2d 721 (Va. App. 2004) and *In re L.A.*, 21 P.3d 952 (Kan. 2001).

## C. Presence of Interested Adults

Wisconsin, although noting that "children are different that adults and the condition of being a child render one uncommonly susceptible to police pressures", *State v. Jerrell C.J.* 699 N.W.2d 110 (Wisc. 2005) has thus far declined to adopt a *per se* rule suppressing confessions when the police don't contact an interested adult to advise a child. However, you may want to the challenge this again in the right case. Carefully read *Jerrell* and other past cases on the issue. Since our state's Supreme court has previously admonished law enforcement officers for not calling parents before interrogation or taken lower courts to task for ignoring such police failures as a factor to consider when determining if a Miranda waiver was properly taken, the court may be getting tired of having its opinion ignored and decide it's time to change the law Even though this result is unlikely, if your client asked for parents, the court may suppress the confession as involuntary.

If you do decide to have the court revisit this issue, review the cases from other states in which other courts have mandated the *per se* interested adult presence rule as well as the dissents from opinions which declined to require a per se rule to find policy arguments in favor of such a requirement. At the evidentiary hearing, call a child psychologist to discuss the developmental level of juveniles the same age as your client. There is a lot of research about juveniles and whether their cognitive abilities have sufficiently developed has for them to fully appreciate the significance of Miranda waivers. The research particularly supports the notion that juveniles below age sixteen or juveniles with developmental disabilities cannot fully appreciate the warnings and the consequences of waiver and you may have better luck litigating this issue with a younger or cognitively disabled client.

Among the policies you can argue favor the creation of a *per se* rule requiring the presence of an interested adult are:

- Bright line rules are easier for police to follow.
- Police and courts will have greater confidence in the validity of Miranda waivers
- There will be a reduction in litigation concerning if juvenile clients fully understood the rights and the consequences of waiver, thus increasing the efficient of court time.
- Courts should use their supervisory authority to make rules that align rules of admissible evidence with the latest scientific research.

Here are a few of the decisions of courts around the country on this issue:

- Indiana's court created a *per se* rule requiring that both the adult and the juvenile must be advised of the rights; the adult must understand the rights and have the opportunity to advise the juvenile regarding whether or not they should waive their rights. *Lewis v. State*, 288 N.E.2d 138 (Ind. 1972) (later codified and superseded by statute). This was later codified into a statute, Ind. Code §31-32 5-1.

- Colorado's statutes also requires the presence of a parent or interested adult, Colo. Rev. Stat.§ 19-2-511(1).

- Vermont's Supreme Court held that its state constitution requires a *per se* parental rule where a parent or interested adult must be present to have a valid waiver of Fifth and Sixth Amendment rights. *In Re E.T.C.* 449 A.2d 937 (Vt. 1982). The interested adult can be a parent, guardian or other relative, but cannot be a police officer or associated with the prosecution. The adult must be informed of and aware of the juvenile's rights. *Id*. at 940.

- Three states, Massachusetts, New Jersey and Kansas, have a per se rule requiring the presence of a parent for juveniles under age fourteen. See *Commonwealth v. A Juvenile*, 449 N.E.2d 654 (Mass. 1983); *State v. Presha*, 748 A.2d 1108 (N.J. 2000); and *In the Matter of B.M.B.*, 955 P.2d 1302 (Kan. 1998). Such jurisdictions strongly recommend but do not require a parental or interested adult to be present with older (14 and over) juveniles and will consider the absence of an interested adult in determining under the totality of the circumstances whether the waiver was valid.

- West Virginia does not permit the admission of statements to a law enforcement officer by a juvenile under age fourteen unless the child has counsel present. Juveniles between age fourteen and sixteen must either have counsel present or a parent or interested adult who has been fully informed of the juveniles rights and is present and consents to the statement being made. W. Va. Code §49-5-2(l).

- Other jurisdictions, while not adopting a *per se* rule, will consider whether or not a parent or other friendly adult is present or at least permitted to be present during interrogation; for example *A.M. v. Butler*, 360 F.3d 787, 799-800 (7th Cir. 2004) stated that courts have recognized that a waivers by juveniles are not the same as waivers by an adultsand required tape recording as a precondition to the admission of a juvenile's statement in court.

- Some states at one time had *per se* rules requiring the presence of parents or interested adults to obtain a valid waiver but later court rulings reversed the requirement, returning to a totality of circumstances test. Among these are Georgia, Louisiana and Pennsylvania; *Riley v. State*, 226 S.E.2d 922 (Ga. 1976), *State v. Fernandez*, 712 So.2d 485 (La. 1998), *Commonwealth v. Williams*, 465 A.2d 1283 (Pa. 1984). California formerly held that a juvenile's request to see parent is treated as an invocation of the Fifth Amendment and once requested, police must contact them in order to administer a valid waiver. *People v. Burton*,

491 P.2d 793 (Cal 1971). This was overturned in *People v. Lessie*, 223 P.3d 3 (Cal. 2010) due to the subsequently enacted California Truth-in-Evidence provision of the California Constitution which does not permit California to suppress evidence on independent state constitutional grounds.

## D. Motions to Suppress Notwithstanding the Presence of an Interested Adult

The presence of a parent or interested adult at the time of a Miranda waiver should not preclude you from bringing a motion to suppress if you feel that your client did not understand the significance of waiving his Miranda warnings or that the adult acted out of a conflict of interest or as an instrument of the police in persuading your client to answer questions. Do a thorough interview of your client regarding the advice that he was given by the adult. Get details about the relationship between your client and the adult. Interview the adult regarding why they advised your client to waive his Miranda rights. If the parent or interested adult was mentally ill, developmentally disabled or under the influence of drugs or alcohol, argue that they were incompetent to assist your client with the decision. If the adult states that the police coerced or even strongly persuaded them to advise your client to waive his rights, determine specifically what the parent told your client regarding waiving his rights Argue that the parent was acting as an agent of law enforcement in coercing a waiver.

Another potential issue is whether the parent or adult had a conflict of interest with your client when they advised them. Conflicts can occur for a variety of reasons, such as: the adult is the victim or has a close relationship with the victim of the crime, the adult wants the child locked up for reasons unrelated to the allegation or the adult is a suspect in the crime. At least one court has held that when law enforcement have knowledge of a potential conflict of interest between the juvenile to be questioned and the interested adult, there is a duty to make further inquiries as to who an appropriate adult to be present. *In Re Steven William T.*, 499 S.E.2d 876 (W. Va. 1997). There are a couple of excellent law review articles summarizing the problems and policy issues that arise when parents or other adults advise their children to waive Miranda rights, see Hillary B. Farber, *The Role of the Parent/Guardian in Juvenile Custodial Interrogations: Friend or Foe?* 41 Am. Crim. L. Rev. 1277 (2004) and Andy Clark, comment, *"Interested Adults" with Conflicts of Interest at Juvenile Interrogations: Applying the Close Relationship Standard of Emotional Distress*, 68 U. Chi. L. Rev. 903 (2001).

## E. Understanding Miranda Warnings and the Consequences of Waiver

The U.S. Supreme Court held that he appropriate test for determining the validity of a juvenile's waiver of their right to remain silent the same "totality of circumstances" test used with adults. *Fare v. Michael C.*, 442 U.S. 707 (1979). As part of this a court must consider a juvenile's age, experience, intelligence their capacity to understand Miranda warnings, the nature of their Fifth Amendment rights and the consequences of waiving those rights, *Id*. Since part of this "totality" involves age, education, and previous experience with the police, all of which may disadvantage a juvenile in making a valid waiver, this is a fruitful area of litigation.

Psychologists have studied the degree to which juveniles comprehend the significance of Miranda warnings and the consequences of waiving their Fifth Amendment rights. The most extensive research in this area is by Thomas Grisso, who has concluded that most juveniles do not sufficiently comprehend Miranda to knowingly and intelligently waive their rights. Thomas Grisso, *Juveniles' Waiver of Rights: Legal and Psychological Competence 202* (1981) and Grisso, *Juveniles' Capacities to Waive Miranda Rights: An Empirical Analysis*, 68 Cal. L. Rev. 1134 (1980). Grisso found that juveniles under age 15 had very poor comprehension of the meaning of Miranda rights and the vast majority of them misunderstood at least one of the warnings. This contrasted with older juveniles; sixteen and seventeen year olds' comprehension of Miranda and competency to waive rights were similar to those of adults. An excellent summary of Grisso's findings as well as the work of other researchers can be found in Barry Feld's law review article, *Juvenile's Competence to Exercise Miranda Rights: An Empirical Study of Policy and Practice*, 91 Minn. L. Rev. 26 (2006). Feld reviewed a sampling of recorded interrogations to study the competence of sixteen and seventeen year olds to waive Miranda rights. His findings echo Grisso's; older teens perform similarly to adults in terms of comprehension and decision making when exercising or waiving Fifth Amendment rights. *Id*.

Generally speaking, the younger the child, the more likely a court is to find that he was unable to comprehend and waive Miranda warnings. For example, in *A.M. v. Butler*, 360 F.3d 787, 801 (7th Cir. 2004) the court held there was no reason to believe an 11 year old child could comprehend Miranda warnings and what it meant to waive his rights. This contrasts with Justice's O'Conner's concurrence in *Yarborough v. Alvarado*, 541 U.S. 652, 669 (2004), where in the context of determining custody, she noted that many seventeen year olds will behave similarly to adults.

Juveniles with learning disabilities, regardless of age, are more likely to have difficulty comprehending Miranda rights. See Steven Greenberg, *Learning Disabled Juveniles & Miranda Rights – What Constitutes Voluntary, Knowing and Intelligent Waiver*, 21 Golden Gate U. L.Rev. (1991). One study of juveniles in corrections free from cognitive disabilities found that many suffer from severe language deficits. Michele LaVigne and Gregory Van Rybroek, *Breakdown in the Language Zone: The Prevalence of Language Impairment Among Juvenile and Adult Offenders and Why It Matters*, 15 UC Davis J. Juv. L. & Pol'y 37 (Winter 2011). This can also impair comprehension of Miranda warnings. *Id*. at 75-76.

Studies have found that juveniles are more likely to give false confessions; a factor that makes juvenile waivers of Miranda rights particularly troubling. For example see Goldstein, Condie, Kalbeitzer, Osman and Geier, *Juvenile Offenders' Miranda Rights Comprehension and Self-Reported Likelihood of Offering False Confessions*, Assessment, Vol. 10, No. 4, December 2003, 359-369 Juveniles were overrepresented in Steven Drizin and Richard Leo's study of false confessions, *The Problem of False Confessions in the Post-DNA World*, 82 N.C.L. Rev. 891 (2004). While the issue of Miranda waiver differs substantially from that of false confessions, it is important to make judges aware of this problem and urge they increase their scrutiny of Miranda waivers in light of this very dangerous trend.

Simply arguing your client was too young to understand what he was doing when he waived his Miranda rights will be ineffectual without expert testimony. Successful litigation will require hiring an expert witness to testify in support of your motion to suppress.

While experts are an important component of a motion to suppress on these grounds, there is other work to be done. Your client must be thoroughly interviewed and possibly prepared to testify. If the interrogation is recorded, listen carefully to see if police minimized the significance of Fifth Amendment rights and Miranda warnings.

## F. Using Expert Witnesses to Challenge Miranda Waivers

Hire a psychologist to evaluate your juvenile or adult client to see if his waiver was knowingly, intelligently and with a full understanding of what was occurring. Do this as soon as possible after taking the case, particularly if your client is in jail or a detention center. Instruct your client to not discuss anything regarding his confession or interactions with other inmates, family or friends about his rights; psychological interviewing and testing will measure your client's comprehension at the time of the testing and the last thing you want is for your client to be "schooled" in his rights by other inmates. A comprehensive examination will involve an interview of your client regarding what occurred when he spoke with the police and the administration of several tests. Some of these are not specific to *Miranda*, such as IQ and the reading tests. There are also special psychological tests available to assess your juvenile client's comprehension of Miranda warnings and his rights.

Professor Thomas Grisso, an expert in the area of juveniles, developed four specific tests to gauge a juvenile's understanding of Miranda warnings. The tests are also useful for evaluating Miranda waiver comprehension by developmentally disabled and mentally ill adults. These tests, together known as the Grisso tests, must be administered by a psychologist who is licensed to administer and interpret them. The first three tests focus on linguistics; together these tests ask the subject to paraphrase the four Miranda warnings, identify a series of phrases as either the same or different from Miranda warnings and test knowledge of the vocabulary used in Miranda rights. In the fourth test the subject is shown a picture of an interrogation and asked questions that assess if the juvenile comprehends the rights that *Miranda* confers on an individual.

One problem with the Grisso instrument is that the Miranda rights used in your jurisdiction may not conform to the language used in the test. A recent study found 866 different versions of Miranda warning that ranged in length from 21 to 408 words; the reading level of these rights varied from second grade to college level. Richard Rogers, et.al, *The Language of Miranda in American Jurisdictions: A Replication and Further Analysis*, 32 Law and Human Behavior 124 (2008). Be sure to provide the psychologist you hire with a copy of the Miranda rights that were read to your client. The expert can measure the reading level of the rights used in your case and compare them against your client's reading level.

Be aware that some states exclude the Grisso test from evidence on relevance grounds, see for example *Carter v. State*, 697 So. 529 (Fla. 1997). Be sure to research admissibility issues in your jurisdiction. The Grisso test is being revised; use this as well as scientific evidence developed since the time of the court's ruling to argue that the court should reverse itself.

In addition to the Grisso test, consider hiring an expert to perform other listening comprehension tests, since Miranda warnings are almost always read from a card to a suspect. These types of tests can be given by linguists or educational psychologists.

There are another set of tests, the Gudjonnson Suggestibility Scale (GSS) and the Gudjonnson Compliance Scale (GCS), which can be administered in evaluating confession issues. These tests are more commonly used when challenging the voluntariness or truthfulness of a confession but may be useful in the Miranda context as well. The GSS measures a person's tendency to be influenced by leading questions and to change answers in presence of mild interrogatory pressure; the GCS measures the extent to which a person just complies with a request.

Provide the expert with all relevant case materials and client background information so the doctor can properly prepare for the meeting. This should include your client's written and recorded statements, educational and mental health records, relevant medical records, a summary of the crime so the expert understands the event and the context for your client's statements and any pertinent information you've developed about the interrogation from your interviews with your client.

A thorough expert evaluation will consist of eliciting information from your client about the circumstances surrounding pre-interrogation events, the reading of rights and the interrogation. If the interrogation is recorded, the expert will want to listen to it accompanied by a transcription. The expert will want to know how the rights were administered; if they were read by the officers or self-read, how they were read and whether the police made statements to undermine the importance of the rights. If your client shows sophistication regarding his rights that does not comport with his level of cognitive development, the expert should try to tease out whether the information was learned from fellow prisoners since the interrogation occurred.

If the expert evaluation supports the position that your client was incompetent to knowingly and intelligently waive his Miranda rights you may need a written report which will be provided to the prosecutor before you can call the expert to testify. Ask the expert if you can review a draft of the report before you provide opposing counsel with a copy. In any event, the report should always be reviewed by your first with an eye toward what issues it will raise for the prosecutor for cross examination.

Once you receive the report, meet with the expert to prepare his or her testimony. Expert witnesses should be prepared to testify like any other witness. Review the questions you plan to ask and be sure you know what the answers will be. Think of cross examination questions the prosecutor will ask and find out what your expert's responses will be. Prosecutor organizations circulate canned questions for specific types of experts; with a little legwork you may be able to get access to these. Try googling cross examination of experts and see what questions prosecutors have asked with other types of psychological experts.

## G. Prepare your expert for cross examination

Expert testimony will be most helpful with the psychologist performs strongly on cross examination as well as direct. The expert should be prepared to defend her findings and the

research in the field. Be sure she is very familiar with the literature surrounding the subject matter of her testimony; a sharp prosecutor will have reviewed the scientific literature and be prepared to cross about any weaknesses in the research, inconclusive findings by experts in the field and anything that contradicts your expert's opinion. If your expert is well known, the prosecutor may have reviewed transcripts of direct and cross examinations of the expert in other cases and you should discuss those in advance of the hearing. If the prosecutor questions the expert about the payment for her services, the expert should state she is being paid not for her opinion but for her time, just like every other professional in the courtroom.

## H. Mirandizing Juveniles and Waiver into Adult Court.

Some states require Miranda warnings to explicitly inform a juvenile that his statement can be used against him in adult court in the event of a jurisdictional transfer. *State v. Benoit*, 490 A.2d 295 (N.H. 1985) (however, if juvenile was previously tried in adult court and statute requires all future cases be tried in adult court, only standard Miranda warnings need be given, *State v. Dandurant*, 567 A.2d 592 (N.H. 1989); *State v. Lohnes*, 324 N.W.2d 409 (S.D. 1982), overruled on other grounds in *State v. Waff*, 373 N.W.2d 18 (S.D. 1985). Others also requires an awareness on the part of the juvenile that the statement may be used in adult court but in lieu of a specific warning permit the inference to be drawn by the adversarial circumstances under which the police interrogation takes place. See for example *State v. Loyd*, 212 N.W.2d 671 (Minn.1973), *State v. Gullings*, 416 P.2d 311 (Ore. 1966), *State v. Luoma*, 558 P.2d 756 (WN.1977). Others neither require any specialized warning or particular indicia that the statement will be used in a criminal proceeding other than the usual totality of the circumstances test. See for example *In re Appeal in Pinal County*, 657 P.2d 915 (Ariz. 1982) and *State v. Perez*, 591 A.2d 119(Conn 1991).

In litigating this issue, focus your cross examination on the setting and circumstances in which the interrogation took place. Some jurisdictions require that minors must have a court appearance in children's court within a certain number of hours from the time of their arrest. The police may not yet have had an opportunity to talk to the juvenile and if the child is held in a juvenile detention center, the questioning may take place there. The child may also have been advised of his rights under the juvenile code. Argue this gives rise to a presumption on your juvenile client's part that his statements could only have been used in a juvenile court proceeding against him. Finally, when cross examining the police, consider asking the opposite of what you might normally want; focus on playing down the inquisitorial aspects of interrogation and instead emphasize the soft and child-centered nature of police questions and anything police said that minimized his culpability in the crime, particularly because of his age or implied they wanted to be helpful to the child or were concerned about his future.

## I. Voluntariness

When representing a juvenile client, aggressively challenge confessions even if a court would find a similar interrogation and confession by an adult to be voluntary. Courts have long recognized that minors are particularly susceptible to police interrogation and statements given by minors that might be considered voluntary if made by an adult were coerced when taken from children. In *Haley v. Ohio*, 332 U.S. 596 (1948), the court reversed the admissibility of a 15 year

old's confession due to his youth, length and time of interrogation and the lack of advise by a parent or lawyer. The opinion, like many of the old cases, expounds on notions of decency and concern for the rights of accused persons being interrogated in language rarely seen in current case law. The court, in condemning an interrogation which took place from midnight to 5:00 a.m., wrote:

> What transpired would make us pause for careful inquiry if a mature man were involved. And when, as here, a mere child -- an easy victim of the law -- is before us, special care in scrutinizing the record must be used. Age 15 is a tender and difficult age for a boy of any race. He cannot be judged by the more exacting standards of maturity. That which would leave a man cold and unimpressed can overawe and overwhelm a lad in his early teens. This is the period of great instability which the crisis of adolescence produces. A 15-year old lad, questioned through the dead of night by relays of police, is a ready victim of the inquisition. Mature men possibly might stand the ordeal from midnight to 5 a.m. But we cannot believe that a lad of tender years is a match for the police in such a contest. He needs counsel and support if he is not to become the victim first of fear, then of panic. He needs someone on whom to lean lest the overpowering presence of the law, as he knows it, may not crush him. No friend stood at the side of this 15-year old boy as the police, working in relays, questioned him hour after hour, from midnight until dawn. No lawyer stood guard to make sure that the police went so far and no farther, to see to it that they stopped short of the point where he became the victim of coercion. No counsel or friend was called during the critical hours of questioning.

*Id*. at 599-600.

In another older juvenile case, *Gallegos v. Colorado*, 370 U.S. 49, 54(1962) the court held that a 14 year old's confession was involuntary because a child of his age would not comprehend what he was doing when giving a confession or know how to assert his rights in the absence of being able to consult with a friendly adult. In *Fare v. Michael C.*, 442 U.S. 707 (1979) the court required that juvenile confessions be considered under the same totality of circumstances test as adults but held that when considering confessions in juvenile cases, this analysis must include an "evaluation of the juvenile's age, experience, education, background, and intelligence". *Id*. at 725.

Distinguishing juvenile defendants from adults has continued in cases such as *Roper v. Simmons*, 543 U.S. 551(2005), where court disallowed death penalty for juveniles, stating they are more susceptible to outside pressures, negative influences and psychological damage than adults. The court has made it clear that the age and maturity of a child must be taken into consideration when determining what is custody for Miranda purposes. *JDB v. North Carolina*, ___U.S.___(2011).

Courts have continued to examine juvenile confession with "special caution", often suppressing statements that might have been considered voluntary had they been made by an adult. For example in *State v. Jerrell C.J.*, 699 N.W. 2d 110 (Wisc. 2005), the court held a confession involuntary when the juvenile was left alone in an interrogation room cuffed to a wall for two hours, then uncuffed and interrogated for five and a half hours by a detective who spoke to him in a "strong voice" and the detective refused to call his parents on request.

## H. Voluntariness and the Presence of an Interested Adult

One major different factor between adult and juvenile confessions that has frequently been discussed by courts is whether a juvenile was permitted to have an "interested adult" present during interrogation. Many courts have expressed concern regarding the voluntariness of interrogations where the juvenile does not have a interested adult present who will advise him to act in his best legal interests. See for example *Hardaway v. Young*, 302 F.3rd 757, 762 (7th Cir. 2002), where the court expressed concern that there were lengthy and repeated interrogations without the juvenile having the benefit of having an "interested" adult present.

Several states require that a minor be permitted to consult with a parent or other "interested adult" before a Miranda waiver can be taken or a statement be deemed voluntary and admissible in court. See Ch.___, sec ___ for specifics regarding which states require the presence of an adult interested in the child's welfare before commencing questioning.

## I. Voluntariness and Juveniles facing Adult Court Penalties

When juveniles are arrested for a serious crime, are repeat offenders or close to the age where they can be prosecuted in adult court, they may end up facing adult penalties. Generally a confession will not be held involuntary because police fail to warn a juvenile that his statement can be used against him in an adult court proceeding when a case is transferred there. *State v. Perez, 591 A.2d 119(Conn 1991); State v. Hunt*, 607 P.2d 297 (Utah 1980). *However, some courts have held that while not dispositive as to voluntariness, the* failure to inform a juvenile of the possibility of adult criminal prosecution is one factor to be considered with others under the totality of the circumstances test. *Watkinson v. State*, 980 P.2d 469 (AK 1999).