

No. 09-11121

**In the
Supreme Court of the United States**

J.D.B.,
Petitioner,

v.

STATE OF NORTH CAROLINA,
Respondent.

On Writ of Certiorari to
The Supreme Court of North Carolina

**BRIEF OF THE AMERICAN BAR ASSOCIATION
AS *AMICUS CURIAE* IN SUPPORT OF
PETITIONER**

<i>Of Counsel:</i>	STEPHEN N. ZACK
Kenneth L. Schmetterer	<i>Counsel of Record</i>
Matthew Whitt	PRESIDENT,
Arlette Grabczynska	AMERICAN BAR ASSOCIATION
Patrick Eagen	321 N. CLARK STREET
	CHICAGO, ILLINOIS 60654
	(312) 988-5000
	abapresident@abanet.org
	http://www.abanet.org/

*Counsel for Amicus Curiae
American Bar Association*

TABLE OF CONTENTS

TABLE OF AUTHORITIES i

INTEREST OF AMICUS CURIAE 1

SUMMARY OF ARGUMENT 5

ARGUMENT 6

 THE DEVELOPMENTAL ATTRIBUTES OF
 CHILDREN RENDER THEM UNIQUELY
 VULNERABLE TO POLICE
 QUESTIONING. 6

CONCLUSION..... 18

APPENDIX:

 EXAMPLES OF STATE STATUTES
 DISTINGUISHING BETWEEN CHILDREN
 AND ADULTS IN TERMS OF A CHILD’S
 RIGHTS OR AN OFFICER’S
 OBLIGATIONS IN CONNECTION WITH
 ARREST, DETENTION, AND
 QUESTIONING. A-1

 EXAMPLES OF STATE COURT CASES
 DISTINGUISHING BETWEEN CHILDREN
 AND ADULTS REGARDING THE
 CUSTODIAL NATURE OF
 INTERROGATIONS OR THE
 ADMISSIBILITY OF CONFESSIONSA-5

TABLE OF AUTHORITIES

CASES	Page(s)
<i>Berkemer v. McCarty</i> , 468 U.S. 420 (1984)	17
<i>CSC v. State</i> , 118 P.3d 970 (Wyo. 2005)	A-7
<i>Gallegos v. Colorado</i> , 370 U.S. 49 (1962)	7
<i>Graham v. Florida</i> , 130 S. Ct. 2011 (2010)	4, 7
<i>Haley v. Ohio</i> , 332 U.S. 596 (1948)	7
<i>In re D.A.R.</i> , 73 S.W.3d 505 (Tex. App. 2002).....	A-7
<i>In re Gault</i> , 387 U.S. 1 (1967)	7
<i>In re Jorge D.</i> , 43 P.3d 605 (Ariz. Ct. App. 2002)	10, A-5
<i>In re Joshua David C.</i> , 698 A.2d 1155 (Md. Ct. Spec. App. 1997)	A-5
<i>In re Watson</i> , 548 N.E.2d 210 (Ohio 1989)	A-6
<i>In re the Welfare of M.A.K.</i> , 667 N.W.2d 467 (Minn. Ct. App. 2003)	A-6
<i>Lee v. Weisman</i> , 505 U.S. 577 (1992).....	15
<i>Matter of Chad L.</i> , 502 N.Y.S.2d 910 (N.Y. Fam. Ct. 1986) <i>aff'd</i> , 131 A.D.2d 760 (N.Y. App. Div. 1987).....	A-6
<i>People v. Givans</i> , 575 N.W.2d 84 (Mich. Ct. App. 1997)	A-5

People v. Howard, 92 P.3d 445 (Colo. 2004) ... 9, A-5

Roper v. Simmons,
543 U.S. 551 (2005).....4, 6, 7, 10, 17

Stansbury v. California, 511 U.S. 318 (1994) .. 7, 17

*State ex rel. Juvenile Dept. of Multnomah County
v. Loreda*, 865 P.2d 1312 (Or. Ct. App. 1993) .A-6

State v. D.R., 930 P.2d 350
(Wash. Ct. App. 1997).....A-7

State v. Doe, 948 P.2d 166
(Idaho Ct. App. 1997)..... A-5

State v. Javier M., 33 P.3d 1 (N.M. 2001) A-6

State v. Presha, 748 A.2d 1108 (N.J. 2000)A-6

Yarborough v. Alvarado, 541 U.S. 652 (2004)..... 17

U.S. CONSTITUTION, STATUTES, RULES & REGULATIONS

Ala. Code § 12-15-202 (1975) A-1

Ark. Code Ann. § 9-27-317 (West 2010) A-1

Cal. Welf. & Inst. Code § 625 (West 2010) A-1

Colo. Rev. Stat. Ann. § 19-2-511
(West 2010)8, A-1

Conn. Gen. Stat. Ann. § 46b-137
(West 2010)9, A-1

Fla. Stat. Ann. § 985.101 (West 2010).....A-1

Ga. Code Ann. § 15-11-7 (West 2010).....	A-1
Haw. Rev. Stat. § 571-32 (West 2010).....	A-2
Idaho Juvenile Rules, Rule 9	A-2
705 Ill. Comp. Stat. Ann. 405/5-401.5 (West 2010)	A-2
Ind. Code Ann. § 31-32-5-4 (West 2010).....	A-2
Iowa Code Ann. § 232.19 (West 2010).....	A-2
Kan. Stat. Ann. § 38-2333 (West 2010).....	A-2
Me. Rev. Stat. Ann. Tit. 15, § 3203-A (2010) ...	8, A-2
Miss. Code Ann. § 43-21-311 (West 2010).....	A-3
Mo. Ann. Stat. § 211.059 (West 2010).....	A-3
Mont. Code Ann. § 41-5-331 (2009)	A-3
N.M. Stat. Ann. § 32A-2-14 (1978)	A-3
N.Y. Family Court Act § 305.2 (McKinney 2010).....	A-3
N.C. Gen. Stat. Ann. § 7B-2101 (West 2010) ..	8, A-3
N.D. Cent. Code Ann. § 27-20-27 (West 2010).....	A-4
Okla. Stat. Ann. tit. 10A § 2-2-301 (West 2010) ..	A-4
Tenn. Code Ann. § 37-1-127 (West 2010).....	A-4
Tex. Fam. Code Ann. § 51.095 (West 2010)	A-4

Wash. Rev. Code Ann. § 13.40.140 (West 2010) ..A-4

W. Va. Code Ann. § 49-5-2 (West 2010)9, A-4

OTHER AUTHORITIES

ABA *Amicus Curiae* Brief in *Graham v. Florida*,
2009 WL2197339 (2010)..... 4

ABA *Amicus Curiae* Brief in *Roper v. Simmons*,
2004 WL1617399 (2005)..... 4

ABA Report With Recommendation #102B 4, 15

Bonnie Halpern-Felscher & Elizabeth Cauffman,
*Costs and Benefits of a Decision: Decision-
Making Competence in Adolescents and Adults*,
22 J. Applied Developmental Psychol. 257
(2001)..... 10

Elizabeth Cauffman & Laurence Steinberg,
*(Im)Maturity of Judgment in Adolescence: Why
Adolescents May Be Less Culpable Than Adults*,
18 Behav. Sci. & L. 741 (2000) 10

Franklin E. Zimring, *Penal Proportionality for the
Young Offender in Youth on Trial: A
Development Perspective on Juvenile Justice*,
271 (Thomas Grisso & Robert G. Schwartz eds.
2000)..... 10

Fred E. Inbau & John E. Reid, *Criminal
Interrogation and Confessions*, 298-301
(4th ed. 2001) 12

IJA-ABA Juvenile Justice Standards
(1980, 1986)..... 2

IJA-ABA Juvenile Justice Standards Relating to Police Handling of Juvenile Problems (1980, 1986)	14, 15, 16
Laurence Steinberg & Elizabeth Scott, <i>Less Guilty by Reason of Adolescence: Developmental Immaturity, Diminished Responsibility, and the Juvenile Death Penalty</i> , 58 Am. Psychol. 1009 (2003).....	10
Marty Beyer, <i>Immaturity, Culpability & Competency in Juveniles: A Study of 17 Cases</i> , 15 Crim. Just. 27 (Summer 2000).....	11, 13, 14
Patrick M. McMullen, Comment, <i>Questioning the Questions: Impermissibility of Police Deception in Interrogation of Juveniles</i> , 99 Nw. U. L. Rev. 971 (2005).....	11, 12
Paul Holland, <i>School Miranda: Policing Interrogation in the Twenty-First Century Schoolhouse</i> , 52 Loy. L. Rev. 39 (2006).....	16
Samuel Gross, et al., <i>Exonerations in the United States, 1989 through 2003</i> , 95 J. Crim. L. & Criminology 523 (2004)	13
Saul M. Kassin & Gisli H. Gudjonsson, <i>The Psychology of Confessions: A Review of the Literature and Issues</i> , 5 Psychol. Sci. in Pub. Interest 33 (2004)	12, 13
Tamar R. Birckhead, <i>The Age of the Child: Interrogating Juveniles After Roper v. Simmons</i> , 65 Wash. & Lee L. Rev. 385 (2008).....	12, 14

Texas Youth Commission, Commitment Profile for
New Commitments: Fiscal Years 2005-2009.
(2009)..... 15

Thomas Grisso, et al. *Juveniles' Competence to
Stand Trial: A Comparison of Adolescents' and
Adults' Capacities as Trial Defendants*, 27 *Law.
& Human Behav.* 333 (2003)..... 11

Thomas Grisso, *What We Know About Youths'
Capacities as Trial Defendants, in Youth on
Trial: A Developmental Perspective on Juvenile
Justice* 158 (2000)..... 12

Youth in the Criminal Justice System: Guidelines
for Policymakers and Practitioners
(ABA 2001)..... 3

**BRIEF *AMICUS CURIAE* OF THE
AMERICAN BAR ASSOCIATION
IN SUPPORT OF PETITIONER**

INTEREST OF *AMICUS CURIAE*¹

Amicus curiae American Bar Association (“ABA”) respectfully requests that this Court reverse the decision of the Supreme Court of North Carolina and hold that, based on current scientific knowledge of the developmental characteristics of juveniles, a court’s *Miranda* custody determination for any person under the age of 18 must include a determination of whether a reasonable person of the juvenile’s age would have felt free to terminate police questioning and leave.

The ABA is the largest voluntary professional membership organization and the leading organization of legal professionals in the United States. Its nearly 400,000 members span all 50 states and other jurisdictions, and include attorneys in private law firms, corporations, non-profit organizations, government agencies and prosecutor and public defender offices, as well as

¹ Pursuant to Rule 37.6, *amicus curiae* certifies that no counsel for a party authorized this brief in whole or in part, and that no person or entity, other than *amicus*, its members, or its counsel made a monetary contribution to the preparation or submission of this brief. Consent to the filing of the brief was granted by both parties.

judges, legislators, law professors and law students.²

The ABA has taken an active role in advocating for the improvement of the juvenile justice system.³ The Juvenile Justice Committee of the ABA's Criminal Justice Section is composed of lawyers who specialize in juvenile justice issues. In conjunction with the Institute of Judicial Administration ("IJA"), the ABA spent over nine years developing standards for the administration of juvenile justice, which culminated in the publication in 1980 of the IJA-ABA Juvenile Justice Standards; and republication in 1996.⁴

² Neither this brief nor the decision to file it should be interpreted to reflect the views of any judicial member of the American Bar Association. No inference should be drawn that any member of the Judicial Division Council has participated in the adoption or endorsement of the positions in this brief. This brief was not circulated to any member of the Judicial Division Council prior to filing.

³ The term "juvenile" in this brief refers to individuals who are under the age of 18.

⁴ The Standards became official ABA policy when they were adopted by vote of the ABA House of Delegates. The ABA House of Delegates is composed of more than 500 representatives from states and territories, state and local bar associations, affiliated organizations, ABA sections and divisions, and the Attorney General of the United States, among others. *See* ABA General Information, available at <http://new.abanet.org/leadership/delegates.html> (last visited Dec. 20, 2010).

These Standards resulted from an exhaustive historical, legal and criminological study of society's response to juvenile crime and reflect the expertise and knowledge of legal practitioners and of experts who work with juvenile offenders. The volume titled "Standards Relating to Police Handling of Juvenile Problems" addresses police investigations, of which Standard 3.2 states, in pertinent part: "For some investigative procedures, greater constitutional safeguards are needed because of the vulnerabilities of juveniles. Juveniles should not be permitted to waive constitutional rights on their own."

In 1997, in response to a growing number of state statutes and policies allowing the transfer of juvenile offenders to the adult criminal justice systems, the ABA created its Task Force on Youth in the Criminal Justice System. In 2001, this Task Force published its report, *Youth in the Criminal Justice System: Guidelines for Policymakers and Practitioners* (ABA 2001) ("2001 ABA Report"). When it was adopted as ABA policy in 2002, the ABA formally recognized that children are developmentally different from adults.⁵ The ABA has continued to adopt policies based on the characteristics of youth, the most recent of which

⁵ ABA Report with Recommendation #101D (Policy adopted Feb. 2002), available at <http://www.abanet.org/crimjust/juvjus/jipolicies/YCJSReport.pdf> and <http://www.abanet.org/crimjust/policy/cjpol.html> (last visited December 20, 2010).

was ABA Report with Recommendation #102B (Policy adopted Feb. 2010), in which the ABA urges the development of simplified *Miranda* warnings for use with juveniles, in light of their verbal comprehension levels.⁶

The ABA drew upon its experience in the juvenile justice field when it filed its *amicus curiae* briefs in *Roper v. Simmons*, 543 U.S. 551 (2005) and *Graham v. Florida*, 130 S. Ct. 2011 (2010).⁷ In those briefs, the ABA endorsed criminal justice policies that account for factors unique to juveniles that affect their culpability. These factors include diminished – as compared to adults – maturity, self-restraint, experience and judgment, decision-making capabilities, capacity to assist in their own defense, and appreciation of the long-term consequences of their actions – factors that simultaneously make them more susceptible to influence and intimidation, and more likely to falsely confess to an offense they did not commit. *See* ABA Brief in *Roper*, 2004WL1617399, at 2 and ABA Brief in *Graham*, 2009WL2197339, at 11-12.

⁶ Available at http://www.abanet.org/leadership/2010/midyear/daily_journal/102B.pdf (last visited December 20, 2010).

⁷ The ABA brief for *Graham v. Florida* was also filed in the companion case, *Sullivan v. Florida*, for which the writ was subsequently dismissed as improvidently granted. The ABA briefs for *Roper* and *Graham* are available at <http://www.abanet.org/amicus/briefs98-03.html> (last visited December 20, 2010).

Having developed expertise over the course of many years of work with prosecutors, defense attorneys, academics, and others in the juvenile justice field, the ABA suggests that its views may assist the Court in this case.

SUMMARY OF ARGUMENT

The ABA respectfully submits that this Court should reverse the decision of the Supreme Court of North Carolina and hold that a *Miranda* custody determination for any person under the age of 18 must include a determination of whether a reasonable person of the juvenile's age would have felt free to terminate police questioning and leave.

This Court, as well as many state courts, state legislatures, the ABA and extensive scientific research, have recognized the unique vulnerabilities of children. Children are less capable than adults of making critical decisions in an informed, mature manner. They are more impulsive and reckless, less self-disciplined, and have less capacity to understand the long-term consequences of their actions. Further, the confessions of children require particular caution. Studies show that children are more susceptible to coercion and pressure, can be overwhelmed by circumstances that would not impact a reasonable adult, and are more likely to make false confessions than are adults.

In the present case, the circumstances petitioner faced when questioned – being escorted by police from his classroom to a school conference room where, with the door closed and without the

guidance of a parent or guardian but in the presence of school officials, he was questioned by a police officer and urged to confess after initially denying culpability – would have a far different impact on a reasonable 13 year old than on a reasonable adult.

While some children will have a greater understanding of their constitutional rights than some adults, society has drawn distinctions based on the unique vulnerabilities of children in many areas of the law. The approach requested by the ABA would ensure that the constitutional protections afforded to juveniles in *Miranda* custody determinations are not less than those guaranteed to adults.

ARGUMENT

THE DEVELOPMENTAL ATTRIBUTES OF CHILDREN RENDER THEM UNIQUELY VULNERABLE TO POLICE QUESTIONING.

Children are developmentally different from adults and possess greater vulnerabilities than adults, and therefore deserve considerations and protections under the law that are not always applicable to adults. *Roper v. Simmons*, 543 U.S. 551 (2005) (holding it unconstitutional to execute offenders who were under 18 at the time of their offenses). In *Roper*, the Court recognized that juveniles have diminished culpability based on their “lack of maturity and an underdeveloped sense of responsibility” that are “found in youth more often than in adults [and that] often result in

impetuous and ill-considered actions and decisions.” *Id.* at 569 (citations omitted). The Court further recognized that “juveniles are more susceptible to negative influences and outside pressures.” *Id.* See also *Graham v. Florida*, 130 S. Ct. 2011, 2026-28 (2010) (recognizing “lack of maturity,” “impetuous and ill-considered actions and decisions” and greater vulnerability to outside pressures that precludes the imposition of life without the possibility of parole on non-homicide juvenile offenders).

These same characteristics of children – immaturity, impetuous decision-making, and greater susceptibility to influence and pressure – that this Court has recognized in the context of Eighth Amendment analysis are equally present when a child is involved in a *Miranda* custody analysis, which asks how “a reasonable person in the position of the individual being questioned would gauge the breadth of his or her ‘freedom of action.’” *Stansbury v. California*, 511 U.S. 318, 325 (1994). A child’s vulnerabilities are significant in the specific context of police interrogations. See, e.g., *Haley v. Ohio*, 332 U.S. 596, 599 (1948) (recognizing that what “would leave a man cold and unimpressed can overawe and overwhelm a lad in his early teens” and that “special care in scrutinizing the record” is required because a child can be “an easy victim of the law”); *Gallegos v. Colorado*, 370 U.S. 49, 54 (1962) (holding that a child “cannot be compared with an adult in full possession of his senses and knowledgeable of the consequences of his admissions.”); *In re Gault*, 387 U.S. 1, 48 (1967) (recognizing that “the distrust of

confessions made in certain situations . . . is imperative in the case of children from an early age through adolescence.”).

Numerous other authorities are in accord. Over half of the fifty states have adopted laws that distinguish between children and adults in terms of a child’s rights or an officer’s obligations in connection with arrest, detention, and questioning.⁸ North Carolina – the state at issue in this case – does not allow the admission into evidence of any in-custody confession resulting from the interrogation of a child under the age of 14 unless a parent, guardian or counsel was present. N.C. Gen. Stat. § 7B-2101 (2005). Several states provide statutory protections that attach regardless of the outcome of the custody analysis. Connecticut, for example, deems all admissions, confessions, and statements made by a child under the age of 16 inadmissible unless the statement is made in the presence of a parent or guardian, and the child and parent or guardian have been advised of the child’s

⁸ *See, e.g.*, Colo. Rev. Stat. Ann. § 19-2-511 (West 2010) (statements made by a juvenile during a custodial interrogation are presumptively inadmissible unless a parent, guardian or counsel was present at the interrogation); Me. Rev. Stat. Ann. Tit. 15, § 3203-A (2010) (an arrested juvenile may not be questioned by any law enforcement officer until a parent or guardian is notified and is present at questioning or waives the right to be present at questioning). *See also*, Appendix, *supra* (identifying similar statutes).

Miranda rights.⁹ Similarly, West Virginia courts may not admit most extrajudicial statements made by a child under the age of 16 unless those statements were made in the presence of the child's counsel or in the presence of, and with the consent of, the child's parent or custodian.¹⁰

Likewise, most state courts that considered this issue differentiate between juveniles and adults when making decisions about the custodial nature of interrogations or the admissibility of confessions.¹¹ The Colorado Supreme Court, for example, has ruled that "a court may consider other factors when weighing the totality of the circumstances in cases involving juveniles" including the child's age.¹² An Arizona court has held that the objective custody analysis for juveniles should be the same as that for an adult

⁹ Conn. Gen. Stat. Ann. § 46b-137 (West 2010).

¹⁰ W. Va. Code Ann. § 49-5-2 (West 2010).

¹¹ *See, e.g.*, Appendix, *supra* (identifying some of these cases).

¹² *People v. Howard*, 92 P.3d 445, 450 (Colo. 2004) (listing age, presence of or knowledge by the parents, the time, place and purposes of the encounter, and the persons present during the interrogation among the relevant factors).

but with “additional elements that bear upon a child’s perceptions and vulnerability.”¹³

These legislative and judicial determinations are firmly supported by scholarly research. Empirical studies confirm that adolescents are more impulsive, less able to exercise self-control, and less able to consider the long-term consequences of their actions than adults. *See* Elizabeth Cauffman & Laurence Steinberg, *(Im)Maturity of Judgment in Adolescence: Why Adolescents May Be Less Culpable Than Adults*, 18 *Behav. Sci. & L.* 741, 748-49, 754 & tbl 4 (2000); Franklin E. Zimring, *Penal Proportionality for the Young Offender in Youth on Trial: A Developmental Perspective on Juvenile Justice*, 271, 280, 282 (Thomas Grisso & Robert G. Schwartz eds. 2000); Bonnie Halpern-Felscher & Elizabeth Cauffman, *Costs and Benefits of a Decision: Decision-Making Competence in Adolescents and Adults*, 22 *J. Applied Developmental Psychol.* 257, 264-70 (2001). *See also Roper*, 543 U.S. at 569 (citing Laurence Steinberg & Elizabeth Scott, *Less Guilty by Reason of Adolescence: Developmental Immaturity, Diminished Responsibility, and the Juvenile Death Penalty*, 58 *Am. Psychol.* 1009, 1014 (2003)).

¹³ *In re Jorge D.*, 43 P.3d 605, 607-09 (Ariz. Ct. App. 2002) (examining cases from other jurisdictions involving police questioning in a principal’s office, concluding that age, the time and place of questioning, and the presence of a parent or other supportive adult should be factors in a custodial determination).

Other studies show that unique attributes of children should be relevant to the *Miranda* custody analysis. Children are less likely to comprehend their rights while being questioned by police or to recognize the risks inherent in their choice. Thomas Grisso, et al., *Juveniles' Competence to Stand Trial: A Comparison of Adolescents' and Adults' Capacities as Trial Defendants*, 27 *Law. & Human Behav.* 333, 357 (2003). Children are more susceptible to interrogation techniques than adults: they have propensity to comply with authority figures, are more likely to confess to police rather than remain silent, and are less capable of considering the long term consequences of their decisions. *Id.* Children's lack of appreciation of long-term consequences impairs their ability to make appropriate decisions regarding their legal strategy and to communicate exculpatory facts effectively – even to their counsel, when representation is available. Marty Beyer, *Immaturity, Culpability & Competency in Juveniles: A Study of 17 Cases*, 15 *Crim. Just.* 27, 28 (Summer 2000).

Developmental psychology studies have found that children and adolescents are more suggestible and therefore are particularly vulnerable to coercive questioning techniques. Patrick M. McMullen, Comment, *Questioning the Questions: Impermissibility of Police Deception in Interrogation of Juveniles*, 99 *Nw. U. L. Rev.* 971, 995 (2005). Because of their greater tendency to base their decisions on emotions rather than logic and reason, adolescents are vulnerable to police interrogation techniques that confront them with

false evidence. McMullen, 99 Nw. U. L. Rev. at 995 (citing Thomas Grisso, *What We Know About Youths' Capacities as Trial Defendants, in Youth on Trial: A Developmental Perspective on Juvenile Justice* 158-59 (2000)). Indeed, police interrogation textbooks recommend the use of psychological themes with children that place blame for their actions on environmental and home factors to encourage a response, while simultaneously acknowledging that due to their immaturity the "symptoms displayed by a youthful suspect may be unreliable." Fred E. Inbau & John E. Reid, *Criminal Interrogation and Confessions*, 298-301 (4th ed. 2001).

Susceptibility to pressure from authority makes children more compliant and more open to suggestion than adults, resulting in a greater likelihood that children will agree to a false or incorrect version of the events during police questioning and, when questioned suggestively, will be more likely to provide unreliable information. Tamar R. Birckhead, *The Age of the Child: Interrogating Juveniles After Roper v. Simmons*, 65 Wash. & Lee L. Rev. 385, 414-415 (2008). As a result, social scientists have identified childhood as a "substantial risk factor" for false confessions. *Id.* at 414-15 (citing Saul M. Kassin & Gisli H. Gudjonsson, *The Psychology of Confessions: A Review of the Literature and Issues*, 5 Psychol. Sci. in Pub. Interest 33, 52 (2004)).

This tendency was illustrated in high profile cases such as the Central Park jogger case, in which all five false confessors were 14-15 years old,

and a murder case in Chicago, in which 7 and 8 year old boys confessed, providing details that matched the crime scene, only to have police drop the charges when the crime lab later discovered semen on the victim that matched the DNA of a local sex offender. Kassin & Gudjonsson, 5 *Psychol. Sci. in Pub. Interest* at 52. One study seeking to elicit false confessions found false confessions rates of 78% among 12 to 13-year olds, 72% among 15 to 16 year-olds and 59% among young adults (ages 18-26). *Id.* at 52-53. Another study that looked at exonerations between 1989-2003 found that 14 out of 33 individuals who were falsely convicted as juveniles – that is, 42 percent – had made false confessions. Samuel Gross, et al., *Exonerations in the United States, 1989 through 2003*, 95 *J. Crim. L. & Criminology* 523, 545 (2004). Among those between 12 and 15 years old, 69 percent had confessed to crimes they did not commit. *Id.*

Children's susceptibility to interrogative pressure and negative feedback from authority figures, and children's greater concern with their immediate predicament (*i.e.* detention or release) than with long range consequences (*e.g.* whether the police would infer guilt from silence, search for additional evidence, and initiate legal proceedings) make children far more vulnerable to false confessions. *Id.* This focus on short-term consequences tends to make children believe that confessing to a crime will end police questioning, free them from custody and allow them to go home, while believing they can later take back a false confession. Marty Beyer, *Immaturity, Culpability*

& Competency in Juveniles: A Study of 17 Cases,
15 Crim. Just. 27, 28-29 (Summer 2000).

Furthermore, children often exhibit behaviors that are common to children but that investigators are trained to associate with deception. For example, despite their inability to comprehend legal terminology, studies have found that children do not seek clarification of terms they do not understand. Instead they pause, hesitate or equivocate, and then give an answer. Birckhead, 65 Wash. & Lee L. Rev. at 417. As a result of anxiety and lack of confidence during questioning, children often avoid eye contact, qualify statements, respond in monosyllables, and provide difficult-to-follow narratives, all of which are characteristics that investigators are trained to identify as signals of deception. *Id.*

These vulnerabilities mean that, during police interrogations, it is more burdensome for a child than for an adult to exercise his or her rights and to enjoy the same protections. Recognizing this vulnerability, the ABA has concluded that “[f]or some investigative procedures, greater constitutional safeguards are needed because of the vulnerabilities of juveniles. Juveniles should not be permitted to waive constitutional rights on their own.” ABA Juvenile Justice Standards Relating to Police Handling of Juvenile Problems, §3.2. “[B]oth as a constitutional matter and as a matter of public policy, juveniles should not be allowed to waive their privilege against incrimination and their right to counsel without mature guidance” through

a parent, guardian or counsel called to assist the child. *Id.*, Commentary at 69-70.

Further, juvenile offenders typically exhibit low levels of achievement and cognitive function compared to adults and even compared to their peers.¹⁴ In 2010, after considering the research establishing that juvenile offenders often exhibit limited verbal comprehension as compared to adults, the ABA concluded that simplified *Miranda* warning language should be developed for use with juvenile arrestees. ABA 2010 Report with Recommendation #102(B) (policy adopted Feb. 2010).¹⁵

Finally, in considering a school setting, the Court, in *Lee v. Weisman*, 505 U.S. 577 (1992), recognized the “subtle coercive pressure in the elementary and secondary public schools,” and although “indirect coercion....may not be limited to the context of schools...it is most pronounced there.” *Id.* at 592. Indeed, because school policies typically prohibit children from walking away from school authorities until they are dismissed,

¹⁴ Texas Youth Commission, Commitment Profile for New Commitments: Fiscal Years 2005-2009. (2009) available at <http://www.tyc.state.tx.us/research/profile.html> (last visited December 20, 2010) (confirming that over 50% of more than 10,000 detainees exhibit IQ scores below 90).

¹⁵ Available at http://www.abanet.org/leadership/2010/midyear/daily_journal/102B.pdf (last visited Dec. 20, 2010).

children reasonably may believe that they cannot simply refuse to answer questions and walk out of a room – even without the additional coercive presence of a police investigator. Paul Holland, *School Miranda: Policing Interrogation in the Twenty-First Century Schoolhouse*, 52 Loy. L. Rev. 39, 85-86 (2006).

The foregoing research confirms what parents intuitively understand: children are different. It illustrates why, in petitioner's case, it would have been reasonable for a 13 year old to understand his circumstances far differently than would a reasonable adult, when he was questioned by police in a school setting without the assistance of a parent, guardian or counsel to help him understand his situation, his rights, the consequences of his decisions to talk to police and school officials – and most important – his right to terminate police questioning and leave the room. When held to an adult-based “reasonable person” standard, children are afforded fewer constitutional protections than those guaranteed to adults because children are less mature, more vulnerable and more susceptible to pressure and authority, less capable of understanding the custodial nature of an environment and any right to walk away, and less capable of making informed decisions about their fundamental rights and of understanding the long-term consequences of their actions.

To be sure, some juveniles will possess greater maturity, intelligence and capacity to understand their constitutional rights than some adults. Nonetheless, in determining that

executions are unconstitutional for children who commit crimes when under 18, this Court recognized that “[t]he age of 18 is the point where society draws the line for many purposes between childhood and adulthood.” *Roper*, 543 U.S. at 574. Similar distinctions should be drawn in *Miranda* custody determinations, which should include a determination of whether a reasonable person of the child’s age would have felt free to terminate police questioning and leave.

Such a rule would comport with this Court’s preference for objective standards. *Yarborough v. Alvarado*, 541 U.S. 652, 667 (2004). The age of a child “is an objective circumstance” that “is not a special quality, but rather a widely shared characteristic that generates commonplace conclusions about behavior and perception. To focus on the circumstance of age in a case like this does not complicate the ‘in custody’ inquiry.” *Id.* at 674 (Breyer, J. dissenting). Juvenile custody inquiries would be determined based on how a reasonable juvenile would perceive his or her circumstances. *Id.* at 661 (“custody must be determined based on how a reasonable person in the suspect’s situation would perceive his circumstances.”); *Stansbury*, 511 U.S. at 325 (officer’s “beliefs are only relevant to the extent they would affect how a reasonable person in the position of the individual being questioned would gauge the breadth of his or her freedom of action . . . [or] freedom to leave.”); *Berkemer v. McCarty*, 468 U.S. 420, 442 (1984) (“the only relevant inquiry is how a reasonable man in the suspect’s position would have understood his situation.”).

To ensure that the constitutional protections afforded to juveniles are not less than those guaranteed to adults, the ABA respectfully asserts that *Miranda* custody determinations for those under 18, being the age that society has deemed the age of majority, must include consideration of the child's age.

CONCLUSION

For the reasons stated above, *amicus curiae* American Bar Association requests that this Court reverse the judgment of the Supreme Court of North Carolina and hold that a *Miranda* custody determination for any person under the age of 18 must include a determination of whether a reasonable person of that age would have felt free to terminate police questioning and leave.

Respectfully submitted,

STEPHEN N. ZACK
Counsel of Record
PRESIDENT,
AMERICAN BAR ASSOCIATION
321 N. CLARK STREET
CHICAGO, ILLINOIS 60654
(312) 988-5000
abapresident@abanet.org
<http://www.abanet.org>

Counsel for Amicus Curiae
American Bar Association

December 23, 2010

APPENDIX

**EXAMPLES OF STATE STATUTES
DISTINGUISHING BETWEEN CHILDREN AND
ADULTS IN TERMS OF A CHILD'S RIGHTS OR AN
OFFICER'S OBLIGATION IN CONNECTION WITH
ARREST, DETENTION, AND QUESTIONING**

Ala. Code § 12-15-202 (1975) (requiring police to use warning language understandable to a child);

Ark. Code Ann. § 9-27-317 (West 2010) (including maturity and parental agreement as factors in a waiver analysis);

Cal. Welf. & Inst. Code § 625 (West 2010) (granting juveniles the right to telephone parents before police perform certain tests);

Colo. Rev. Stat. Ann. § 19-2-511 (West 2010) (making admission of juvenile statements contingent upon whether a parent or legal custodian was present);

Conn. Gen. Stat. Ann. § 46b-137 (West 2010) (making juvenile statements inadmissible unless reasonable efforts to contact a parent or guardian have been made);

Fla. Stat. Ann. § 985.101 (West 2010) (requiring parental notification when a child is taken into custody);

Ga. Code Ann. § 15-11-7 (West 2010) (creating due process rights for juveniles);

Haw. Rev. Stat. § 571-32 (West 2010) (requiring that when a child is taken into custody his parents, guardian, or legal custodian be notified immediately);

Idaho Juvenile Rules, Rule 9 (requiring that both the juvenile and the juvenile's parent(s), guardian, or custodian be notified of the right to counsel and the potential consequences of confessions);

705 Ill. Comp. Stat. Ann. 405/5-401.5 (West 2010) (making juvenile statements presumptively inadmissible if made as the result of a custodial interrogation);

Ind. Code Ann. § 31-32-5-4 (West 2010) (listing several additional factors to be considered when evaluating whether a juvenile's waiver was made knowingly and voluntarily, including child's mental and emotional maturity and the presence or knowledge of parent or guardian);

Iowa Code Ann. § 232.19 (West 2010) (requiring that a child's parent, guardian, or custodian be notified when the child is taken into custody);

Kan. Stat. Ann. 38-2333 (West 2010) (barring all admissions and confessions made by juveniles under fourteen years of age unless made following a consultation between the juvenile's parent or attorney);

Me. Rev. Stat. Ann. Tit. 15 § 3203-A (2009) (prohibiting law enforcement officers from

questioning a juvenile before reasonable efforts have been made to contact the legal custodian of the juvenile);

Miss. Code Ann. § 43-21-311 (West 2010) (granting juveniles the right to telephone a parent, guardian, or custodian immediately upon being taken into custody);

Mo. Ann. Stat. § 211.059 (West 2010) (granting juveniles the right to have a parent, guardian, or custodian present during police questioning);

Mont. Code Ann. § 41-5-331 (2009) (requiring that law enforcement officers immediately notify the parents, guardian, or legal custodian of any youth that is taken into custody);

N.M. Stat. Ann. § 32A-2-14 (1978) (listing age and education as factors to be considered in determining whether a child knowingly, intelligently, and voluntarily waived the child's rights);

N.Y. Family Court Act § 305.2 (McKinney 2010) (prohibiting the questioning of children unless the child and the parent or other person legally responsible for the child's care have been advised of the child's rights);

N.C. Gen. Stat. Ann. § 7B-2101 (West 2010) (specifying procedures to be used in juvenile custodial interrogations);

N.D. Cent. Code Ann. § 27-20-27 (West 2010) (granting due process rights to juveniles);

Okla. Stat. Ann. Tit. 10A § 2-2-301 (West 2010) (listing rules for juvenile custodial interrogations, and prohibiting admission from custodial interrogation of children under age 14 without presence of parent or guardian);

Tenn. Code Ann. § 37-1-127 (West 2010) (creating restrictions on what extrajudicial statements may be admitted against a juvenile);

Tex. Fam. Code Ann. § 51.095 (West 2010) (listing requirements for the admission of statements made by a child);

Wash. Rev. Code Ann. § 13.40.140 (West 2010) (requiring that any waiver of a juvenile's rights come from the parent, guardian, or custodian if the juvenile is under twelve years of age);

W. Va. Code Ann. § 49-5-2 (West 2010) (barring admission of all extrajudicial statements made by juveniles unless made in the presence of juvenile's counsel, or in the presence of, and with the consent of, the juvenile's parent or custodian).

**EXAMPLES OF STATE COURT CASES
DISTINGUISHING BETWEEN CHILDREN AND
ADULTS REGARDING THE CUSTODIAL
NATURE OF INTERROGATIONS OR THE
ADMISSIBILITY OF CONFESSIONS**

In re Jorge D., 43 P.3d 605, 608 (Ariz. Ct. App. 2002) (concluding that “additional elements that bear upon a child’s perceptions and vulnerability, including the child’s age, maturity and experience with law enforcement and the presence of a parent or other supportive adult” relevant to objective custodial interrogation test);

State v. Doe, 948 P.2d 166, 173 (Idaho Ct. App. 1997) (same);

People v. Howard, 92 P.3d 445, 450 (Colo. 2004) (listing age and presence of or knowledge by the parents as among “other factors” that a court may consider in juvenile cases);

In re Joshua David C., 698 A.2d 1155, 1162 (Md. Ct. Spec. App. 1997) (“in determining whether a juvenile’s statement was made while in custody, the court must consider additional factors, such as the juvenile’s education, age, and intelligence.”) (citation omitted);

People v. Givans, 575 N.W.2d 84, 88 (Mich. Ct. App. 1997) (factors to consider for admissibility of confession include, among others, age, education, and intelligence level, and presence of a parent, custodian, or guardian);

In re the Welfare of M.A.K., 667 N.W.2d 467, 471 (Minn. Ct. App. 2003) (factors to consider for custodial determination include “child’s age, intelligence, education, experience with the law, the warning given, and the presence or absence of the child’s parents.”) (citation omitted);

State v. Presha, 748 A.2d 1108, 1114-15 (N.J. 2000) (holding that statements made in interrogation of a child under 14 years of age are inadmissible unless an adult was present, or unwilling or “truly” unable to be present);

State v. Javier M., 33 P.3d 1, 5 (N.M. 2001) (holding that a juvenile must be afforded protections similar to those under *Miranda* while in investigatory detention, not custodial detention);

Matter of Chad L., 131 Misc. 2d 965, 966-67, 502 N.Y.S.2d 910, 911-12 (N.Y. Fam. Ct. 1986) *aff’d*, 131 A.D.2d 760, 517 N.Y.S.2d 58 (N.Y. App. Div. 1987) (“[I]n evaluating the totality of the circumstances surrounding the interrogation of a juvenile to determine whether such interrogation must be deemed ‘custodial’, the age of the juvenile must be considered a major factor.”);

In re Watson, 548 N.E.2d 210, 213 (Ohio 1989) (“In deciding whether a defendant’s confession is involuntarily induced, the court should consider the totality of the circumstances, including the age . . . of the accused”);

State ex rel. Juvenile Dept. of Multnomah County v. Loreda, 865 P.2d 1312, 1315 (Or. Ct. App. 1993)

(applying test of “whether a reasonable person in child’s position – that is, a child of similar age, knowledge and experience, placed in a similar environment – would have felt required to stay and answer all of [the] questions.”);

In re D.A.R., 73 S.W.3d 505, 510-11 (Tex. App. 2002) (holding that “consideration of the age of the juvenile is appropriate” in determining whether interrogation was custodial);

State v. D.R., 930 P.2d 350, 353 (Wash. Ct. App. 1997) (citing the juvenile defendant’s youth as among the factors, which also included “the naturally coercive nature of the school and principal’s office environment for children of his age,” in determining that an interrogation was custodial);

CSC v. State, 118 P.3d 970, 977-78 (Wyo. 2005) (“Following Justice O’Connor’s reasoning, we acknowledge that there could be instances where the suspect is so young that his age must be considered by the police.”).