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Around and Around on Pennsylvania's Juvenile Confession Carousel: This Time the Police Get the Brass Ring

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The special status of juveniles in our criminal justice system has been recognized for more than a century. Despite this recognition, many jurisdictions continue to evaluate a juvenile’s waiver of his or her privilege against self-incrimination by standards identical or very similar to those used to evaluate the waivers of adults. Indeed, the Supreme Court of the United States has determined that the waiver of a juvenile during a custodial interrogation may be evaluated by the same standards as an adult’s waiver.

Other jurisdictions, recognizing both the vulnerability of juveniles during custodial interrogation and the traditional protection of youth in

1. For a discussion of the treatment of juveniles in the criminal justice system, see infra notes 25-36 and accompanying text.
2. These courts generally analyze the validity of a juvenile’s waiver by looking at the totality of the circumstances surrounding the waiver. For a discussion of this approach and its application in various jurisdictions, see infra notes 59-66 and accompanying text.
3. Fare v. Michael C., 442 U.S. 707, 725, 728 (1979). For a discussion of the Supreme Court’s opinion in Michael C., see infra notes 54-56 and accompanying text.
American society, have provided additional safeguards to ensure that juvenile suspects understand their constitutional rights before they can make an effective waiver. One such safeguard, known as the “per se” rule, provides that a juvenile’s waiver of any constitutional right is not effective unless the juvenile has consulted with an interested and informed adult prior to waiving that right. Scholars have repeatedly recommended the adoption of a per se rule and have commended the Pennsylvania judiciary for adopting such a protection. Pennsylvania opinions also have been cited in other jurisdictions as support for the adoption of the per se rule, sometimes referred to as the “interested adult” rule. Recently, however, Pennsylvania has retreated from this highly praised position and reverted to a former and, by some standards, much less enlightened test for evaluating the validity of juvenile waivers.

This comment will first review the constitutional right against self-incrimination as it has been applied to adults and juveniles. Next, the comment will discuss the various methods for evaluating the validity of juvenile confessions, the rationales underlying each of these methods, and the empirical evidence regarding the effectiveness of each method. Finally, this comment will review the development of Pennsylvania case law in this area and propose a resolution to the Pennsylvania Supreme Court’s apparent inability to define a stable standard for evaluating juveniles’ waivers.

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4. For a discussion of such additional protections, see infra notes 89-114 and accompanying text.

5. For a discussion of the per se rule, see infra notes 89-110 and accompanying text.

6. See, e.g., Grisso, Juveniles’ Capacities to Waive Miranda Rights: An Empirical Analysis, 68 CALIF. L. REV. 1134, 1166 (1980) (per se rule should include consultation with attorney before juvenile’s waiver can be “effective”); Comment, Pennsylvania Supreme Court Review, 49 TEMP. L. Q. 558, 704-12 (1976) [hereinafter cited as Comment, Pa. S. Ct. Review] (Pennsylvania’s per se rule is significant step toward meaningful protection of juveniles in pre-judicial stage of criminal process); Note, Preadjudicatory Confession and Consent Searches: Placing the Juvenile on the Same Constitutional Footing as an Adult, 57 B.U.L. REV. 778, 792 (1977) [hereinafter cited as Note, Preadjudicatory Confessions] (per se rule is compelled in order to afford juveniles the same protection as adults). For a discussion of Pennsylvania’s adoption of the per se rule, see infra notes 129-148 and accompanying text.

7. See, e.g., In re Dino, 359 So. 2d 586, 593 (La.) (Pennsylvania courts in adopting the per se rule have concluded that the advice of an adult helps remove the juvenile’s impediment of immaturity), cert. denied, 439 U.S. 1047 (1978).

8. The latest in a series of opinions from the Pennsylvania Supreme Court that have eroded, and finally abandoned, the per se rule was Commonwealth v. Williams, 504 Pa. 511, 475 A.2d 1283 (1984). For a discussion of the Williams case, see infra notes 161-68 and accompanying text.
II. THE PRIVILEGE AGAINST SELF-INCrimINATION AND WAIVER BY ADULTS

The United States Constitution guarantees to every individual the privilege against self-incrimination.9 Traditionally, however, a criminal suspect has been allowed to waive this constitutional right.10 Such a waiver, though, is invalid and the confession is excluded from evidence if the waiver and confession were not voluntary.11 Involuntary confessions have been rejected because of concerns that they are unreliable and may reflect unconstitutional and illegal police practices.12

9. U.S. CONST. amend. V. The fifth amendment provides in pertinent part: "[N]or shall [anyone] be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law . . . ." Id. In the early confession cases, the United States Supreme Court relied on the fifth amendment as a basis for excluding coerced confessions from federal trials. See, e.g., Bram v. United States, 168 U.S. 532, 542 (1897) (issue of voluntariness of confessions in federal criminal cases is controlled by fifth amendment). See generally L. LEVY, ORIGINS OF THE FIFTH AMENDMENT, THE RIGHT AGAINST SELF-INCrimINATION 46 (1968); Note, Self-Incrimination: Privilege, Immunity, and Comment in Bar Disciplinary Proceedings, 72 MICH. L. REV. 84, 85-88 (1973). When examining the voluntariness of a confession in a state criminal proceeding, however, the Court initially relied on the due process clause of the fourteenth amendment. Brown v. Mississippi, 297 U.S. 278, 285-86 (1936). See generally Ritz, Twenty-Five Years of State Criminal Confession Cases in the U.S. Supreme Court, 19 WASH. & LEE L. REV. 35 (1962); Comment, Development in the Law—Confessions, 79 HARV. L. REV. 935 (1966). The fifth amendment had not yet been held applicable to the states. See Twining v. New Jersey, 211 U.S. 78 (1908). The Supreme Court eliminated the existing confusion concerning the use of separate constitutional provisions to evaluate the propriety of confessions when it held that the fifth amendment privilege against self-incrimination was enforceable against the states through the fourteenth amendment. Malloy v. Hogan, 378 U.S. 1, 8 (1964). Confessions are now admissible under a voluntariness standard as determined under the fifth amendment, which standard is now identical in federal and state courts. Davis v. North Carolina, 384 U.S. 737, 740 (1966). For a general discussion of the use of confessions in court, see Rogge, Proof by Confession, 12 VILL. L. REV. 1 (1966).


11. See Brown v. Mississippi, 297 U.S. 278 (1936). A waiver of a constitutional right may be valid only if there has been "an intentional relinquishment or abandonment of a known right or privilege," i.e., a voluntary waiver. Johnson v. Zerbst, 304 U.S. 458, 464 (1938).

In describing the standard employed to determine if a waiver was voluntary, the Supreme Court stated that the inquiry is whether the confession [is] the product of an essentially free and unconstrained choice by the maker[.] If it is, if he has willed to confess, it may be used against him. If it is not, if his will has been overborne and his capacity for self-determination is critically impaired, the use of his confession offends due process. Culombe v. Connecticut, 367 U.S. 568, 602 (1961).

The voluntariness standard has not always been the norm. At early common law, confessions were admissible as convictions, not evidence, even if the confessions were involuntary in that they had resulted from threats, torture, or promises. § J. WIGMORE, EVIDENCE § 818, at 292-93 (Chadbourn rev. ed. 1970).

mining the voluntariness of an adult’s confession, the courts have generally examined the totality of the circumstances surrounding the confession. Under this approach, the courts review the characteristics of the accused and the details of the interrogation to determine whether the confession was freely given.

The landmark case of *Miranda v. Arizona* set forth protections intended to ensure that a suspect’s confession would not be the result of coercion, intimidation, or ignorance of rights. The *Miranda* Court recognized that custodial interrogation of persons suspected or accused of crimes was inherently coercive because the interrogation environment was generally intended to subjugate the suspect to the will of his examiner. In this environment, the Court concluded that “protective


17. Id. at 467-68. The Court concluded that without such protections custodial interrogation “contains inherently compelling pressures which [would] work to undermine the individual’s will to resist and to compel him to speak where he would not otherwise do so freely.” Id. at 467. The Court stated that only with proper safeguards would those pressures be combated such that the accused would retain full opportunity to exercise the privilege against self-incrimination. Id.

18. The *Miranda* Court defined custodial interrogation as any questioning by law enforcement officers “after a person has been taken into custody or otherwise deprived of his freedom of action in any significant way.” Id. at 444 (footnote omitted).

19. Id. at 457-58.
devices" were necessary to prevent potential abuse. The Court therefore devised what are now commonly known as the "Miranda warnings," which inform the accused of 1) his right to remain silent; 2) his right to the presence of an attorney during interrogation; 3) if indigent, his right to appointed counsel; and 4) the state's right to use anything said by the accused against him in court.

Any confession by an individual who has not first received the Miranda warnings or their equivalent is not admissible in court. Once the Miranda warnings have been administered, however, a suspect may waive the right to remain silent provided that the waiver is made voluntarily, knowingly, and intelligently. When a suspect makes a statement in the absence of counsel during custodial investigation, the government bears a heavy burden to demonstrate the conditions that render such a waiver admissible. Under Miranda, courts are to utilize the totality of the circumstances test for determining the validity of the waiver.

III. THE JUVENILE JUSTICE SYSTEM

Generally, the law with regard to the privilege against self-incrimination has treated juveniles as it treats adults. Some distinctions have been made, however, in the development of this law in order to accommodate the special status of the juvenile.

Historically, many constitutional rights have not been extended to juveniles undergoing prosecution in the juvenile court system. This practice resulted from the courts' conception of the relationship between the state and the juvenile as that of parent and child, otherwise

20. Id. at 458.
21. Id. at 444, 467-73. The Court observed, however, that Congress and the states remained free to establish alternative means to protect a person's right to remain silent. Id. at 467. Under Miranda, a suspect who has initially waived his right to remain silent has the right to stop the custodial questioning at any time and request counsel. Id. at 473-74. Thus, the interrogation must cease at any time the individual indicates in any manner his wish to remain silent. Id.
22. Id. at 475-76.
23. Id.
24. Id.
25. See, e.g., Planned Parenthood of Central Missouri v. Danforth, 428 U.S. 52, 74 (1976) ("Constitutional rights do not mature and come into being magically only when one attains the state-defined age of majority. Minors, as well as adults, are protected by the Constitution and possess constitutional rights.").
26. For a discussion of these distinctions, see infra notes 37-56 and accompanying text.
known as the doctrine of *parens patriae.* Under this doctrine, the juvenile court was supposed to assume custody of the child and to assure the provision of proper care and treatment. The juvenile court system treated juvenile offenders as wards of the state and labelled them delinquent rather than criminal. Thus, the juvenile system was based upon a different philosophy than the adult criminal system and, because of its paternalistic philosophical underpinnings, the juvenile system was viewed as non-adversarial and civil rather than criminal in nature. The goal of the juvenile system was not to punish but to rehabilitate and treat the offender. The unfortunate result of this system’s philosophy was that juvenile offenders were not regarded as individuals in need of protection from the state, and thus they did not receive the same constitutional protections guaranteed to adult criminal suspects.

Eventually the judiciary recognized that, although laudable, the

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29. See Shears, *Legal Problems Peculiar to Children’s Courts*, 48 A.B.A. J. 719, 720 (1962). Historically, the juvenile justice system’s position concerning the rights of minors was that they have the right to proper care and treatment—the right to custody—rather than to the procedural protections necessary to ensure liberty. *Id.* at 720-21.

30. S. Davis, *Rights of Juveniles: The Juvenile Justice System* § 1.2 (2d ed. 1980). Crimes committed by juveniles were deemed the result of overwhelming environmental factors and not the result of any malice or reasoned judgment of the juvenile. *McKeiver v. Pennsylvania*, 403 U.S. 528, 551-52 (1971) (White, J., concurring). The juvenile court system was based on the premise that the individual had not erred, but, rather, society had. *Id.*

31. For a discussion of the premise underlying the juvenile court system, see supra note 30. The first juvenile court was established in Chicago in 1899 with a primary focus of rehabilitation rather than punishment. *An Act to Regulate the Treatment and Control of Dependent, Neglected and Delinquent Children §§ 1, 21*, 1899 Ill. Laws 131 (current version at ILL. REV. STAT. ch. 37, §§ 701-708 (1971)).


32. S. Davis, supra note 30, § 1.2. Juvenile proceedings were informal and were designed not to establish guilt or innocence but to determine whether the juvenile’s actions warranted rehabilitative treatment by the state. O. Ketcham & M. Paulsen, *Cases and Materials Related to Juvenile Courts* 1-20 (1967).

33. See O. Ketcham & M. Paulsen, supra note 32, at 1-20. Because of the juvenile court’s philosophy that errors of the child are faults of society and not of the child, the goal of the juvenile court system was to rehabilitate the child as a useful member of society instead of permanently labelling the juvenile as a criminal. *Id.*

34. *In re Gault*, 387 U.S. 1, 15-17 (1967). For example, the privilege against self-incrimination was available to juveniles only when they were being prose-
goals of the juvenile court system were not being achieved. The informal nature of juvenile court hearings had led to the exercise of unbridled discretion by judges. Recognition of these problems led to a reevaluation of the status of juveniles within the juvenile court system.

A. Juveniles and the Privilege Against Self-Incrimination

Before considering the adequacy of the procedural protections afforded by the juvenile justice system, the United States Supreme Court had recognized that minors prosecuted under adult criminal proceedings possess the same constitutional protections as adults and thus, while in police custody, should not be interrogated in a manner offensive to due process. In *Haley v. Ohio*, the Supreme Court considered the circumstances under which the confession of a juvenile should be deemed to have been given voluntarily in an adult proceeding. In *Haley*, a fifteen-year-old's confession was admitted into evidence and the youth was subsequently convicted of murder. Before confessing, the juvenile had been beaten, had been repeatedly questioned by numerous teams of police from midnight until 5:00 a.m. without the presence of counsel, and had been held incommunicado for three days following his confession. The Court held that the juvenile's confession was inadmissible because it had been obtained in a manner which violated the due process clause of the fourteenth amendment.

The *Haley* Court, although evaluating the confession by examining
the totality of the circumstances, recognized that juveniles were more susceptible to coercive police practices than adults and accordingly concluded that the circumstances surrounding the juvenile's confession must be carefully scrutinized.\footnote{41} The Court reasoned that:

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 . . . . 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 . . . . Mature men might stand the ordeal . . . . 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, crush him.\footnote{42}

Some years later in \textit{Gallegos v. Colorado},\footnote{43} the Supreme Court again held that the admission of a juvenile's confession violated the due process clause.\footnote{44} In \textit{Gallegos}, the police had held a fourteen-year-old boy for five days and interrogated him without access to a lawyer, a parent, or any other “friendly” adult.\footnote{45} The juvenile was ultimately convicted of murder, but the Court found the confession inadmissible and reversed the conviction.\footnote{46} The Court reasoned that teenagers need special pro-

\begin{footnotes}
\footnote{41. \textit{Id.} at 600-01. The factors examined by the Court in \textit{Haley} included the accused’s age, the particular time of day during which he was questioned, the length of the questioning, the lack of friend or counsel to whom the juvenile could turn for advice, and “the callous attitude of the police towards his rights.” \textit{Id.}}
\footnote{42. \textit{Id.} at 599-600.}
\footnote{43. 370 U.S. 49 (1962).}
\footnote{44. \textit{Id.} at 55. The Court stated that the due process clause prohibits a confession which is “so inherently coercive that its very existence is irreconcilable with the possession of mental freedom by a lone suspect against whom its coercive force is brought to bear.” \textit{Id.} at 52 (quoting \textit{Ashcraft v. Tennessee}, 322 U.S. 143, 154 (1944)) (emphasis supplied by the \textit{Gallegos} Court).}
\footnote{45. \textit{Id.} at 50. The juvenile was originally held on charges of assault and robbery. \textit{Id.} Because the victim later died as a result of the assault, the juvenile was also charged with first degree murder. \textit{Id.} The juvenile orally confessed to the assault and robbery immediately upon his arrest, and he also signed a written statement after five days of incommunicado detention. \textit{Id.}}
\footnote{46. \textit{Id.} at 55. The Court looked at the totality of the circumstances to evaluate the validity of the juvenile’s waiver. \textit{Id.} The factors the Court considered were the age of the accused, the length of detention, the failure of the police to send for the juvenile’s parents or to immediately take him before a juvenile court judge, and the lack of adult assistance (either attorney or parent). \textit{Id.} As it had in \textit{Haley}, the Court stressed the juvenile’s youth and immaturity as the factors that determined the invalidity of the juvenile’s waiver. \textit{Id.} at 54-55.}
\end{footnotes}
tection in the form of adult advice in order to equalize the differences in power between the police, as interrogators, and juveniles, as suspects, and in order to alleviate the burden of the juvenile’s own immaturity.\textsuperscript{47}

Because both \textit{Haley} and \textit{Gallegos} were decided prior to \textit{Miranda}, the question remained open whether the Constitution required the police to give the \textit{Miranda} warnings to juveniles. In \textit{In re Gault},\textsuperscript{48} however, the Supreme Court extended fundamental constitutional guarantees, including the privilege against self-incrimination, to juveniles in delinquency proceedings in order to alleviate the unchecked judicial discretion and unfairness of the juvenile court system.\textsuperscript{49} Significantly, the Court stated that if counsel was not present when a juvenile made an admission while in custody, a court must take care to make sure the admission was voluntary “in the sense not only that it was not coerced or suggested, but also that it was not the product of ignorance of rights or of adolescent fantasy, fright or despair.”\textsuperscript{50} However, the opinion in \textit{Gault} was explicitly limited to the adjudicatory stage of the juvenile delinquency determination, leaving unanswered the question whether

\textsuperscript{47} \textit{Id.} at 54-55. The Court reasoned that a juvenile lacks the experience and wisdom necessary to understand the consequences of his or her confession. \textit{Id.} at 54. However, a lawyer, adult relative, or adult friend, the Court suggested, would provide the necessary maturity to place the juvenile on a more equal footing with the police. \textit{Id.} The Court concluded that, without this protection, a juvenile would not be able to know or to assert his or her constitutional rights. \textit{Id.} Therefore, according to the Court, a juvenile’s immature judgment renders him incapable of exercising his constitutional rights. \textit{Id.} at 54-55.


\textsuperscript{49} 387 U.S. at 19-31. The Court observed that the doctrine of \textit{parens patriae} then operating in the juvenile justice system, and the lack of procedural protections engendered by that philosophy, led to arbitrary decisions by juvenile judges and “inadequate or inaccurate findings of fact and unfortunate prescriptions of remedy.” \textit{Id.} at 19-20. The Court then held that in addition to the privilege against self-incrimination, juveniles are entitled to the constitutional rights of notice of charges, confrontation, and cross-examination. \textit{Id.} at 29. The Court had first expressed its dissatisfaction with the juvenile justice system the year before \textit{Gault}, when it held that a juvenile, when relegated to adult criminal proceedings, must receive a hearing replete with due process and fair treatment protection commensurate with that of an adult. \textit{Kent} v. United States, 383 U.S. 541, 561-62 (1966). The Court’s extension of the juvenile’s constitutional rights in \textit{Kent} was not, however, comprehensive. Shortly after \textit{Gault}, for example, the Court declined to extend the right to trial by jury to juvenile proceedings. \textit{McKeiver} v. Pennsylvania, 403 U.S. 528, 545 (1971). The Court was willing to forego some constitutional protections that were unnecessary for a fair proceeding in order to retain some of the advantages of the juvenile system. \textit{Id.} at 534-550.

\textsuperscript{50} 387 U.S. at 55 (footnote omitted).
these protections should be extended to the preadjudicatory stages. 51 Although this question has yet to be addressed by the Supreme Court, 52 many states, by case law or by statute, have independently extended the protections of Miranda to the preadjudicatory stages of juvenile proceedings. 53

Recently, in Fare v. Michael C., 54 the Supreme Court declined to extend special protection to the juvenile or to recognize the special situation of juveniles, as it had done previously in Gault. 55 Moreover, in

51. Id. at 13. The Court refused to decide whether such protections should be extended because “[t]he problems of pre-adjudication treatment of juveniles, and of post-adjudication disposition, are unique to the juvenile process.” Id. at 31 n.48.

The Court stated, however, that “[i]t would be surprising if the privilege against self-incrimination extended to hardened criminals but not to children [because t]he language of the Fifth Amendment . . . is unequivocal and without exception.” Id. at 47.

52. Recently, the Supreme Court noted that it had not yet applied Miranda to exclude evidence obtained in violation of Miranda from the preadjudicatory stages of juvenile proceedings. Fare v. Michael C., 442 U.S. 707, 717 n.4 (1979). In Michael C., the Court again declined to decide that issue, instead assuming that the Miranda principles were fully applicable to the juvenile proceeding that was the subject of the opinion. Id.


55. The Supreme Court held in Michael C. that a juvenile’s request to see his probation officer during custodial interrogation does not invoke the privilege against self-incrimination. Id. at 724. The juvenile had requested to see his probation officer after Miranda warnings were given, and later argued that his request to see his probation officer was akin to an adult’s request to see an attorney and that the subsequent confession should be inadmissible. Id. at 710, 712.

Justice Powell, in a dissenting opinion, disagreed with the majority’s treatment of the juvenile, reasoning that the court in Gault had recognized that “the
reaffirming that the totality of the circumstances approach was sufficient for evaluating whether the confession of a juvenile was a product of a voluntary, knowing, and intelligent waiver of his privilege against self-incrimination, the Supreme Court quelled any speculation that it would provide additional preadjudicatory safeguards to juveniles.56

B. The Admissibility of Juvenile Confessions

While the United States Supreme Court has approved the use of the totality of the circumstances test to evaluate the validity of a juvenile’s waiver of the privilege against self-incrimination,57 several states have afforded additional protections to juveniles during custodial interrogation.58 In order to properly evaluate the Pennsylvania Supreme Court’s particular treatment of this issue, the advantages, disadvantages, and underlying rationale of these protections should be understood.

1. The Totality of the Circumstances Test

Most jurisdictions employ the traditional totality of the circumstances test to decide whether a juvenile has voluntarily, knowingly, and intelligently waived his or her privilege against self-incrimination.59

It must be taken to assure that the admission was voluntary.” Id. at 734 (Powell, J., dissenting) (citation omitted). Justice Powell concluded that under the totality of the circumstances (including age, actual maturity, family environment, education, emotional, mental stability, and previous criminal experiences), the juvenile’s confession in Michael C. was not voluntary. Id. at 734 & n.4. For a discussion of the Court’s previous recognition of the special situation of juveniles, see supra notes 37-53 and accompanying text.

56. In the opinion of one commentator:

For the past three decades the general trend—in case law, statutory law, and commentary—has been to provide a juvenile greater protection than an adult during a custodial interrogation in order to insure the validity of any waiver of rights. The decision in Fare v. Michael C. breaks with this liberal trend by blurring the traditional legal distinction between minors and adults in the custodial situation.


Included as factors in the totality of the circumstances test as applied in Michael C. were the age of the accused, the juvenile’s prior experience with the juvenile court system, the duration of the interrogation, and the methods employed therein. 442 U.S. at 725. Significantly, the Court stated that the totality approach also includes “evaluation of the juvenile’s age, experience, education, background, and intelligence, and . . . whether he has the capacity to understand the warnings given him, the nature of his Fifth Amendment rights, and the consequences of waiving those rights.” Id.

57. For a discussion of the Supreme Court’s approval of the totality of the circumstances test to evaluate a juvenile’s waiver, see supra notes 54-56 and accompanying text.

58. For a discussion of such additional protections, see infra notes 89-114 and accompanying text.

These courts examine the circumstances surrounding the custodial interrogation on a case-by-case basis in order to determine whether the resultant confession is valid. In evaluating the totality of the circumstances, these courts consider several factors: 1) the age, physical condition, intelligence, and level of education of the accused; 2) the juvenile’s prior experience with police proceedings; 3) the juvenile’s access to guidance by an attorney or parent; 4) the extent of the juvenile’s knowledge concerning the substance of the charges and the nature of his or her rights; and 5) the method and length of the interrogation. The premise underlying this approach is that age, alone, is not determinative and that a juvenile is capable of making a decision to waive his constitutional rights.

Proponents of the totality of the circumstances test argue that courts are perfectly capable of evaluating all the circumstances to make an individual determination based on the facts applicable to that juvenile. Additionally, the advocates of this approach suggest that it allows police the flexibility to deal differently with sophisticated juveniles who understand their rights without the artificial constraints of a prophylactic rule that is not needed by such juveniles.

Opponents of the totality of the circumstances approach claim that it does not go far enough in protecting the interests of juveniles. They argue that its “flexibility” leaves too much to judicial discretion, includ-
ing the selection of the factors to evaluate, and the weight to be given to each factor. Further, those opposed to the totality of the circumstances test argue that it presents police with no standard by which to model their practices. Finally, it has been suggested that an examination of the totality of the circumstances may fail to reveal "subtle coercive pressures at work against the particularly susceptible minor."

Many commentators rely on the results of empirical research to support their contention that juveniles, as a class, are incompetent to waive their fifth amendment privilege against self-incrimination. The theory behind this contention is that when society encourages its children to be respectful and obedient to adults, it renders juveniles unlikely to assert their right to remain silent when confronted by the police during custodial investigation. Indeed, psychological studies have shown that even innocent minors frequently confess simply to please an adult. Because of society's emphasis on respect and obedience, juveniles are very susceptible to police pressures and subtle coercion. Furthermore, some juveniles believe that the police are omnipotent and know the juvenile is lying; believing this, the minor may confess to avoid aggravating the situation. Moreover, juveniles lack the emotional maturity of adults and

64. See, e.g., Grisso, supra note 6, at 1138-39; Note, Preadjudicatory Confessions, supra note 6, at 784 (citing Annot., 87 A.L.R.2d 624, 631-33 (1963)). At times, the courts' evaluations of juveniles' waivers have been based on mere speculation. See, e.g., In re Dino, 359 So. 2d 685, 691 (La.), cert. denied, 439 U.S. 1047 (1978). In one commentator's view, the totality of the circumstances test "is an oversimplification often used by courts as a crutch to avoid analysis." Note, Waiver in the Juvenile Court, 68 COLUM. L. REV. 1149, 1156 n.58 (1968) [hereinafter cited as Note, Waiver in the Juvenile Court].

65. Lewis v. State, 259 Ind. 431, 440, 288 N.E.2d 138, 141 (1972) (court adopted per se rule which was later codified at IND. CODE ANN. §§ 31-6-7-3a(1), (2) (Burns 1979)). According to such opponents, the totality of the circumstances test forces the police to consider a myriad of factors and to predict the constitutionality of their actions without guidelines. Id.

66. Comment, Pa. S. Ct. Review, supra note 6, at 711 (juveniles may fear that non-waiver will be viewed as uncooperative attitude and that it would, therefore, be "better" to talk with police). See also Comment, The Judicial Response to Juvenile Confessions: An Examination of the Per Se Rule, 17 DUQ. L. REV. 659, 670 (1978-1979) [hereinafter cited as Comment, The Judicial Response] (questioning totality of circumstances approach because of several noted "conservative applications of the test and disingenuous appraisals of the interrogations of juveniles").

67. Empirical studies would seem to support these commentators' opinions. For a discussion of the results of empirical research, see infra notes 76-88 and accompanying text.


69. Comment, supra note 68, at 419-20.

70. Note, The Admissibility of Juvenile Confessions: Is an Intelligent and Knowing
may, therefore, be more susceptible to confess either in response to feelings of guilt imposed by the police or in an effort to end the traumatic interrogation. Finally, minors in custodial interrogation frequently confess not only to the offense being investigated, but also to other offenses of which the police were unaware. As a result of these characteristics, the courts have come to realize that juveniles' confessions are often inaccurate and unreliable.

Apart from the unreliability of juveniles' confessions, these confessions are also suspect because of concern for the mental capabilities of juveniles. Because of their immaturity and lack of experience, juveniles may lack the mental capacity to understand the nature of their rights or to comprehend the consequences of a waiver of those rights. Additionally, once a juvenile has waived those rights and proceeded to talk with the police, he may not be sophisticated enough to know how or when to halt the questioning by invoking his rights.

2. Empirical Studies

The observations of courts and commentators that juveniles do not comprehend their constitutional rights or the consequences of a waiver of those rights are supported by empirical studies. In 1969, the researchers of one empirical study concluded that only a small percentage


73. See, e.g., In re Gault, 387 U.S. 1, 55 (1967) (citation omitted). As the Supreme Court explained in Gault:

Simply stated, the Court's decision in this case rests upon the considered opinion—after nearly four busy years on the Juvenile Court bench during which the testimony of thousands of such juveniles has been heard—that the statements of adolescents under 18 years of age who are arrested and charged with violations of law are frequently untrustworthy and often distort the truth.

Id. Traditionally, courts have viewed confessions elicited from the interrogation of a juvenile with heightened scrutiny. See 3 J. Wigmore, Treatise on Evidence § 822 (3d ed. 1940). Often a prerequisite to the admissibility of juvenile confessions has been corroboration of the confession. See, e.g., State v. Boswick, 4 Del. (4 Harr.) 563 (1847); Uniform Juvenile Court Act § 27B (extrajudicial statement by minor needs corroboration by other evidence in order to support adjudication of delinquency).

74. See Note, Waiver in the Juvenile Court, supra note 64, at 1165.

75. See Note, supra note 70, at 326-27 n.39 (quoting People v. Burton, 6 Cal. 3d 375, 380, 491 P.2d 793, 797, 99 Cal. Rptr. 1, 5 (1972) ("It is fatuous to assume that a minor in custody will be in a position to call on an attorney for assistance.")).
of juveniles are capable of understanding their *Miranda* rights or of knowingly and intelligently waiving them.76 Furthermore, a simplified version of the *Miranda* warnings did not significantly increase the juveniles' understanding.77

A more recent empirical study sought to determine whether juveniles, as compared with adults, understand the actual words and phrases of the *Miranda* warnings and whether they understand the function and significance of the rights conveyed by the warnings.78 The results of this study buttressed the belief that juveniles are incapable of understanding and constitutionally waiving their fifth amendment rights against self-incrimination. Several significant findings were reported in this study.79

1) Juveniles demonstrated less comprehension than adults of the actual *Miranda* rights.80

2) Juveniles demonstrated less understanding than adults of the meaning of the words used in the *Miranda* warnings.81

3) Juveniles, more than adults, misunderstood the right to counsel (i.e., the right to consult an attorney prior to interrogation and to have counsel present during interrogation).82

4) Juveniles, like adults, generally understood the role of the at-
5) Although most juveniles understood the meaning of the right to remain silent, many did not understand the comprehensiveness of this right, believing that they could later be penalized for invoking their right to silence and that, if questioned by a judge, they would have to explain their criminal involvement.

6) Juveniles younger than fifteen years old and fifteen- to sixteen-year-olds with low I.Q. scores had significantly poorer comprehension of their Miranda rights than adults.

7) Sixteen-year-old juveniles with I.Q.'s of 80 or above understood their rights as well as did older juveniles and young adults.

3. The Per Se Rule

Some jurisdictions, dissatisfied with the protection afforded a juvenile by the totality of the circumstances approach, have adopted a per se rule requiring the participation of a parent or of some other interested adult in the juvenile's waiver of the privilege against self-incrimination. This rule is based on the presumption that a juvenile is incapable of understanding that a confession could later be used against them in court.
ble of waiving his or her constitutional rights without the assistance of an adult. The most protective features of this rule require that an adult who is "interested" in the juvenile's welfare (parent, attorney, or other adult) be advised of the juvenile's constitutional rights and that the juvenile and the adult have an opportunity to consult with one another prior to the waiver. Under the per se rule, waivers made without these protections are automatically excluded. Once the court is satisfied that the protections have been afforded, it may still conduct a traditional totality of the circumstances test, if there is any doubt that the waiver was voluntary, knowing, and intelligent.

The need for an adult and the resultant per se rule are justified partly because of the vulnerability of juveniles. The presence of an adult provides those elements of maturity, mental capabilities, and experience that a juvenile lacks. A second justification for the rule lies in


Such a rule has also been recognized by court decision. See, e.g., Lewis v. State, 259 Ind. 431, 288 N.E.2d 138 (1972) (superseded by IND. CODE ANN. §§ 31-6-7-3a(1), (2) (Burns 1979)); In re J.A.N., 346 N.W.2d 495 (Iowa 1984); In re K.W.B., 500 S.W.2d 275 (Mo. Ct. App. 1973); In re Dino, 359 So. 2d 586 (La.), cert. denied, 438 U.S. 1047 (1978); Commonwealth v. Smith, 472 Pa. 492, 372 A.2d 797 (1977).

This rule has been proposed by drafters of juvenile court standards. See JOINT COMM'N ON JUVENILE JUSTICE STANDARDS, INST. OF JUDICIAL ADMIN. & ABA, STANDARDS RELATING TO POLICE HANDLING OF JUVENILE PROBLEMS 54 (1980) (parent or adult required for valid waiver of juvenile's constitutional rights); Piersma, Ganousis & Kramer, Model Juvenile Act, 20 ST. LOUIS U.L.J. 1, 29 (1975); U.S. DEP'T OF HEALTH, EDUC. & WELFARE, LEGISLATIVE GUIDE FOR DRAFTING FAMILY AND JUVENILE COURT ACTS § 26 (Pub. No. 472 1969).


91. See, e.g., Lewis v. State, 259 Ind. 431, 439, 288 N.E.2d 138, 142 (1972) (superseded by IND. CODE ANN. §§ 31-6-7-3a(1), (2) (Burns 1979)); In re Dino, 359 So. 2d 586, 594 (La.), cert. denied, 439 U.S. 1047 (1978).

92. See generally Comment, The Judicial Response, supra note 66.

93. See, e.g., In re L.B., 33 Colo. App. 1, 4, 513 P.2d 1069, 1070 (1973) (waiver invalid where accused's father was also incarcerated at time of waiver); Daniels v. State, 226 Ga. 269, 273, 174 S.E.2d 422, 424 (1970) (waiver invalid where mother of accused was intoxicated when waiver was made).

94. See, e.g., In re K.W.B., 500 S.W.2d 275, 282 (Mo. Ct. App. 1973) (Miranda protections may be inadequate because juvenile is incapable of understanding his constitutional rights and consequences of any waiver).

95. Note, supra note 70, at 327. It is thought that a parent will provide the added assurances and assistance that will result in a knowing and intelligent waiver of the Miranda rights. See generally Note, Preadjudicatory Confessions, supra note 6.

If the studies conducted on adults' waivers of Miranda rights are equally applicable when adults advise juveniles, such a prophylactic rule would not materially reduce the number of juvenile confessions since most adults waive their own rights and speak freely with the police. Note, supra note 70, at 327-28 (citing Seeburger and Wettick, Miranda in Pittsburgh: A Statistical Study, 29 U. PITT. L. REV. 1 (1967)); Interrogations in New Haven: The Impact of Miranda, 76 YALE L.J. 1519 (1967).
the fact that the goal of the juvenile justice system is rehabilitation rather than retribution. 96 Some courts believe that there is a greater likelihood of rehabilitating juveniles when the minor views the justice system as fair. 97 This perception can be enhanced if the juvenile is provided with adult assistance when confronted by the police. 98 A final reason supporting the per se rule is that the requirement of adult assistance provides a clear guideline for acceptable police interrogation procedures. Under the per se rule, the police are no longer forced to speculate about whether a court will later admit the confession. 99 Rather, absent a lack of voluntariness, a juvenile waiver is admissible if it is made after consultation with an interested and informed adult. 100 It is significant that the parental consent required under the per se rule is consistent with parental consent requirements regarding other decisions concerning juveniles. 101

96. For a discussion of the philosophy underlying the juvenile justice system, see supra notes 25-36 and accompanying text.

97. In re Gault, 387 U.S. at 26. The Court in Gault recognized the historically informal and paternalistic approach of the juvenile courts. Id. The Court noted that studies have shown that fairness engenders a much more impressive and therapeutic attitude in a penalized juvenile thereby garnering the minor's assistance rather than resistance to the rehabilitative effort. Id. (citation omitted).

98. Since rehabilitation should begin as soon as a minor comes into contact with the juvenile justice system, the minor's initial impression must be one of fairness so that the system will not inculcate in the juvenile a disrespect for authority. Davis, Justice for the Juvenile: The Decision to Arrest and Due Process, 1971 Duke L.J. 913, 924.

99. Lewis v. State, 259 Ind. 531, 436, 440, 288 N.E.2d 138, 141, 142 (1972) (superseded by IND. CODE ANN. §§ 31-6-7-3a(I), (2) (Burns 1979)).

100. Id.

101. Id. In many states, for example, a minor may not sue or be sued alone. Harris, Children's Waiver of Miranda Rights and the Supreme Court's Decisions in Parham, Bellotti, and Fare, 10 N.M.L. REV. 379, 379 (1980). A child may also need parental approval to receive medical or dental treatment, to donate blood, or to be tattooed. Note, supra note 70, at 321.

Presumably, a child's decision to waive constitutional rights, thereby facing possible imprisonment, is just as important as deciding whether to be tattooed and thus the child should similarly be afforded the benefit of parental consultation, advice, and consent. As one commentator has observed:

The decision to waive Miranda rights is in essence a relinquishment of the basic right to resist state intervention into one's life and represents agreement to cooperate by producing powerful evidence of criminal conduct against oneself . . . . The decision is particularly difficult because, to make a wise choice, the suspect must be able to relate the abstract warnings to the reality of the potential consequences of a waiver in a later criminal prosecution. . . . The practical consequences, then, of decisions to waive Miranda rights can be as great as the consequences of decisions to have an abortion or to forego mental hospitalization.

Harris, supra, at 405-06 (footnotes omitted). Such decisions should be made only with the benefit of mature thought and analysis.

At least one commentator has also noted the parents' interest in advising their child regarding waiver of Miranda rights. Id. at 401. If the parents are
Those opposed to the per se rule argue that it neither eliminates speculation nor provides clear standards to guide the police. Critics have observed that under the per se rule, the courts and police must evaluate whether the parent was “interested,” whether the warnings were understood by the parent, and whether the juvenile and parent consulted after the parent was advised of the juvenile’s rights. Such a determination usually requires inquiry into the totality of the circumstances, thereby subsuming part of the value of the parental consultation requirement. In addition, the value of the presence of a parent as a protector of the child’s rights has been questioned because studies have shown that parents often are no more able than juveniles to make a knowing and intelligent waiver. Moreover, the parental requirement has been regarded as worthless insofar as the parent fails to advise the child or insofar as the parent advises the child not to withhold any information from the authorities.

Critics also have argued that the per se rule is far too restrictive of police activities. First, criminal investigations may be slowed while the police attempt to locate the parents of a juvenile. Second, the rigidity of the rule may result in the suppression of confessions that would have been admissible under an evaluation of the totality of the circumstances. It is argued, therefore, that the rule is overly protective of sophisticated juveniles who are competent to independently deny the opportunity to advise their child, “[the parents will] lose a significant opportunity to assert their rights to custody and control of [their child] and to inculcate him with their values.”

102. See generally Comment, The Judicial Response, supra note 66, at 692-84.
103. See id.
104. Id. The value of the presence of a parent has also been questioned because the parent’s presence may not be in the minor’s best interests, the juvenile may confess to avoid parental disapproval, or the parent’s own judgment may be negatively influenced by the parent’s embarrassment or anger at the juvenile’s predicament. Comment, Interrogation of Juveniles: The Right to a Parent’s Presence, 77 DICK. L. REV. 543, 555-56 (1973). A parent may be hostile or uncaring, thereby negating the potential benefit of an “interested” adult’s advice. See Note, Preadjudicatory Confessions, supra note 6, at 783. For this reason, one commentator has supported a proposal requiring the presence of an attorney prior to a juvenile waiver.
105. See Grisso, supra note 6, at 1163. One study indicated that 75% of the participating parents felt children should never withhold information from the police. Id. (citing Grisso & Ring, Parents’ Attitudes Toward Juvenile’s Rights in Interrogation, 7 CRIM. JUST. & BEHAV. 211 (1979)).
106. See, e.g., Fare v. Michael C., 442 U.S. 707, 725-26 (1979) (recognizing the state’s interest in not imposing rigid restraints on the police).
107. See Note, Preadjudicatory Confessions, supra note 6, at 782 n.32. Proponents of the rule have countered with the argument that although the police inquiry must be halted until a parent is contacted, most parents are in fact located within a reasonable time.
waive their rights.\textsuperscript{109} Third, those opposed to the prophylactic effect of the per se rule claim that it is an overzealous attempt to protect juveniles and that it ignores or undervalues the competing need to protect the public from crime.\textsuperscript{110}

4. \textit{Supplementary Protections for Juveniles}

Some jurisdictions, reasoning that the presence of a parent is not enough protection for the juvenile, have adopted supplementary protections to the per se rule. One such protection is the requirement of the presence of an attorney during the custodial interrogation.\textsuperscript{111} Advocates of such an approach argue that a juvenile's non-waivable right to an attorney will ensure that the juvenile's waiver of his or her fifth amendment privilege against self-incrimination will be knowing and intelligent and compensate for the shortcomings of the per se rule with respect to inadequate advice by parents.\textsuperscript{112} Still other jurisdictions have provided additional protections to the per se rule in the form of presumptions of inadmissibility rebuttable only by proof beyond a reasonable doubt\textsuperscript{113} and statutory directives requiring the police to take juveniles before the juvenile court immediately upon arrest.\textsuperscript{114}

\section*{IV. PENNSYLVANIA COURTS AND JUVENILE CONFESSIONS}

The Pennsylvania Supreme Court has authored numerous fre-
quently cited opinions on the issue of a juvenile's waiver of his or her privilege against self-incrimination. Until ten years ago, the Pennsylvania courts routinely employed the totality of the circumstances test to determine the validity of a juvenile's waiver. Then, the court shifted towards, and eventually adopted, a per se rule. After defining and interpreting the parameters of the per se rule, the court gradually relaxed the rule's rigid requirements. Recently, however, the court has completely abandoned the per se rule and reverted to the use of the totality of the circumstances test. The following discussion will trace the metamorphosis of the court's approach to juveniles' waivers of constitutional rights.

A. Pennsylvania's Totality of the Circumstances Approach

Traditionally, the Pennsylvania Supreme Court espoused an evaluation of the totality of the circumstances when determining whether a waiver and subsequent confession were valid. Although cognizant of the fact that a juvenile defendant should not be judged by the more exacting standards applicable to a mature adult, the court nevertheless continued to decide whether a juvenile's waiver was voluntary and intelligent by looking to all the circumstances surrounding the waiver. Applying this standard in Commonwealth v. Darden, the Pennsylvania Supreme Court concluded that a fifteen-year-old defendant, Darden, had knowingly and understandingly waived his constitutional right to

115. For a discussion of several of these opinions, see infra notes 120-168 and accompanying text. These Pennsylvania cases have been cited as authority by advocates of divergent positions concerning the Pennsylvania Supreme Court's historical adherence to, subsequent rejection of, and recent readoption of the totality of the circumstances test. Compare Note, supra note 70, at 328 ("It is not likely... that the [Pennsylvania] [S]upreme [C]ourt will give up its right to judicial discretion in this issue or that the majority will change its opinion on the 'sophistication' of the average sixteen-year-old.") with Comment, Pa. S. Ct. Review, supra note 6, at 709-10 ("The [Pennsylvania Supreme C]ourt's adoption of a per se rule is in accord with the progressive trend in American jurisprudence... it should be viewed as a significant step toward the meaningful protection of juveniles.").

116. For a discussion of this earlier use of the totality of the circumstances test, see infra notes 120-128 and accompanying text.

117. For a discussion of the formulation of the per se rule, see infra notes 129-148 and accompanying text.

118. For a discussion of this gradual change, see infra notes 149-160 and accompanying text.

119. For a discussion of the court's return to the totality of the circumstances test, see infra notes 161-168 and accompanying text.


Darden had given an incriminating statement after two and one-half hours of police questioning and after four hours of police custody. The court stated that Darden should not "be judged by the more exacting standards of maturity" but concluded that all of the circumstances indicated that his waiver had been knowing and voluntary.

In Commonwealth v. Moses, the Pennsylvania Supreme Court reaffirmed the totality of the circumstances test as the appropriate method for evaluating the validity of a juvenile’s waiver. The court reiterated its previous determination that a waiver by a juvenile must be scrutinized with special care and reasoned that adoption of a per se rule "would be to ignore reality and the sophistication of the average six-

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123. 441 Pa. at 48, 271 A.2d at 260. Darden was involved in one of several fights that erupted in a high school parking lot following a baseball game. Id. at 42, 271 A.2d at 258. During one of the fights, another youth was fatally stabbed. Id. Darden was ultimately convicted of the murder. Id. at 43, 271 A.2d at 258.

124. Id. at 44-45, 271 A.2d at 258-59. Darden admitted unintentionally stabbing the victim. Id. at 45-46, 271 A.2d at 259. Darden was given the Miranda warnings twice, once shortly after being detained, and once after being confined in a holding cell from 2:00 a.m. until 3:00 a.m. Id. After each warning, Darden was asked if he understood the warnings, and he replied in the affirmative. Id. Immediately thereafter, police interrogation ensued. Id.

The evidence indicated that Darden had been drinking alcohol that evening. Id. Furthermore, the testimony of a psychologist indicated that Darden had an I.Q. of 76, a level revealing mild retardation and functioning equivalent to that of an average youth of 8 to 11½ years. Id. at 47, 271 A.2d at 259-60.

125. Id. at 48, 271 A.2d at 260. The court noted that a reading of Darden’s own testimony showed that he had the requisite ability to understand his rights; the trial court had described him as "remarkably alert, aware and responsive." Id. at 48 n.3, 271 A.2d at 260 n.3. At another point in the opinion, the court explained that it was significant that Darden did not deny that he was given the Miranda warnings, and even more significantly that he never said nor indicated that he did not understand the warnings. Id. at 47-48, 271 A.2d at 259-60.

The dissenting opinion argued that Darden could not have waived his rights without first obtaining advice from an adult friend or counsel. Id. at 52, 271 A.2d at 262 (Roberts, J., dissenting). Justice Roberts concluded that, under the totality of the circumstances, Darden was incapable of understanding and making a knowing waiver of his rights. Id. at 53, 291 A.2d at 263-64 (Roberts, J., dissenting). Justice Roberts pointed out the recognized immaturity of juveniles espoused by the United States Supreme Court in Haley and Gallegos. Id. at 54-55, 271 A.2d at 264 (Roberts, J., dissenting). For a discussion of Haley, see supra notes 37-42 and accompanying text. For a discussion of Gallegos, see supra notes 43-47 and accompanying text.


127. 446 Pa. at 351, 287 A.2d at 132. In Moses, the defendant argued that a juvenile lacks the ability to fully understand and assert his or her constitutional rights, thus rendering invalid any waiver given by a juvenile in the absence of adult advice. Id. at 354, 287 A.2d at 133. The sixteen-year-old defendant, Leonard Moses, was convicted of murder. Id. at 351, 287 A.2d at 132. In reaffirming the totality of the circumstances rule, the court explained that the validity of a waiver depends on all of the attendant circumstances, including the age, maturity, and intelligence of the accused. Id. at 354, 287 A.2d at 132.
teen-year-old in these days and times." 128

B. Fashioning a Per Se Rule in Pennsylvania

The first in a trilogy of Pennsylvania cases that developed a per se exclusionary rule for juvenile waivers made in the absence of adult guidance was Commonwealth v. Roane. 129 In that case, sixteen-year-old Daryl Roane was arrested at his home for robbery and murder. 130 His mother followed him to the police station but was denied access to her son and the opportunity to speak with him alone. 131 The supreme court suppressed the juvenile's confession, holding that when a parent refuses to allow the child to be questioned, the state bears a heavy burden to prove that any waiver by the child was knowing and voluntary. 132 The court stated that "[a]n important factor in establishing that a juvenile's waiver

128. Id. at 354, 287 A.2d at 133. Examining the attendant circumstances, the court concluded that Moses, a tenth-grade student with average intelligence, had validly waived his rights and that his subsequent statements were admissible. Id. at 355, 287 A.2d at 133.

Justice Roberts, in a lengthy dissent, strongly objected to the majority's assumptions concerning the average sixteen-year-old. Id. at 356-57, 287 A.2d at 135-36 (Roberts, J., dissenting). Justice Roberts stated that, in rejecting the proffered per se rule, the majority had put forth a new per se rule, that the "average" sixteen-year-old is capable of waiving constitutional rights. Id. at 360, 287 A.2d at 135-36 (Roberts, J., dissenting). Justice Roberts observed that "[t]he need for adult guidance when juveniles are called upon to decide whether to surrender their Miranda rights has been universally recognized by leading commentators" and therefore he supported the adoption of a rule requiring adult guidance prior to an effective juvenile waiver. Id. at 368, 287 A.2d at 140 (Roberts, J., dissenting) (citations omitted).


130. Id. at 391-92, 329 A.2d at 287.

131. Id. When Daryl was arrested at his home, his mother informed the police that she would be following them to the station. Id. When Mrs. Roane arrived at the station, she was given no information concerning her son's whereabouts. Id. Over an hour later, she saw her son in the hall and attempted to talk to him, but was denied the opportunity because Darvl was taken away to another room. Id. After approximately another hour, she saw her son being led to another interrogation room, which Mrs. Roane entered uninvited. Id. Mrs. Roane was allowed to speak to her son, but only if she kept her voice loud enough for the police to hear what she was saying. Id. The police ignored her repeated requests that an attorney be present and that the police not take a statement from her son. Id.

132. Id. at 393, 329 A.2d at 288. The court expressly followed the reasoning of the United States Supreme Court in Gault, noting that the greatest care must be taken to assure that an admission by a juvenile is voluntary and "not the product of ignorance of rights, or an adolescent fantasy, fright or despair." Id. (quoting In re Gault, 387 U.S. at 53). For a discussion of Gault, see supra notes 48-51 and accompanying text.
was a knowing and intelligent one would be evidence that, before he made his decision to waive those rights, he had access to the advice of a parent, attorney, or other adult who was primarily interested in his welfare.”

Shortly thereafter in Commonwealth v. Starkes, the court held that in order for a juvenile to validly waive his right against self-incrimination when his parent is present, the parent must be advised of the child’s rights prior to the waiver. Without such a requirement, the court pointed out, the juvenile would be advised by an uninformed adult, which would thereby make the requirement of the adult’s presence meaningless.

In Commonwealth v. McCutchen, the Pennsylvania Supreme Court held that the confession of a fifteen-year-old should be suppressed when the confession was given without the benefit of parental or interested

133. 459 Pa. at 394, 329 A.2d at 288. The court relied on the United States Supreme Court’s reasoning in Gallegos that without adult guidance, a juvenile, because of his or her diminished mental abilities and immaturity, is not able to understand and to assert constitutional rights or to realize the consequences of failing to do so. Id. (quoting Gallegos, 390 U.S. at 54-55). For a discussion of Gallegos, see supra notes 43-47 and accompanying text.

Justice Eagens, in a dissenting opinion in Roane, argued that the majority’s prophylactic rule was unrealistic and overlooked the actual determination that should have been made—whether Daryl, under the totality of the circumstances, had waived his rights. 459 Pa. at 397, 329 A.2d at 289-90 (Eagens, J., dissenting). Justice Eagens concluded that Daryl had in fact knowingly waived his rights, and that the fact that an adult expressed a different view should not affect the ability of a sixteen-year-old to waive such rights. Id. at 398, 329 A.2d at 290 (Eagens, J., dissenting).


135. Id. at 189, 335 A.2d at 703. In Starkes, the defendant made an inculpatory statement to the police after conferring with his mother. Id. at 188-89, 335 A.2d at 703. Initially, the defendant had denied any involvement in a robbery-murder the police were investigating. Id. His mother had not been informed of her son’s constitutional rights prior to her conversation with her son. Id. During the conversation, defendant’s mother encouraged him to tell the truth. Id.

In assessing the voluntariness of the juvenile’s waiver, the court considered all of the attendant facts and circumstances, including the accused’s age, intelligence, and mental and physical development. Id. at 185, 335 A.2d at 701. The court again stressed the importance of prior adult advice in determining whether a juvenile’s waiver was knowing and intelligent. Id. at 185-86, 335 A.2d at 701. Such advice would compensate for a juvenile’s immaturity that “deprives [him] of the sober judgment possessed by the average adult.” Id. at 186, 335 A.2d at 702. Because the defendant’s mother was not informed of her son’s rights prior to her urging him to tell the truth, his statements were held inadmissible. Id. at 188-89, 335 A.2d at 703.

136. Id. at 188-89, 335 A.2d at 703. The court viewed the advice of an uninformed adult as meaningless because the child receiving such advice would be given the illusion of protection, but would in fact be relying on someone incapable of protecting his or her rights. Id. Again, the dissent argued that waiver of constitutional rights was a matter of individual choice. Id. at 190-91, 335 A.2d at 704 (Eagen, J., dissenting).

adult guidance. The court concluded that its decision in Roane mandated consultation with a parent prior to an effective waiver by a juvenile.139

Shortly after McCutchen, the court seemed to vacillate on whether to retain a per se rule.140 In Commonwealth v. Webster,141 the court ruled that the police may not interfere with a juvenile's consultation with his or her parent, and, moreover, that the police must make a reasonable effort to provide a minor with the opportunity to confer with an interested and informed adult before waiving his or her rights.142 In a footnote, however, the court rejected a rule that would automatically exclude a juvenile's confession if the police had obtained it in the absence of such advice.143

In spite of the language of the Pennsylvania Supreme Court in Webster, Pennsylvania courts thereafter routinely excluded confessions obtained from a juvenile who was not afforded an opportunity to consult with a parent or other interested adult prior to waiving his or her constitutional rights.144 The supreme court also proceeded to refine and

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138. 463 Pa. at 92, 343 A.2d at 670. In McCutchen, the defendant was convicted of murder and sodomy. Id. During custodial interrogation, the defendant had made two confessions. Id. He had been permitted to speak with his mother only before giving the second confession. Id.

139. Id. The court summarily rejected the Commonwealth's argument that the defendant's confession was voluntary because he never requested his mother's presence and because of his prior experiences with the police. Id. For a discussion of Roane, see supra notes 129-33 and accompanying text.

140. For a discussion of McCutchen, see supra notes 137-39 and accompanying text.


142. Id. at 326, 353 A.2d at 378. In Webster, a sixteen year old child, unaccompanied by an adult, was being questioned as a witness in a murder investigation when the police obtained information that he was actually implicated. Id. at 327, 353 A.2d at 378. The police called his mother to obtain permission to continue the questioning of the son as a suspect but never advised her of his rights with respect to the questioning. Id.

143. Id. at 327, 353 A.2d at 378. Rather, the court explained, "the younger and more immature the offender the greater is the government's responsibility to provide an opportunity for the counselling of an attorney or the guidance of an informed parent or guardian." Id. at 327 n.5, 353 A.2d at 378 n.5 (citing Note, Due Process Reasons for Excluding Juvenile Court Confessions from Criminal Trials, 50 CALIF. L. REV. 902 (1962)). The court concluded, however, that the defendant's statement had been improperly admitted into evidence. 466 Pa. at 324, 353 A.2d at 379. The dissent observed that the majority had indeed applied a per se exclusionary rule. Id. at 329, 353 A.2d at 379-80 (Pomeroy, J., dissenting). The dissent added that "this ill-conceived per se rule . . . is . . . totally without basis in law or logic." Id. at 329, 353 A.2d at 379 (Pomeroy, J., dissenting). The dissent argued that the constitutional rights of a defendant were personal to the individual, therefore necessitating an inquiry into the totality of the circumstances. Id.

144. See, e.g., Commonwealth v. Gaskins, 471 Pa. 238, 369 A.2d 1285 (1977) (confession of sixteen-year-old without prior consultation of parent was suppressed); Commonwealth v. Smith, 465 Pa. 310, 350 A.2d 410 (1976) (statement obtained after third interrogation and without previous consultation with
elaborate the requirements for a valid waiver. In this regard, the parent was suppressed); Commonwealth v. Chaney, 465 Pa. 407, 350 A.2d 829 (1975) (sixteen-year-old’s waiver obtained prior to consultation with mother is ineffective); Commonwealth v. Riggs, 464 Pa. 208, 348 A.2d 429 (1975) (waiver made without benefit of counsel or adult guidance is involuntary). These courts relied on Roane and its progeny in ruling that such waivers were ineffective. See, e.g., Commonwealth v. Chaney, 465 Pa. 407, 409, 350 A.2d 829, 830 (1975) (“[McCUTCHEON, STARKES and Roane] held that absent a showing that a juvenile had an opportunity to consult with an interested and informed parent or adult or counsel before he waived his Miranda rights, his waiver will be ineffectual.”).

The requirements of the rule and its rationale have been succinctly stated:

Because of the unique disadvantage in the custodial interrogation process of the youthful accused due to his immaturity, it was recognized that merely a consideration of the fact of youth in the totality of the circumstances formation . . . was inadequate to insure that a juvenile’s waiver was indeed a knowing one . . . . The administering of Miranda warnings to a juvenile, without providing an opportunity to that juvenile to consult with a mature, informed individual concerned primarily with the interest of the juvenile, was inadequate to offset the disadvantage occasioned by his youth. The new rule appreciates that the inexperience of the minor affects not only his or her ability to understand the full implication and consequences of the predicament but also renders the judgment inadequate to assess the spectrum of considerations encompassed in the waiver decision. It was therefore reasoned that the impediment of immaturity can only be overcome where the record establishes that the youth had access to the advice of an attorney, parent, or other interested adult and that the consulted adult was informed as to the constitutional rights available to the minor and aware of the consequences that might follow the election to be made.


In dissenting opinions, Justice Pomeroy continued to argue that the per se rule was “unwise, unnecessary and unwarranted” and that the rule merely substituted the judgment of an adult for that of a minor. Commonwealth v. Chaney, 465 Pa. 407, 409, 350 A.2d 829, 831 (1975) (Pomeroy, J., dissenting). See also Smith, 472 Pa. 492, 372 A.2d 797. The dissent in Smith argued that the per se rule was “unnecessarily protective and overly paternalistic,” precluding police questioning until a suitable mentor could be located. Id. at 508-09, 372 A.2d at 804-05 (Pomeroy, J., dissenting). Furthermore, the dissent argued that [there] is no guarantee that a subsequent waiver by the minor of his rights is truly voluntary. Circumstances are easily imaginable where a minor who would not otherwise cooperate with the police will do so on the advice of a parent who, although aware of the nature of the minor’s rights, nevertheless advises him to tell the police the truth. The only way to prevent this is to inquire also into what advice is actually given by the adult and then pass judgment on whether that advice helped the juvenile do what was best for himself in that situation. Are we to say that the nature and content of a consultation between a minor and a parent or other adult are to be examined by a suppression court, that the soundness of the advice given must be evaluated and the validity of the confession determined in the light of such findings? If so, a new and, I submit, unnecessary avenue of inquiry will be opened without any corresponding improvement in the ability of the court to fulfill its function of determining the voluntariness of a juvenile confession.

Id. at 508-09, 372 A.2d at 805 (Pomeroy, J., dissenting) (footnote omitted).

145. See, e.g., Commonwealth v. Gaskins, 471 Pa. 238, 369 A.2d 1285
court ruled that unless the adult or parent consultant was "interested" in the welfare of the minor, the minor's waiver would be ineffective. Further, the court clarified the requirement that the adult must be "informed," and explained the requirement that the minor must be given an "opportunity to consult" with a parent.

C. The Presumption of Incompetency to Waive

The Pennsylvania Supreme Court has never unanimously adopted either the totality of the circumstances or the per se test. Increasingly dissatisfied with the inflexibility of the per se rule, the court began to relax the rule's requirements. In Commonwealth v. Veltre an equally divided court affirmed a juvenile's conviction on murder and rape charges, ruling that his confession was admissible under the totality of (1977). The court stated that the mere offer by the police to allow a mother to accompany her sixteen-year-old son to the station failed to satisfy the requirement of an opportunity to consult prior to an effective waiver. Id. at 241, 269 A.2d at 1286.


148. Commonwealth v. McFadden, 470 Pa. 604, 369 A.2d 1156 (1977) (ten minutes alone with mother in living room while handcuffed to a chair provided a sufficient "opportunity to consult").

149. See, e.g., supra notes 133-44.

150. See, e.g., Commonwealth v. Nelson, 488 Pa. 148, 411 A.2d 740 (1980). In Nelson, an equally divided court affirmed the lower court's suppression of the juvenile's statement, concluding that he had not been provided an opportunity to consult with an interested adult prior to waiving his right against self-incrimination. Id. at 152-53, 411 A.2d at 742. The opinion in support of reversal proposed an alternative test: a juvenile's waiver made in the absence of an adult would be effective when the accused's age, experience, and intelligence indicated that the "presence of an interested adult [would] not significantly contribute to [the minor's] comprehension and understanding of the situation." Id. at 162, 411 A.2d at 747 (Larsen, J., opinion in support of reversal). Given that the appellee was two months younger than eighteen, was experienced with the criminal justice system, and comprehended his constitutional rights, the opinion concluded that no purpose would be served by "drawing a 'brightline' at the magical moment appellee reaches the age of eighteen." Id. Since under the totality of the circumstances the juvenile had waived his constitutional right to remain silent, the opinion recommended reversal of the suppression of the confession. Id. at 163-64, 411 A.2d at 747 (Larsen, J., opinion in support of reversal).

the circumstances. The court declined to apply the per se rule because the purpose of the rule—preventing the loss of constitutional protection as a result of “the innocence and inexperience of youth being taken advantage of by overbearing interrogation—would not be advanced” in Veltre. The court leaned toward rejecting the per se rule in favor of the more flexible approach that includes youth, inexperience, and comprehension as factors.

Recently, in Commonwealth v. Christmas, a majority of the court overruled the previously espoused per se rule. The defendant in Christmas was almost eighteen years old when he was arrested for possession of 744 packets of heroin. Although the minor had consulted with his father prior to confessing, there was no evidence that his father had been informed of his son’s constitutional rights prior to their consultation. Reasoning that the goal of the per se rule—the protection of

152. Id. at 243-44, 424 A.2d at 488-89. The lower court had admitted inculpatory statements made by a sixteen-year-old juvenile. Id. at 239, 424 A.2d at 486. The juvenile, Veltre, was convicted of the brutal rape of a woman and of murdering the woman and her two-year-old daughter. Id. at 239-40, 424 A.2d at 486. After a conversation with his probation officer, Veltre waived his right to remain silent. Id. at 240-41, 424 A.2d at 487. The court cited the juvenile’s age (13 months under the age of maturity), previous experience with the criminal justice system, demonstrated understanding of his rights, and consultation with his probation officer as relevant factors in this determination. Id. at 242, 424 A.2d at 487.

153. Id. at 242, 424 A.2d at 487. The court concluded that Veltre was not the innocent, inexperienced youth the per se rule was designed to protect. Id. at 242-43, 424 A.2d at 489. Rather, the court argued that application of the per se rule would merely result in the senseless exclusion of reliable evidence and the needless repetition of a fair trial. Id. at 243, 424 A.2d at 489.

154. See id. at 243, 424 A.2d at 489. The court postulated that the presence of an interested adult was not necessary for all juveniles. Id.

Taking the opposite view, the opinion in support of reversal urged adherence to the “interested” adult rule to safeguard the interests of juveniles. Id. at 244-45, 424 A.2d at 489 (Roberts, J., opinion in support of reversal). Justice Roberts asserted that “the interested adult rule reflects the jurisprudential wisdom of the observation that . . . ‘[t]he quality of a nation’s civilization can be largely measured by the methods used in the enforcement of its criminal laws.’” Id. at 245, 424 A.2d at 489-490 (quoting Schaefer, Federalism and State Criminal Procedure, 70 Harv. L. Rev. 1, 26 (1956)). He also noted that the clear trend in other jurisdictions was towards the adoption of an “interested” adult requirement for valid juvenile waivers. Id. at 245, 424 A.2d at 490.

Justice Nix, in a separate opinion in support of reversal, emphasized that the characterization of the “interested” adult rule as a per se rule was a misnomer because a juvenile could give a statement that would later be admitted at trial if an adult had advised the juvenile to waive his rights. Id. at 248, 424 A.2d at 491 (Nix, J., opinion in support of reversal). Further, Justice Nix argued that the record in Veltre did not support the conclusion that the juvenile was streetwise because there was evidence that the minor was severely retarded and mentally ill. Id. at 249, 424 A.2d at 491.


156. Id. at 220, 465 A.2d at 991.

157. Id. Ironically, the juvenile defendant’s father was a police officer. Id.
the juvenile's interests—could be achieved in a manner that would also protect the interests of society.\textsuperscript{158} the court stepped back from the per se rule in deciding that adequate protections would be afforded by a presumption that a juvenile is incapable of waiving his constitutional rights without prior consultation with an "interested" and informed adult.\textsuperscript{159} This presumption, the court concluded, could be rebutted only when the evidence clearly demonstrated that, under the totality of the circumstances, the juvenile had made a voluntary, knowing, and intelligent waiver of his or her rights.\textsuperscript{160}

D. Return to Totality of the Circumstances

Recently, in \textit{Commonwealth v. Williams},\textsuperscript{161} the Pennsylvania Supreme Court abandoned the presumption established in \textit{Christmas}\textsuperscript{162} and re-adopted the totality of the circumstances test for purposes of evaluating

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\item\textsuperscript{158} \textit{Id.} at 223, 465 A.2d at 992. The majority reasoned that the per se rule served to suppress juvenile confessions that were in fact rendered in a knowing, intelligent, and voluntary manner. \textit{Id.}
\item\textsuperscript{159} \textit{Id.}
\item\textsuperscript{160} \textit{Id.} The majority reasoned that the use of this presumption adequately served the competing interests of the juvenile and society. \textit{Id.} The court explained that the presumption of inadmissibility would protect the ordinary juvenile from his or her immaturity yet, in extreme cases of clear waiver, the waiver of a juvenile would be valid under an examination of the surrounding circumstances. \textit{Id.} Considering the totality of the circumstances, the majority concluded that the juvenile in \textit{Christmas} had validly waived his rights even though he had not consulted with an "informed adult." \textit{Id.} at 22-24, 465 A.2d at 992-93. Although the juvenile's father had not been advised of his son's constitutional rights prior to consultation, the court stated that this deficiency was overcome by the youth's relative maturity and prior experience in the legal system. \textit{Id.} at 224, 465 A.2d at 992-93. The juvenile had been arrested 17 times before, adjudicated delinquent three times, and committed to two different youth detention centers. \textit{Id.}

The concurring opinion in \textit{Christmas} supported the abandonment of the per se rule but disagreed with the adoption of the presumption espoused by the majority, believing that it muddled and confused the analysis. \textit{Id.} at 225, 465 A.2d at 993 (Larsen, J., concurring). Justice Larsen reasoned that, in addition to permitting an inference, a presumption shifts the burden of proof. \textit{Id.} at 224-25, 465 A.2d at 992 (Larsen, J., concurring). Adoption of this presumption, Justice Larsen concluded, might confuse that issue since the Commonwealth always has had the burden of proving that a waiver was voluntary, knowing, and intelligent. \textit{Id.} Justice Larsen, therefore, would have reverted to the totality of the circumstances analysis which, in his view, previously had proved successful. \textit{Id.}

Justice Hutchins, in a separate concurring opinion, also favored abandonment of the per se rule and readoption of the totality of the circumstances approach with youth, experience, and need for adult consultation considered as factors in that approach. \textit{Id.} at 227-28, 465 A.2d at 494 (Hutchins, J., concurring).
\item\textsuperscript{161} 504 Pa. 511, 475 A.2d 1283 (1984).
\item\textsuperscript{162} \textit{Id.} at 521, 475 A.2d at 1288. The court stated that the presumption served "no analytical purpose" since it merely reaffirmed the Commonwealth's burden of proof. \textit{Id.}
the validity of a juvenile's waiver.\textsuperscript{163} In \textit{Williams}, a juvenile defendant was arrested for robbery six months before his eighteenth birthday.\textsuperscript{164} In applying a totality of the circumstances test, the court explained that the youth of the accused, his or her experience and comprehension of the constitutional rights involved, and the presence or absence of an interested adult are to be considered, but that no single factor is determinative.\textsuperscript{165}

In his concurring opinion in \textit{Williams}, Justice Flaherty argued that the totality of the circumstances analysis provided inadequate protection for juveniles because of its failure to recognize that the opportunity to consult with an interested and informed adult is a necessary safeguard of a juvenile's constitutional rights.\textsuperscript{166} Justices Nix and Zappala, in individual dissenting opinions, strongly objected to the majority's reversion to the totality of the circumstances approach.\textsuperscript{167} Since, in their view, the majority's approach abandoned any modicum of protection afforded by the rebuttable presumption of \textit{Christmas}, the dissenting Justices contended that a per se exclusionary rule should be applied to all juvenile waivers obtained by the police without first allowing the juvenile to consult with an interested and informed adult.\textsuperscript{168}

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  \item \textsuperscript{163} For a discussion of previous Pennsylvania cases decided under the totality of the circumstances test, see supra notes 120-28 and accompanying text. In \textit{Williams}, the defendant waived his constitutional rights after consultation with his father. 504 Pa. at 514-15, 475 A.2d at 1284-85. The lower court, however, suppressed Williams' subsequent inculpatory statement on the ground that the father had not been advised of his son's rights prior to the consultation. \textit{Id.}
  
  After tracing the applicable Pennsylvania case law, the court determined that the requirements of due process are satisfied by an examination of the totality of the circumstances. \textit{Id.} at 521, 475 A.2d at 1288.
  
  \textsuperscript{164} 504 Pa. at 514, 475 A.2d at 1284.
  
  \textsuperscript{165} \textit{Id.} at 521, 475 A.2d at 1288.
  
  \textsuperscript{166} \textit{Id.}, at 522-23, 475 A.2d at 1288 (Flaherty, J., concurring). Justice Flaherty reasoned that the presumption was necessary because most juveniles suffer from a diminished capacity to understand the consequences of their actions, to resist police coercion, and to make adequate judgments. \textit{Id.} at 523-24, 475 A.2d at 1289 (Flaherty, J., concurring). He concluded that the analytical framework of the totality of the circumstances test was inadequate because it failed to recognize the vulnerable position of a minor. \textit{Id.}
  
  \textsuperscript{167} \textit{Id.} at 524-26, 475 A.2d at 1289 (Nix, J., dissenting); \textit{id.} at 526-28, 475 A.2d at 1290 (Zappala, J., dissenting).
  
  \textsuperscript{168} 504 Pa. at 524-26, 475 A.2d at 1289 (Nix, J., dissenting); \textit{id.} at 526-28, 475 A.2d at 1290 (Zappala, J., dissenting). Both justices claimed that they had joined the majority in \textit{Christmas} only to preserve some modicum of protection for juveniles. \textit{Id.} Apparently both justices felt that the irrebuttable presumption was an appropriate compromise to prevent reversion to the former totality of the circumstances standard.
  
  Justice Nix reasoned that the majority's retreat from the per se rule in recent cases had been motivated in large part by a need to respond to the heinous nature of the crimes involved in those cases. 504 Pa. at 525, 475 A.2d at 1290 (Nix, J., dissenting). Justice Nix observed that \\
  \phantom{[t]}this capability on the part of some juveniles, however, does not warrant a relaxing of our vigil in determining whether the custodial state-
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The Pennsylvania judiciary has come full circle in its rulings on the appropriate standard for determining the validity of a juvenile’s waiver of his or her right against self-incrimination. The court moved first from the traditional totality of the circumstances test to a rigid per se rule, excluding juvenile confessions obtained without prior consultation with an interested and informed adult. Over the course of the last few years, the court developed exceptions to the per se rule and then, recently, abandoned the rule completely and reverted to the former totality of the circumstances standard.

The court’s previous adoption of the per se rule has been hailed by commentators as a model of enlightened recognition of the juvenile’s vulnerable status. Empirical studies also have supported the conclusion that juveniles need added protection during custodial interrogation. For some reason, however, the Pennsylvania Supreme Court apparently now feels confident that courts can competently evaluate whether a juvenile’s waiver is truly voluntary by examining all the attendant circumstances. One might question this position given the justices’ general inability to unanimously agree on whether a juvenile’s waiver has been voluntary, knowing, and intelligent under the totality of the circumstances test. Nevertheless, the court has not clarified the standards for applying the totality of the circumstances test, as it might have by specifying the factors to consider or the relative importance of such factors.

The most significant problem in the court’s changing approach to the voluntariness of juvenile confessions is that it is legitimate to punish the juvenile offender for the crime he commits, and that punishment should be commensurate with the crime committed. However, regardless of the nature of the crime, the procedure by which we adjudicate his guilt should not ignore the impediment of immaturity.

169. For a discussion of the totality of the circumstances approach, see supra notes 120-28 and accompanying text. For a discussion of Pennsylvania’s per se rule, see supra notes 129-48 and accompanying text.

170. For a discussion of the exceptions to the per se rule and its recent abandonment, see supra notes 149-68 and accompanying text.

171. For a discussion of empirical studies that have demonstrated the need for additional protections for juvenile offenders, see supra notes 76-88 and accompanying text.

172. Opinions of the Pennsylvania Supreme Court concerning the validity of juvenile confessions are fraught with dissents that debate the validity of the current test for evaluating waivers. In addition to basic disagreements about the protections to be accorded juveniles, the dissents frequently disagree as to whether there actually has been a knowing and voluntary waiver by the juvenile under the totality of the circumstances test. See, e.g., Commonwealth v. Irvin, 462 Pa. 383, 341 A.2d 132 (1975); Commonwealth v. Webster, 466 Pa. 314, 353 A.2d 372 (1975); Commonwealth v. Porter, 449 Pa. 153, 295 A.2d 311 (1972); Commonwealth v. Moses, 446 Pa. 350, 287 A.2d 131 (1971); Commonwealth v. Darden, 441 Pa. 41, 271 A.2d 257, cert. denied, 401 U.S. 1004 (1970).
the admissibility of juvenile confessions is its inability to reach a lasting consensus on the appropriate standard for evaluating the validity of a juvenile's waiver. Neither the police nor the courts can be certain of the appropriate standard to follow because the test has changed every few years. At a minimum, it is suggested, the police must know the circumstances under which a waiver will withstand judicial scrutiny so that convictions are not reversed on appeal because of the procedures they may or may not have followed.173

In Fare v. Michael C., the United States Supreme Court approved the totality of the circumstances test as a method for evaluating the validity of a juvenile's waiver of constitutional rights.174 This does not prevent the states, however, from providing additional protections for juveniles. Indeed, some states have enacted statutes that render admissible any waiver by a juvenile that the police have obtained in the absence of parental guidance or consent.175 It is important that Pennsylvania adopt similar legislation to protect juveniles in custodial interrogations and to end the recurrent shifting of position on this issue by the state's supreme court.176 Over time, unnecessary suppressions could be avoided if the police had stable, clear-cut guidelines to follow. The enactment of a per se rule would thereby benefit both the interests of juveniles and society.

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173. Indeed, one may wonder what justification the police would have for failing to contact a minor's parent or interested adult prior to custodial interrogation. The only valid reason may be the inconvenience and delay involved in locating such an adult. Since most juvenile confessions made after consultation with an interested adult are admissible, the motives behind police interrogation of a juvenile without adult advice are certainly suspect.

174. For a discussion of the United States Supreme Court's opinion in Fare v. Michael C., see supra notes 54-56 and accompanying text.

175. For a listing of the states that have promulgated such statutes, see supra note 89. Alternative or additional protections have also been afforded in other jurisdictions in various forms. For a discussion of these protections, see supra notes 111-14 and accompanying text.

176. Because the United States Supreme Court approved the totality of the circumstances approach to the evaluation of juvenile confessions in Fare v. Michael C., any further protection required by the state must rest on adequate and independent state grounds. See generally Note, supra note 56 (advocating legislative resolution of this issue); Comment, Preadjudicatory Confessions, supra note 6 (urging action by the state legislature to adopt a parental presence requirement). At a minimum, a simplified version of the Miranda warnings could be fashioned specifically for juveniles. See Griss, supra note 6, at 1161-64.