MINORS AND THE FOURTH AMENDMENT: HOW JUVENILE STATUS SHOULD INVOKE DIFFERENT STANDARDS FOR SEARCHES AND SEIZURES ON THE STREET

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INTRODUCTION

A police officer encountered a juvenile sitting in a tunnel underneath a bridge.[1] Although the only thing "suspicious" about the youth was that he was wearing a heavy jacket in warm weather,[2] the officer told the minor to come towards him with his hands out of his pockets.[3] When the minor did not remove his hands from his pockets as he approached the officer, the officer grabbed the minor's hand and told him to drop whatever he was holding.[4] The minor complied and dropped a brown vial with a spoon.[5] The officer arrested the minor, and found drugs during a subsequent search.[6] The Arizona Court of Appeals held that the officer's conduct was not a seizure under the standard set forth in *Terry v. Ohio*.[7] The court further found that even if it were a seizure, it was not an unreasonable one.[8] The court applied a balancing test[9] and held that the public's "strong and legitimate interest in the welfare of *its* children"[10] outweighed the officer's minimal interference with the minor's liberty.[11]

Police officers boarded a bus at a terminal in the District of Columbia at 2:30 a.m. to conduct consent searches of passengers for

* I wish to thank Jenny Yang and Jennifer Hand for their thoughtful editing, Liz Ehrenfest Steinglass for directing me to various development theorists, and especially Randy Hertz for his guidance through the many drafts of this piece. This Note is dedicated to my husband, Jan Boswinkel.

1 In re Pima County Juvenile Delinquency Action, 783 P.2d 1213, 1214 (Ariz. Ct. App. 1989).

2 Id.

3 Id.

4 Id.

5 Id.

6 Id.

7 Id. at 1215 (citing Terry v. Ohio, 392 U.S. 1, 16 (1968) (holding that seizure occurs when officer "accosts" person and "restrains his freedom to walk away")).

8 Id.

9 Id.

10 Id. (emphasis added).

11 Id.

drugs.[12] A detective approached a fourteen-year-old seated in the back of the filled bus and began questioning him.[13] In response to the detective's questions, the youth denied carrying any drugs or weapons.[14] The detective searched the minor's bag after asking and obtaining the juvenile's agreement to search it.[15] The detective then did a pat-down search of the minor and found crack cocaine.[16] The District of Columbia Court of Appeals en banc held that under the totality of the circumstances, a reasonable person would not have concluded that he had been seized.[17] The court en banc specifically noted that it did not consider the defendant's young age, including whatever effect that may have had in making him more vulnerable to coercion, in its seizure analysis.[18]

The above cases illustrate two different ways that courts treat juvenile status in assessing searches and seizures of minors. In the first case, the Arizona court determined that the juvenile was not seized, even though Arizona courts have held that adults were seized in comparable circumstances and thus entitled to the protections of the Fourth Amendment of the United States Constitution.[19] Moreover, the court found that the minor had a limited liberty interest which was

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12 In re J.M., 619 A.2d 497, 498 (D.C. 1992) (en banc). Officers identified themselves as members of a drug interdiction unit and said they were going to interview passengers since the bus was traveling from New York, a known source city. Id.

13 Id.

14 Id.

15 Id.

16 Id. At trial, there was a dispute as to whether the detective asked J.M. if he could pat him down; the detective said he had asked while the juvenile testified that the detective simply requested that he raise his arms. Id. at 498-99.

17 Id. at 498, 501.

18 See id. For a further discussion of this opinion, see infra text accompanying notes 84-86.

19 See, e.g., State v. Mullen, 812 P.2d 1064 (Ariz. Ct. App. 1990), cert. granted and judgment vacated, 502 U.S. 977 (1991). In *Mullen*, a police officer approached the adult defendant while he was sitting at a bus stop. Id. at 1065. Although the officer did not have reasonable suspicion justifying a stop, id. at 1066, he asked the defendant for identification, id. at 1065. After allowing the defendant to leave on a bus, the officer ran a check and discovered an outstanding warrant; he intercepted the bus at the next stop, arrested the defendant, and conducted a search which produced drugs. Id. at 1065-66. Although the factual scenario was very similar to that in *Pima County*, the Arizona Court of Appeals held in *Mullen* that the officer's initial approach and request for identification constituted a stop and was not a consensual encounter. Id. at 1066.

Mullen was appealed to the United States Supreme Court, 502 U.S. 977 (1991), which vacated and remanded the case. The Arizona Court of Appeals subsequently remanded the case to determine if the defendant's compliance with the officer's request for identification was coercive or consensual given the Supreme Court's decision in Florida v. Bostick, 501 U.S. 429, 439-40 (1991) (striking down per se seizure rule for all bus encounters and adopting reasonable person standard). State v. Mullen, 827 P.2d 1133, 1133-34 (Ariz. Ct. App. 1992).

outweighed by society's interest in his welfare.[20] Thus, the Arizona court provided the minor with less protection against unreasonable searches and seizures than that which is afforded adults under the Fourth Amendment.

In the second case, the D.C. court applied the same test to the juvenile as it would to an adult to determine whether a seizure had taken place. In other cases, D.C. courts have found that *adults* approached by law enforcement officials on buses to conduct drug searches were not seized under a "reasonable person" analysis.[21] On its face, the D.C. court's seizure analysis was "neutral" with regard to the minor's youth; it did not use the minor's youth "against him" in assessing whether a reasonable seizure occurred as did the Arizona court. However, like the Arizona court's analysis, the D.C. court's "neutral" approach arguably provided less protection to juveniles under the Fourth Amendment than is accorded adults.

By contrast, some lower courts recognize the unique cognitive development of juveniles. These courts have attempted to develop standards for consent searches and seizures on the street that account for the critical differences in how juveniles, as compared to adults, think and make decisions.[22] However, these lower court opinions have not provided a coherent approach for factoring youth into a Fourth Amendment analysis.

The Supreme Court had the opportunity to develop a standard to assess seizures of juveniles on the street in *California v. Hodari D.*[23] The *Hodari* Court, however, declined to factor the defendant's youth into its analysis.[24] The gap in Supreme Court jurisprudence in this area has resulted in a lack of uniformity among lower courts as to how "juvenileness" should count in search and seizure inquiries.[25]

This Note argues that standards for seizures and consent searches that do not capture the different level of cognitive and emotional development of minors as compared to adults fail to adequately protect juveniles' Fourth Amendment rights. The Note proposes a new framework for assessing the legality of consent searches and seizures

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20 See In re Pima County Juvenile Delinquency Action, 783 P.2d 1213, 1215 (Ariz. Ct. App. 1989).

21 See, e.g., United States v. Lewis, 921 F.2d 1294, 1296-97, 1300 (D.C. Cir. 1990) (finding no unreasonable search by police officers who boarded commercial bus and, with permission of individual passengers, conducted searches); Burton v. United States, 657 A.2d 741, 742-43, 745 (D.C. 1994) (finding that officer could reasonably have concluded that bus passenger had not withdrawn consent for search by putting hand in coat pocket).

22 See infra text accompanying notes 44-57.

23 499 U.S. 621 (1991).

24 For a further discussion of *Hodari*, see infra text accompanying notes 64-71.

25 See infra Part I.

of juveniles on the street. The framework builds on, first, Supreme Court cases in other areas of the law that recognize minors as "different" and, second, scholarship on juveniles' cognitive, emotional, and social development.

This Note proceeds in three parts. Part I describes the paradigms that courts apply to determine whether a minor has voluntarily consented to a search or has been seized. Section A of Part II reviews two areas of the law outside of the Fourth Amendment—the rights of minors in custodial interrogations and the rights of minors to seek abortions—in which the Supreme Court has extended special protections to juveniles and created unique tests to assess events involving minors. In these areas, the Court has concluded that there is an inherent difference in the way juveniles, as compared to adults, think, reason, and interact with authority figures, especially in stressful situations. Section B of Part II substantiates these conclusions by drawing on child-development theory. This section explains how an understanding of juveniles' cognitive, emotional, social, and moral development can inform courts' analyses of whether a minor has voluntarily consented to a search or has been seized by law enforcement officials. Finally, Part III sets out a framework for factoring juvenile status into the analysis of Fourth Amendment events such that minors are afforded the same level of constitutional protection as adults.

I
SEARCHES AND SEIZURES OF JUVENILES: HOW COURTS HAVE APPLIED THE FOURTH AMENDMENT TO MINORS

Courts follow different paradigms to determine if a minor has validly consented to a search of his person and possessions and if a minor has been seized. The paradigms vary in the manner and extent to which courts factor juvenile status into their analyses of whether a Fourth Amendment violation has occurred. The sections that follow lay out the specific elements of each paradigm.

A. Consent Searches

The Supreme Court has held that voluntary consent to a search is an exception to the warrant requirement.[26] A court faced with an alleged consent search must examine the facts of the event to determine if the consent was voluntary under the totality of the circumstances

[26] Schneckloth v. Bustamonte, 412 U.S. 218, 219 (1973).

and not the result of police coercion.[27] The state has the burden of proving that consent was voluntarily given, "a burden that is not satisfied by showing a mere submission to a claim of lawful authority."[28]

In *Schneckloth v. Bustamonte*, the Supreme Court specifically declined to hold that the state must prove that an individual knew he had the right to refuse consent as a prerequisite to demonstrating that consent was voluntary.[29] The *Schneckloth* Court also rejected arguments that police should be required to warn individuals of their right to refuse to be searched.[30] Thus, a warning comparable to a *Miranda* warning prior to custodial interrogation is not required to show that consent was voluntarily given.[31]

This Note divides the cases involving juveniles consenting to searches of their persons or possessions by law enforcement officials into two paradigms. In what will be called Model I, courts proceed on the assumption that juveniles have roughly the same capacity as adults to hypothesize and understand the consequences of consenting to searches. As a result, the standard or threshold of what constitutes a valid consent to search is identical for juveniles and adults. That standard is whether, considering the totality of the circumstances, the person voluntarily consented to the search.[32]

Some courts in applying Model I consider youth among the circumstances involving the request for consent. In these cases, youth is just one factor which may be outweighed by any number of other "mitigating" circumstances, such as the fact that only one or two officers approached the juvenile, weapons were not drawn, it was daylight, or the minor was informed of his right to refuse consent.[33] Certain attributes of the juvenile also may be relevant to the analysis.[34] Other courts, however, do not factor the defendant's youth into their analysis. Regardless of whether the court considers youth a salient factor, the focus of the inquiry remains the same: was the consent voluntary?

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[27] Id. at 227, 229. Factors such as youth, lack of education, and even police failure to advise that consent can be withheld may be considered in the "totality of all the circumstances" test. No one factor, however, is determinative. Id. at 226-27.

[28] Florida v. Royer, 460 U.S. 491, 497 (1983) (plurality opinion) (citations omitted); see also Bumper v. North Carolina, 391 U.S. 543, 548-49 (1968) (holding that burden is not satisfied by "showing no more than acquiescence to a claim of lawful authority").

[29] *Schneckloth*, 412 U.S. at 232-33.

[30] Id. at 231-32.

[31] See id. The Court reasoned that such a warning was impractical given the informal conditions under which consent requests are made.

[32] See id. at 227.

[33] See infra note 43.

[34] These individual attributes include factors such as the youth's level of education and his prior experience with the law. See infra note 43.

A case which aptly illustrates Model I is *In re S.B.*[35] In *S.B.*, police officers followed a car occupied by two teenagers; whenever the teens parked their automobile, the officers would park their patrol car nearby.[36] Although the officers never walked up to the car to request identification from the driver, S.B. eventually left his car to show the officers his driver's license.[37] S.B. explained that he had just dropped off a friend, who, as it turned out, the officers suspected was in possession of stolen guns.[38] The officers asked S.B. if they could search his car, to which S.B. responded, "[h]ave at it."[39] In the course of their search, the officers found a stolen .22-caliber pistol under the driver's seat; the officers then arrested S.B.[40] The Georgia Court of Appeals found that the search was "consensual and valid."[41] The court observed that "[t]he detectives employed no physical force or show of authority to restrain [S.B.]'s freedom of movement; at no time did they attempt to detain him. He voluntarily stopped after having driven away, and he approached the officers without their bidding . . . ."[42] Thus, the court concluded that the teen had voluntarily given his permission to the police to search his car.[43]

Like Model I, Model II also inquires whether, under the totality of the circumstances, consent was voluntarily given and was not the

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35 427 S.E.2d 52 (Ga. Ct. App. 1993).

36 Id. at 52. The officers said they were suspicious because S.B. and his companion were white males in a black neighborhood that had a high crime rate and drug activity. Id.

37 Id. at 53.

38 Id.

39 Id.

40 Id.

41 Id.

42 Id.

43 Id. For other cases illustrating the Model I approach, see, e.g., State in re Trader, 1993 WL 265173, at *3 (Del. Fam. Ct. Mar. 29, 1993) (holding that sixteen-year-old boy voluntarily consented to search; while offender's young age was relevant, police officer did not act in "intimidating, overbearing or coercive fashion" and juvenile's actions during stop and search did "not fit the personality profile of an individual whose will was being overborne" by police officer); State v. C.S., 632 So. 2d 675, 675 (Fla. Dist. Ct. App. 1994) (considering totality of circumstances, juvenile's consent to police officer's search of his automobile was voluntary because facts that defendant was minor, officer had youth's license and registration, and youth responded quickly to officer's request were outweighed by facts that initial stop was lawful, officer was nonthreatening, and officer advised juvenile that he could refuse consent); State ex rel. Juvenile Dep't of Multnomah County v. Fikes, 842 P.2d 807, 808, 810-11 (Or. Ct. App. 1992) (holding that youth who said "[y]eah, go ahead" to officers who asked for consent to search his person gave voluntary, valid consent; youth's testimony that officers had approached him from behind, startling him, and that he thought police could search him regardless of what he said was outweighed by trial court's findings that child was mature and had experience dealing with police); State v. McCrorey, 851 P.2d 1234, 1240-41 (Wash. Ct. App. 1993) (holding that juvenile's consent to police entry of home, which led to police observation of evidence used to convict juvenile, was involuntary because police officer misrepresented scope of investigation).

result of coercion. Model II, however, is premised on the understanding that a juvenile has a less well-developed capacity to hypothesize and understand the consequences of consenting or not consenting to a search, and to resist the requests of authority figures in stressful situations. Consequently, there is a subtle yet critical difference between the way the totality of the circumstances test is employed in Model II as compared to Model I. In the second paradigm, youth becomes the lens through which the court views and analyzes everything else, including the circumstances of the stop and search and the attributes of the young person. Youth status thus places the consent search into an altogether different category.

Model II also places greater emphasis on the role of informed consent—consent given by an individual who knows and understands his rights—in the voluntariness inquiry. Whether the police officer told the juvenile of his right to refuse consent assumes particular importance since knowledge of this right reduces the coercion inherent in a stop and subsequent search request by police.

Although courts rarely have applied Model II, the District of Columbia Court of Appeals panel decision in *In re J.M.*[44] provides an example of its use. In *J.M.*, the facts of which are described above,[45] the panel held that the prosecution failed to prove that J.M. voluntarily consented to the search of his property and person. The panel noted that it could not take the principles of what constitutes "voluntariness" of consent as defined in *Schneckloth v. Bustamonte*,[46] a case that involved an adult, and simply apply them in the instant case without examining how the defendant's youth affected those principles. "A threshold determination of law must therefore be made here as to whether and in what measure the [*Schneckloth*] analysis applies to fourteen-year-old juveniles."[47]

For the panel in *J.M.*, the interplay between the officer's failure to advise J.M. of his right to decline consent and J.M.'s youth was key to assessing the voluntariness of J.M.'s consent.[48] J.M., the panel noted, was not a "street-smart veteran of numerous confrontations with the police," and "[a]lthough the quarter of a pound of cocaine concealed on his person may suggest that he was no angelic young

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44 596 A.2d 961 (D.C. 1991), reh'g granted, 619 A.2d 497 (D.C. 1992) (en banc). The J.M. en banc decision, discussed infra text accompanying notes 84-86, also incorporates aspects of Model II. However, the en banc decision does not follow that paradigm as closely as the panel decision.

45 See supra text accompanying notes 12-18.

46 412 U.S. 218 (1973); see supra text accompanying notes 26-32.

47 *J.M.*, 596 A.2d at 967 n.6 (panel decision).

48 See id. at 969-70.

innocent, J.M. was fourteen years old, and had completed only the eighth grade."[49] The panel concluded that J.M. had not voluntarily consented "primarily because J.M. was only fourteen years of age at the time of the encounter, because he was not advised of his right to withhold his consent, and because the surrounding circumstances . . . were such that J.M.'s choice was not free in the practical context of its exercise."[50]

To develop this analysis and reach this result, the *J.M.* panel looked to an analogous area of the law—juvenile confessions. The panel first noted that once a court had established that police properly advised a juvenile of his *Miranda* rights during custodial interrogation, the court then may go on to determine whether a juvenile's confession was voluntary, taking into account a multitude of factors.[51]

The panel then pointed out that "[i]f a confession by a juvenile following a *Miranda* warning is subject to rigorous scrutiny, then this must surely be even more true of a consent to a search which was given without any explanation of rights."[52] Thus, the panel cited with approval the recommendation of a joint commission of the Institute of Judicial Administration and the American Bar Association that

> "an appropriate constitutional standard for juveniles is [arguably] that they cannot give a voluntary consent unless they are informed of their right to refuse consent. This suggests that the test rejected by the Court in *Schneckloth* should be adopted for juveniles, given the greater likelihood of their lack of sophistication and their greater susceptibility to apparent or real coercion. In other words, this may be an example of an area where, because of greater vulnerability, due process may require greater rights for juveniles than for adults."[53]

The panel noted that officers carry an "intrinsic air of authority" and that it is unrealistic to expect a fourteen-year-old to know that he can refuse, especially in the circumstances surrounding J.M.'s search.[54] The panel stopped short of holding that a juvenile's consent is always invalid if he has not been advised of his rights, giving the state the

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[49] Id. at 970.

[50] Id. at 963.

[51] Id. at 970-71.

[52] Id. at 972.

[53] Id. (alteration in original) (quoting Institute of Judicial Admin. & American Bar Ass'n, Joint Comm'n on Juvenile Justice Standards, Police Handling of Juvenile Problems § 3.2(a), at 67 (1980)).

[54] See id. at 972-73.

option of proving that the juvenile was aware of his rights.[55] As the panel warned, however:

> [W]here a juvenile, especially one as young as J.M., has not been advised of his rights, the burden on the prosecutor to establish that consent to a search was a voluntary one is a heavy one, which cannot be sustained by showing only that no weapons were displayed and that no threats were made.[56]

Finding that the state had not sustained this heavy burden in J.M.'s case, the panel remanded the case with instructions to grant J.M.'s motion to suppress.[57]

B. Seizures on the Street

The Supreme Court has held that to differentiate between a Fourth Amendment seizure and an encounter that does not implicate Fourth Amendment protections, the test is whether, given the totality of the circumstances, a reasonable person would have believed that he was not free to leave.[58] The "free to leave" test applies where defendants actually "stopped" when they were approached and questioned by police officers.[59]

In situations in which the defendant did not physically stop when approached by police officers but instead fled, the Supreme Court has developed a seizure analysis distinct from the "free to leave" test. The

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[55] See id. ("Nevertheless, we are not prepared to hold that a consent by a juvenile to a search is invalid in all cases unless he or she has been advised of the right to refuse consent. Advice of rights is unnecessary if the prosecution can prove that the consenting individual is aware of them.").

[56] Id. at 973.

[57] Id. at 976. However, when the District of Columbia Court of Appeals reviewed the case en banc, it decided to remand the case for an explicit finding by the trial judge "with respect to the key factual issue presented, namely, the bearing of the appellant's age . . . upon the voluntariness of his consent to the search of his person." In re J.M., 619 A.2d 497, 498 (D.C. 1992) (en banc). The court en banc agreed with the panel that J.M.'s age and maturity (or lack thereof) were critical factors in determining if J.M. understood his rights and hence the validity of the consent, but concluded that it did not have enough information from the trial court record to rule. See id. at 502. Specific findings as to the coerciveness of the setting and the effect of age and maturity on the voluntariness of consent are "particularly necessary when it is conceded, as in this case, that the youth was not told he could withhold consent." Id. at 503.

[58] The reasonable person/free to leave test, first enunciated by Justice Stewart in United States v. Mendenhall, 446 U.S. 544, 554 (1980) (Stewart, J., concurring), was adopted by the majority of the Court in INS v. Delgado, 466 U.S. 210, 215 (1984), and Florida v. Royer, 460 U.S. 491, 502, 508-09 (1983).

For a summary of the *Mendenhall-Royer-Delgado* test, see In re E.D.J., 502 N.W.2d 779, 781-82 (Minn. 1993); see also Wayne R. LaFave, Search and Seizure: A Treatise of the Fourth Amendment § 9.3(a) (3d ed. 1996).

[59] This was the case in *Delgado*, 466 U.S. at 212-13; *Royer*, 460 U.S. at 494; and *Mendenhall*, 446 U.S. at 547-48.

Court enunciated the standard for these special situations in *California v. Hodari D.*[60] Under *Hodari*, a seizure occurs when a law enforcement official uses physical force to restrain a person, or a person physically submits to a "show of police authority."[61] Thus, the seizure standard is essentially reduced to a "force or submission" standard.[62] At least one state court, however, has rejected this standard in favor of the "free to leave" standard under its authority to interpret its state constitution as providing more protection than the United States Constitution.[63]

1. When Juveniles Flee

a. Applying the "Force or Submission" Standard. In *Hodari*, a group of teens fled upon the approach of an unmarked police car.[64] One officer, who was wearing a jacket with "Police" clearly marked on the front and back, pursued Hodari on foot; when the officer was almost upon Hodari, the youth dropped an object which later proved to be crack cocaine.[65] "A moment later," the officer tackled the youth and handcuffed him.[66] The key issue in this case was whether at the time Hodari dropped the drugs (before the officer tackled him to the ground) Hodari had been illegally seized within the meaning of the Fourth Amendment, thus requiring the suppression of the drugs as evidence.[67]

The *Hodari* Court held that in cases where a police officer does not physically touch the defendant, a seizure is only established by evidence that the defendant actually submitted to a show of authority by the officer.[68] Hodari did not submit but kept running; he dropped the drugs before the officer touched him.[69] For this reason, the *Hodari* Court concluded that the drugs were not the fruit of an illegal

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60 499 U.S. 621 (1991); see also infra text accompanying notes 64-71 (discussing *Hodari*).

61 *Hodari*, 499 U.S. at 626.

62 See LaFave, supra note 58, § 9.3(d).

63 See In re E.D.J., 502 N.W.2d 779, 783 (Minn. 1993). For further discussion, see infra Part I.B.1.b.

64 *Hodari*, 499 U.S. at 622-23.

65 Id.

66 Id. at 623.

67 Id. The state of California conceded in the proceedings below that the officer did not have the "reasonable suspicion" required to justify stopping Hodari. Id. at 623 n.1 (citing Terry v. Ohio, 392 U.S. 1 (1968) (holding that police officer must have reasonable articulable suspicion of criminal activity to justify stop and frisk)).

68 See id. at 629.

69 Id. at 623.

seizure.[70] The Court did not factor the defendant's youth into the seizure analysis. Some jurisdictions use the *Hodari* "force or submission" test in assessing seizures when juveniles flee approaching police officers.[71]

b. Applying the "Free to Leave" Test. In *In re E.D.J.*,[72] the Minnesota Supreme Court specifically rejected the "force or submission" test and instead applied the "free to leave" standard to a situation in which a juvenile fled from a police officer. A police car spotted E.D.J. standing on a street corner in a high crack-cocaine-trafficking area.[73] Upon the police car's approach, E.D.J. and the two adults who were in his company began walking away from the police car.[74] When the police car pulled up behind the group and ordered them to stop, the two adult men stopped immediately while E.D.J. continued walking.[75] E.D.J. dropped an object, continued walking for a couple of steps, and then stopped and turned around.[76] The object turned out to be crack cocaine.[77]

Applying the "force or submission" standard, the lower courts found that E.D.J. had abandoned the crack cocaine before he was seized; therefore, the cocaine was not the fruit of an illegal seizure.[78] The state supreme court, however, was not persuaded that the *Hodari* standard was better than the "free to leave" test and held that Minnesota courts would continue to apply the latter test.[79] Unlike the "force

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[70] Id. at 629. In reaching this conclusion, the Court in *Hodari* rejected the defendant's contention that he had been seized under the standard in *INS v. Delgado*: a seizure has taken place only if, in view of all of the circumstances, a reasonable person would not have felt free to leave. Id. at 627-28 (citing INS v. Delgado, 466 U.S. 210, 215 (1984)). Justice Scalia said that the proper reading of this requirement was that it was a necessary but not sufficient condition for a seizure "effected through a 'show of authority.'" Id. at 628 (quoting United States v. Mendenhall, 446 U.S. 544, 553 (1980)).

[71] See, e.g., In re J.K., 581 So. 2d 940, 940-41 (Fla. Dist. Ct. App. 1991) (illegal seizure occurred when police with no legal cause commanded juvenile walking away to stop and juvenile submitted; drugs dropped by juvenile when he responded to police were thus inadmissible); In re Jeffrey R., 581 N.Y.S.2d 269, 271, 273 (N.Y. Fam. Ct. 1992) (gun thrown over fence by fleeing defendant as he was being pursued by police officers with reasonable suspicion that defendant was carrying weapon was not fruit of illegal search since police did not physically detain defendant until after he had thrown gun).

It is important to note that in these cases, as in *Hodari*, the courts did not factor the defendants' youth into their seizure analyses.

[72] 502 N.W.2d 779, 781 (Minn. 1993).

[73] Id. at 780.

[74] Id.

[75] Id.

[76] Id.

[77] Id.

[78] See id. at 780-81.

[79] See id. at 781, 783. The Minnesota Supreme Court used its authority to interpret the state constitution to extend more protection than is provided by the United States Consti-

or submission" test, which focuses on the defendant's conduct when police do not physically restrain the defendant, the "free to leave" standard includes police conduct in the seizure analysis.[80] Applying this standard, the court held that E.D.J. was seized when the police yelled out to him to stop walking;[81] because the police did not have reasonable suspicion to justify the stop, the abandoned cocaine was the fruit of an illegal seizure.[82]

2. *When Juveniles Submit*

Although the Minnesota Supreme Court in *E.D.J.* held that the test was whether a reasonable person in the *defendant's shoes* would have concluded that he was free to leave, the court did not apply a "reasonable juvenile" test. On the contrary, the court simply concluded that it would have been objectively reasonable for any person to think he had been seized once the police ordered him to stop and did not factor E.D.J.'s youth into its seizure analysis.[83]

The *E.D.J.* court could have employed a reasonable juvenile test in reaching its ruling rather than basing its decision on whether any reasonable person would have thought he was seized. Other opinions demonstrate that the failure to employ a reasonable juvenile standard—as opposed to a reasonable person test—leaves young people with less protection under the Fourth Amendment than adults.

The District of Columbia Court of Appeals's en banc holding on the seizure question in *In re J.M.*[84]—in which the juvenile did not flee but submitted to police—illustrates this gap in protection. The en banc court applied the reasonable person test to hold that the youth had not been seized when a detective approached his seat towards the back of a filled bus.[85] The en banc court specifically stated that it did

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tution. Id. at 783 (citing Michigan v. Long, 463 U.S. 1032, 1041 (1983) (citing Minnesota v. National Tea Co., 309 U.S. 551, 557 (1940), for proposition that state courts should "be left free and unfettered" when they interpret their constitutions)).

[80] See id. at 781-82 (citing United States v. Mendenhall, 446 U.S. 544, 554-55 (1980) (examples of police conduct "that might indicate a seizure . . . would be the threatening presence of several officers, the display of a weapon by an officer, some physical touching of the person of the citizen, or the use of language or tone of voice indicating that compliance with the officer's request might be compelled")); see also Wayne R. LaFave, "Seizures" Typology: Classifying Detentions of the Person to Resolve Warrant, Grounds and Search Issues, 17 U. Mich. J.L. Ref. 417, 425 (1984) ("The critical inquiry [in determining if a confrontation is a seizure] is whether the policeman . . . has otherwise conducted himself in a manner which would be perceived as a nonoffensive contact if it occurred between two ordinary citizens.").

[81] See *E.D.J.*, 502 N.W.2d at 783.

[82] See id.

[83] See id.

[84] 619 A.2d 497 (D.C. 1992) (en banc).

[85] See id. at 501.

not consider whether J.M.'s youth made him more vulnerable to coercion than an adult.[86]

The dissent to the en banc holding criticized the majority for "woodenly" applying a standard developed for the hypothetical reasonable adult to a child.[87] By treating the child as a "little adult," the dissent argued, the majority violated the Supreme Court's holding in custodial interrogation cases that, in order to ensure their constitutional rights, children must be treated differently than adults in certain situations.[88]

If the dissent in *J.M.* is correct that juvenile status should be factored into search and seizure analysis to provide young people with

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[86] See id.

[87] See id. at 506 (Rogers, C.J., dissenting but concurring in the remand). The dissent argued as follows:

> The hypothetical "reasonable person" standard has been developed by the Supreme Court in the context of seizures involving adults, and to date the Supreme Court has not addressed whether or not the peculiarities associated with non-adult status of a seized person affect the proper examination of the totality of the circumstances. . . .
>
> The Supreme Court has explicitly adhered to a contextual approach in determining whether an adult has been seized . . . . [T]he objective standard encompasses the particular circumstances with which the police officer is confronted. . . . Consequently . . . the majority's application of the hypothetical "reasonable person" test for adults to a child is misconceived. . . . [A] court must consider, as part of "the setting in which the conduct occurs," *whether a reasonable person who is a child* would have thought that he or she was free to leave under the circumstances. . . .
>
> Applying the "reasonable person" standard in a manner to recognize that a child could, in law, be deemed to have a different understanding of police conduct than an adult assures that young citizens are not denied constitutional protection by reason of their age and immaturity.

Id. at 504-06 (emphasis added) (citations omitted).

[88] See id. at 506 (citing, inter alia, In re Gault, 387 U.S. 1, 55 (1967) (recognizing special problems of waiver of privilege against self-incrimination by children); Gallegos v. Colorado, 370 U.S. 49, 50, 53-55 (1962) (holding that confession was obtained in violation of due process when 14-year-old was held for five days without access to lawyer or parent); Haley v. Ohio, 332 U.S. 596, 599-601 (1948) (finding that treatment that would make court pause if it involved adult makes court use special scrutiny when child is involved)).

For another example of a court's application of a reasonable person test, as opposed to a reasonable juvenile standard, to the detriment of a minor, see In re Winston, 563 So. 2d 1351, 1352 (La. Ct. App. 1990) (holding that "[a] reasonable person could not conclude that the officers communicated to [the juvenile] an attempt to capture him or intrude on his freedom of movement by merely approaching the location in a semi-marked police unit").

Note that sometimes a court will claim to assess whether a reasonable juvenile would have thought he was seized but will then proceed to base its ruling completely on the police officers' conduct without any reference to the attributes of the youth. See, e.g., In re Kemonte H., 273 Cal. Rptr. 317, 320 (Ct. App. 1990) ("A reasonable person of Kemonte's age would not have felt restrained by two police officers approaching him on a public street. From the officers' conduct in the instant case, a reasonable person could only conclude that the officers wanted to talk to him. No detention occurred.").

the same level of Fourth Amendment protection afforded adults,[89] the question remains: how should "juvenileness" matter? The *J.M.* dissent suggests that there is something different about juveniles which should influence courts' analyses of confrontations between police and juveniles that implicate constitutional rights, but it does not flesh out this idea.[90] The *J.M.* dissenting opinion, however, points to another area of the law in which "juvenileness" has been considered in assessing confrontations with police: the Fifth Amendment right against self-incrimination.[91]

II
WHAT MAKES JUVENILES DIFFERENT?

This Note argues that juveniles are entitled to the same effective level of Fourth Amendment protection as adults in the context of searches and seizures on the street and that providing them with such equivalent protection requires greater safeguards. As an initial matter, it must be noted that the Fourth Amendment search and seizure context is distinguishable from other areas in which the Supreme Court has held that it is constitutional to extend *fewer* safeguards to juveniles. The Court has been somewhat willing to relax the usual constitutional safeguards in environments that are specifically structured to ensure the well-being of minors.

For example, although the Court has affirmed the due process rights of juveniles facing delinquency charges,[92] the Court has stopped short of holding that juvenile proceedings must mirror adult trials in order to comport with due process.[93] Noting that juvenile courts are charged with "treating" and "rehabilitating" juveniles, as opposed to convicting and sentencing them, the Court has concluded that remaking the delinquency proceeding into a fully adversarial process would

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[89] See *J.M.*, 619 A.2d at 505-06 (D.C. 1992) (en banc) (Rogers, C.J., dissenting but concurring in the remand).

[90] See supra text accompanying notes 87-88.

[91] See supra text accompanying notes 87-88.

[92] See In re Gault, 387 U.S. 1, 30-31 (1967) (reiterating view expressed in Kent v. United States, 383 U.S. 541, 562 (1966), that juvenile hearing must conform with essentials of due process).

[93] For example, while the Court has held that juveniles facing charges in delinquency proceedings have a right to notice of the charges, to counsel, to invoke the privilege against self-incrimination, to confront their accuser, id. at 31-57, against double jeopardy, Breed v. Jones, 421 U.S. 519, 528-41 (1975), and to a showing of proof beyond a reasonable doubt to be adjudicated delinquent, In re Winship, 397 U.S. 358, 361-68 (1970), the Court also has held that juveniles are not entitled to a trial by jury, McKeiver v. Pennsylvania, 403 U.S. 528, 545-51 (1971). The due process standard in juvenile proceedings is one of fundamental fairness. *McKeiver*, 403 U.S. at 543; *Winship*, 397 U.S. at 361-68; *Gault*, 387 U.S. at 30.

interfere with these special functions.[94] The Court similarly recognized the need to maintain discipline in schools in holding that before searching a student, a school official need only have reasonable suspicion that a student is violating school policy or the law.[95]

However, the interaction between student and school official in a school setting is distinct from the adversarial nature of the police-juvenile encounter on the street.[96] The police-juvenile confrontation is also distinguishable from the interaction between the minor and the juvenile court, where the judge is specially charged with rehabilitating the juvenile, who has the assistance of his parents and counsel in the proceedings. The Supreme Court has acknowledged the adversarial nature of police encounters and the special vulnerabilities of youth in holding that special care must be taken in ensuring and assessing the voluntariness of a juvenile confession.[97] Thus, the Court has recognized that to provide juveniles confronted by police with the same Fifth Amendment protection against self-incrimination as is accorded adults, courts must treat juveniles differently.[98] Similarly, this Note argues that in order to provide juveniles with the same level of Fourth Amendment protection as adults in the context of police searches and seizures on the street, courts must take into account the particular way in which juveniles think, reason, and interact with authority figures, especially in stressful situations.

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[94] See *McKeiver*, 403 U.S. at 545, 550.

[95] See New Jersey v. T.L.O., 469 U.S. 325, 337-43 (1985). The Court upheld a school official's search of a student's handbag on a reasonable suspicion (but not probable cause) that the student was violating the school's no-smoking policy. Id. at 343-47. The search revealed marijuana and other drug-related paraphernalia, id. at 328, and the Court held that the fruits of the school search were admissible in a delinquency proceeding against the student since the search itself did not violate the Fourth Amendment, id. at 343-47.

[96] As Justice Powell wrote in his concurrence in *T.L.O.*:

> The special relationship between teacher and student also distinguishes the setting within which schoolchildren operate. Law enforcement officers function as adversaries of criminal suspects. These officers have the responsibility to investigate criminal activity, to locate and arrest those who violate our laws, and to facilitate the charging and bringing of such persons to trial. Rarely does this type of adversarial relationship exist between school authorities and pupils.

Id. at 349-50 (Powell, J., concurring).

[97] See infra Part II.A.1. For the same reasons, several state legislatures and courts have extended greater protections to juveniles in the context of custodial interrogations. See infra notes 112-17 and accompanying text.

[98] See infra Part II.A.1.

A. *Reasoning by Analogy: The Custodial Interrogation and Abortion Cases*

This section explores two areas of the law in which the Supreme Court has treated juveniles differently from adults. These cases all recognize that juveniles are developmentally different from adults, and that courts must take this into account. The cases also demonstrate that courts can factor into their decisionmaking the cognitive, emotional, social, and moral evolution of youth. Moreover, the cases confirm that courts can develop and apply standards for assessing confrontations with police that take into account the different capacities of young people but that do not revolve around completely subjective factors. These cases, therefore, will serve as a model from which to develop juvenile search and seizure standards in Part III.

However, because these cases often recite assertions about juveniles that seem to be based more on anecdotal experience than on rigorous scholarship,[99] a review of the relevant scholarship is needed to construct a juvenile search and seizure model. For this reason, Section B attempts to substantiate the conclusions about what makes minors different by drawing on cognitive, emotional, and social development theory.

1. *The Treatment of Juvenile Status in Fifth Amendment Case Law*

The analogue to juveniles' ability to consent voluntarily to search under the Fourth Amendment is their capacity to make voluntary, knowing, and intelligent waivers of their *Miranda* rights under the Fifth Amendment.[100] The Supreme Court has identified a number of factors which render minors "different" from adults for the purposes of determining the voluntariness of juvenile confessions during custodial interrogations. In these cases, the Court has stated that standards which do not take into account the ways in which juveniles differ from adults deprive young people of constitutional protection.[101]

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[99] See Elizabeth S. Scott et al., Evaluating Adolescent Decision Making in Legal Contexts, 19 Law & Hum. Behav. 221, 238 (1995) (observing that courts' and legal policymakers' "[a]ssumptions about adolescents' cognitive capacities, attitudinal frameworks, and amenability to treatments are grounded largely in anecdotal data and practical experience").

[100] For example, the District of Columbia Court of Appeals panel in In re J.M., 596 A.2d 961, 970-73 (D.C. 1991), applied the Supreme Court's reasoning in juvenile interrogation cases to searches and seizures of juveniles. The *J.M.* court noted in particular the Supreme Court's assertion in Gallegos v. Colorado, 370 U.S. 49 (1962), that without some additional protection to compensate for the inequality between adults and children, a child would not be able to know or assert his constitutional rights. See *J.M.*, 596 A.2d at 971 (citing *Gallegos*, 370 U.S. at 54-55).

[101] See infra notes 102-11 and accompanying text.

The Supreme Court has recognized that minors are generally less mature than adults and, therefore, are more vulnerable to coercive interrogation tactics. The Court reasoned in *Haley v. Ohio*[102] that a fifteen-year-old boy

> 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. . . . [W]e 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 . . . crush him.[103]

Similarly, in *In re Gault*,[104] decided one year after *Miranda v. Arizona*,[105] the Court reasoned that when juveniles testify in court, "the greatest care must be taken to assure that the admission was voluntary, in the sense not only that it was not coerced or suggested, but also that it was not the product of ignorance of rights or of adolescent fantasy, fright or despair."[106]

The Court also has noted that minors generally lack critical knowledge and have less capacity to understand the meaning of the *Miranda* warning. In *Haley*, the Court dismissed the state's argument that the juvenile defendant confessed after being advised of his right not to make a statement and that it could be used against him, pointing out that reliance on the warnings incorrectly "assumes . . . that a boy of fifteen, without aid of counsel, would have a full appreciation of that advice and that on the facts of this record he had a freedom of choice."[107] In *Gallegos v. Colorado*,[108] the Court reasoned as follows:

> [A] 14-year-old boy, no matter how sophisticated, is unlikely to have any conception of what will confront him when he is made

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[102] 332 U.S. 597, 598-601 (1948) (holding that murder confession extracted from 15-year-old boy at 5:00 a.m. after five hours of interrogation by police officers acting in relay—and without youth having aid of family, friends, or counsel present—was involuntary and violated due process).

[103] Id. at 599-600. In Colorado v. Connelly, 479 U.S. 157, 167 (1986), the Supreme Court held that involuntariness cannot be based solely on the defendant's mental condition, and evidence of coercive tactics by police officers is necessary to find that a confession was involuntary. Nevertheless, in dictum the Court confirmed that a defendant's mental condition is relevant to the voluntariness inquiry, especially as interrogators apply more subtle psychological pressure to suspects. See id. at 164.

[104] 387 U.S. 1 (1967).

[105] 384 U.S. 436 (1966).

[106] Id. at 55.

[107] *Haley*, 332 U.S. at 601.

[108] 370 U.S. 49, 54-55 (1962) (holding that confession obtained from 14-year-old boy who had been held by police for five days without access to counsel, family, or friends was invalid; even though boy was advised of his right to counsel, he did not ask for either lawyer or his parents).

> accessible only to the police. . . . [W]e deal with a person who is not equal to the police in knowledge and understanding of the consequences of the questions and answers being recorded and who is unable to know how to protect his own interests or how to get the benefits of his constitutional rights. . . . He cannot be compared with an adult in full possession of his senses and knowledgeable of the consequences of his admissions.[109]

Moreover, the Court has recognized that minors generally have a limited ability to foresee the consequences of their actions. The Court in *Gallegos* went on to find that a fourteen-year-old

> would have no way of knowing what the consequences of his confession were without advice as to his rights—from someone concerned with securing him those rights—and without the aid of more mature judgment as to the steps he should take in the predicament in which he found himself.[110]

The Court held that unless the juvenile was provided with special protection to compensate for his lesser ability to understand the consequences of different courses of action, the courts would essentially be treating the young person as if he had no constitutional rights.[111]

Following the Supreme Court's reasoning, a number of lower courts treat youth as a particularly important factor in assessing the voluntariness of a waiver of *Miranda* rights.[112] Several state courts have similarly held that the presence or absence of a parent or other interested adult is another significant factor in assessing the voluntariness of a waiver.[113] Some state courts have set rules requiring that a parent or other interested adult be present during a juvenile's interrogation,[114] while other jurisdictions require the same by statute.[115] Still other states require police officers or other designated officials to give minors in custody a simplified *Miranda* warning.[116] Finally, a number of courts apply what they call a reasonable juvenile test to determine whether or not a youth was "in custody" for *Miranda* purposes.[117]

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109 Id. at 54.

110 Id.

111 Id. at 54-55.

112 1 Randy Hertz et al., Trial Manual for Defense Attorneys in Juvenile Court § 24.05(a) (1991).

113 Id. § 24.14(a), at 656.

114 Id. at 657.

115 Id. § 24.14(b).

116 See, e.g., State v. Benoit, 490 A.2d 295, 304 (N.H. 1985) (recommending use of simplified *Miranda* warnings and concluding that New Hampshire law requires that juveniles be informed of rights in language understandable to child); Beaver v. State, 824 S.W.2d 701, 703 (Tex. Ct. App. 1992) (upholding procedure whereby designated magistrate administered statutorily required juvenile warnings).

117 See, e.g., Commonwealth v. Philip S., 594 N.E.2d 880, 883 (Mass. App. Ct. 1992) (employing standard of how reasonable person of juvenile's age would have understood his

2. *Juveniles Seeking Abortions*

In a series of cases challenging state statutes restricting the ability of minors to obtain abortions, the Supreme Court has recognized that "during the formative years of childhood and adolescence, minors often lack . . . experience, perspective, and judgment"[118] as well as "the ability to make fully informed choices that take account of both immediate and long-range consequences."[119] For this reason, the Court has held that states may decide that it is desirable for minors to consult with their parents when seeking abortions.[120]

The Court has held, however, that state legislatures may not enact statutes giving parents an absolute veto power over a minor's decision to obtain an abortion.[121] A state statutory scheme also must provide an alternative procedure which allows the juvenile to procure authorization for the abortion from the State without complying with the parental-notification and/or consent requirements.[122] A pregnant teenager must have the opportunity to go directly to court to demonstrate either that she is mature, informed, and can make a decision regarding an abortion, independently from and without the consent of her parents or that an abortion is in her best interest even if she is not able to make an independent decision.[123] If the minor satisfies either burden, the court must grant her permission to obtain the abortion without first consulting her parents.[124] Moreover, once a court finds

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position); In re M.D.S., 345 N.W.2d 723, 730 (Minn. 1984) (same); In re Robert H., 599 N.Y.S.2d 621, 623 (App. Div. 1993) (same); In re Valerie J., 538 N.Y.S.2d 307, 308 (App. Div. 1989) (same); In re Chad L., 517 N.Y.S.2d 58, 59 (App. Div. 1987) (same); In re L.L.B., No. 90-1944, 1991 WL 44651, at *4 (Wis. Ct. App. Feb. 20, 1991) (same).

Note the similarity between this standard and the test proposed infra Part III.B for assessing juvenile seizures—whether a court objectively determines from the totality of the circumstances that a reasonable juvenile would not have felt free to end the police encounter.

118 Bellotti v. Baird, 443 U.S. 622, 635 (1979).

119 Id. at 640; see also Hodgson v. Minnesota, 497 U.S. 417, 444 (1990) ("The State has a strong and legitimate interest in the welfare of its young citizens, whose immaturity, inexperience, and lack of judgment may sometimes impair their ability to exercise their rights wisely.").

120 See *Hodgson*, 497 U.S. at 458 (O'Connor, J., concurring in part) (noting that liberty interest of minor deciding to bear child can be limited by parental notice requirement, given that immature minors often lack ability to make fully informed decisions); *Bellotti*, 443 U.S. at 640 (noting that because minors often lack capacity to make fully informed choices, state may reasonably determine that parental consent is desirable).

121 Planned Parenthood v. Danforth, 428 U.S. 52, 74 (1976) (invalidating state statute requiring that unmarried minors obtain parental consent for abortions).

122 *Bellotti*, 443 U.S at 642.

123 Id. at 643-44.

124 Id. at 647-48.

that a minor is competent to assess the implications of her choice, the court cannot override the minor's decision.[125]

Thus, in the abortion context, the Court has drawn a distinction among the requirements that a state may impose on an immature versus a mature juvenile. As one commentator has observed, the Court has made this distinction because whatever interest the state has in protecting immature minors "is satisfied by their very maturity."[126] In drawing this distinction, the Court has implicitly recognized that chronological age alone is not a sufficient indicator of a minor's ability or inability to hypothesize different courses of action and their possible outcomes, or to judge which action is in her best interest.

The Court's holdings in this area demonstrate that a standard which mandates courts to conduct case-by-case evaluations of the maturity of juveniles allows the state to protect the welfare of the immature teen while not infringing on the constitutional rights of the mature one.

B. What Makes Juveniles Different?: Applying Social Science Studies and Development Theories

In the custodial interrogation and abortion cases discussed in the preceding section, the Supreme Court found that because juveniles are unlike adults, the law must treat them differently to ensure that they are not accorded less constitutional protection than adults.

The Court's holdings in these cases were based on its conclusions that minors generally: (1) lack critical knowledge of their rights and have less capacity to understand the meaning of informative warnings and act on them;[127] (2) are developing the ability, at different rates, to weigh the pros and cons of different courses of action and foresee their consequences, especially in pressure-filled situations;[128] (3) have different perceptions of risk and time, and are undergoing emotional changes, which affect their decisionmaking capacity;[129] and (4) are less able than adults to withstand pressure from authority figures to comply with their demands, especially in coercive settings.[130]

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125 Id. at 650.

126 See Catherine Grevers Schmidt, Note, Where Privacy Fails: Equal Protection and the Abortion Rights of Minors, 68 N.Y.U. L. Rev. 597, 635 (1993). Schmidt, however, argues that judicial bypass hearings do not effectively distinguish mature from immature minors, see id. at 636, since there is no uniform standard for determining whether a minor is mature, leaving the juvenile at the mercy of the judge's discretion, see id. at 607.

127 See supra text accompanying notes 107-09.

128 See supra text accompanying notes 110-11, 119, 123.

129 See supra text accompanying notes 106, 118.

130 See supra text accompanying notes 102-06.

This section substantiates these conclusions about what makes juveniles different from adults by drawing on social science studies and scholarship on juveniles' cognitive, social, emotional, and moral development. Because development theory can help to explain what makes juveniles different, this scholarship provides the foundation for special tests and standards for Fourth Amendment events in a manner that accords minors the same amount of constitutional protection as adults.

1. Knowing and Understanding Your Rights

Noting that most juveniles in pretrial proceedings waive rather than invoke their rights to silence and counsel, psychology professor Thomas Grisso conducted a study to determine juveniles' legal and psychological capacity to waive their *Miranda* rights.[131] To date, Grisso's study is the only empirical research to examine the differences between juveniles and adults in making decisions in criminal proceedings.[132]

To measure comprehension of the words in the *Miranda* warning, Grisso administered three tests. In both the "Rights"[133] and "Vocabulary"[134] tests, only half as many juveniles as adults understood the entire *Miranda* warning.[135] Moreover, juveniles were about twice as likely as adults not to understand at least one of the four *Miranda* statements[136] and one of the six key words.[137] In the final test—in which the standard *Miranda* warning was reworded and subjects were asked if one version had the same or different meaning as a second

131 Thomas Grisso, Juveniles' Capacities to Waive *Miranda* Rights, 68 Cal. L. Rev. 1134, 1134 (1980).

132 See Scott et al., supra note 99, at 238.

133 The Rights test asked participants to put into their own words four statements contained in the typical *Miranda* warning. Grisso, supra note 131, at 1144.

134 In the Vocabulary test, participants were asked to describe the meaning of six key words contained in the *Miranda* warning—consult, attorney, interrogation, appoint, entitled, and right. Id. at 1146.

135 Id. at 1152-54, 1152 tbl. 1, 1153 tbl. 2. A perfect score on the Rights test showing adequate understanding of the four *Miranda* statements was received by only 20.9% of the juveniles compared to 42.3% of the adults tested. Id. at 1152 tbl. 1. In the Vocabulary test, 60.1% of the adults received the highest possible scores, as compared to only 33.2% of the juveniles. Id. at 1154, 1153 tbl. 2.

136 Id. at 1153-54, 1152 tbl. 1. About 55.3% of the minors scored zero understanding on at least one of the four statements as compared to 23.1% of the adults. Id. at 1153-54.

137 Id. at 1154, 1153 tbl. 2. At least one of the six words tested for was not understood by 63.3% of the minors as compared to 37.3% of the adults. Id. at 1154.

version[138]—less than one-half as many juveniles as adults received perfect scores.[139]

Grisso worked in conjunction with a team of lawyers and psychologists to develop a test to measure whether juveniles perceived the significance and function of *Miranda* rights in the criminal justice system.[140] They determined that in order to meaningfully waive their rights, juveniles must: (1) perceive the police as adversaries who are trying to obtain information to convict them; (2) understand that an appointed attorney must act as an advocate and keep information confidential; and (3) perceive the right to silence as an absolute right not to incriminate oneself throughout all phases of the criminal process.[141] Grisso found that juveniles seemed to understand as well as adults the first two concepts;[142] however, juveniles revealed a poor understanding of the overall right against self-incrimination.[143]

Grisso's findings help substantiate the assertions in Fifth Amendment case law that juveniles lack critical knowledge and have a lesser capacity to understand the meaning of the *Miranda* warning.[144] Grisso's studies, however, did not test for two other contentions made by the Supreme Court in its holdings in juvenile confession cases: that juveniles have a limited ability to foresee the consequences of their actions and that they are less able to resist the demands of authority figures.

Moreover, Grisso focused on the comprehension of juveniles as compared to adults; he did not analyze the decisionmaking process that juveniles undertake in choosing to waive their *Miranda* rights.[145] Understanding the language of the *Miranda* waiver does not translate into the ability to make a knowing and intelligent decision about waiving it. That ability encompasses an ability to abstract and to pose and weigh hypotheticals, concepts that are explored more fully in the next subsection.

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138 Id. at 1147.

139 Id. at 1154 & tbl. 3. Only 27.6% of the juveniles—as compared to 62.7% of the adults—received the two highest possible scores on the True-False test. Id. at 1154.

140 See id. at 1148.

141 Id.

142 See id. at 1157-58.

143 See id. at 1158. For example, juveniles were nearly three times as likely as adults to not know that a judge could not penalize someone for remaining silent. Id. at 1158-59.

144 For a more complete description of the studies, see generally Thomas Grisso, Juveniles' Waiver of Rights: Legal and Psychological Competence (1981).

145 See Scott et al., supra note 99, at 225.

2. *Ability to Abstract, Hypothesize, and Deal in Propositional Thought*

Adolescence is marked by the development of "'formal operations,' . . . an ability to deal with the abstract, with the possible, and with what can be postulated."[146] From ages two through about eleven or twelve, children develop and use "concrete operations," which involve the "manipulation of real things and ideas rather than purely hypothetical ones."[147] Then, starting at around age eleven or twelve, juveniles begin to develop "formal operations"—the ability to abstract from the real to the possible; to reduce what is perceived into concepts or propositions[148] by disassociating the "similarities inherent in various behavioral acts . . . from their particularized contexts."[149] Adolescents become concerned with the possible, and reality is seen as just a "particular instance of it."[150]

Formal operations also involve the ability to think in terms of propositions that are not tied to concrete, observable events and to manipulate those abstractions.[151] Thus, adolescents begin to develop the capacity to abstract from the "possible to the possible" as well as from the "real to the possible."[152]

Hypothetical-deductive reasoning is yet another hallmark of formal operations. This involves the capacity to postulate hypotheticals, both in terms of courses of action and outcomes, and test them against reality.[153] Adolescents develop the ability to test hypotheses by isolating variables and examining all possible combinations of variables.[154] They also can factor in such abstract concepts as chance and probability in testing their hypotheses.[155] "[T]he end result of this

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146 Committee on Child Psychiatry, Group for the Advancement of Psychiatry, How Old is Old Enough? The Ages of Rights and Responsibilities 28 (1989) [hereinafter GAP].

This subsection describes the cognitive development model of Jean Piaget, whose work is a foundation in the child-development field and remains an important theoretical guide to how children perceive, think, and conceptualize. Piaget observed and questioned children as he asked them to perform or solve various tasks. His major conclusion was that there are certain cognitive abilities which are very rare in children below a certain age; different abilities develop as a child grows. See Stanley I. Greenspan & John F. Curry, Piaget's Approach to Intellectual Functioning, in 1 Comprehensive Textbook of Psychiatry 256, 256-61 (Harold I. Kaplan & Benjamin J. Sadock eds., 5th ed. 1989) (providing overview of Jean Piaget's developmental psychology); GAP, supra, at 20-21.

147 GAP, supra note 146, at 23.

148 Greenspan & Curry, supra note 146, at 259-61.

149 Id. at 257.

150 Id. at 260.

151 See id. at 261.

152 See id.

153 See id.

154 See id. at 258 tbl. 3.2-1.

155 See GAP, supra note 146, at 28.

new ability is the capacity to test the causal significance of each individual factor in succession by holding all other factors constant."[156]

A study illustrates the distinction between the use of "formal" as opposed to "concrete" operations in decisionmaking. Adolescents aged twelve to eighteen were presented with different scenarios, such as how to advise an individual concerning whether to undergo a surgical procedure about which two doctors disagreed.[157] The study showed that the younger adolescents, from ages twelve to about fourteen or fifteen, in comparison to the eighteen-year-olds, had a lesser ability to imagine risks and future consequences, to recognize the need for independent professional opinions, and to understand that these professionals could have their own interests and motivations when they provided advice.[158] The eighteen-year-olds had greater abilities, but other studies have suggested that "older adolescents really possess something closer to savvy than fully mature, formal thought."[159]

During adolescence, humans learn to use the emerging abilities to abstract, to test hypotheses, and to weigh the merits of various courses of action in order to adapt to the demands of their environment.[160] As cognitive development proceeds, the individual becomes more and more able to adapt to a wider range of internal and external disturbances.[161] While these capacities are in development, however, adolescents apply them inconsistently in their daily lives; formal operations is an ideal level, and "[e]ven those who learn how to abstract and to test hypotheses do not use these skills consistently or invariably."[162]

First, the utilization of cognitive skills, such as the ability to abstract, is relatively context-specific during adolescence.[163] "[F]ew psychologists believe that children at a given stage engage in a

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156 Greenspan & Curry, supra note 146, at 261.

157 GAP, supra note 146, at 28-29 (citing Catherine Lewis, How Adolescents Approach Decisions: Changes Over Grades Seven to Twelve and Policy Implications, in 52 Child Development 538, 538-44 (1981) (discussing legal and legislative controversy about "the ages at which children and adolescents are permitted to make various legally regulated decisions")).

158 Id.

159 Id. at 29 (citation omitted).

160 See supra text accompanying notes 146-56.

161 Greenspan & Curry, supra note 146, at 256; see also Howard Lerner, Psychodynamic Models, in Handbook of Adolescent Psychology 53, 64 (Vincent B. Van Hasselt & Michel Hersen eds., 1987) (noting that "[t]he transformation of thinking from concrete to formal operations enhances adaptation in a number of ways").

162 GAP, supra note 146, at 28.

163 See Kurt W. Fischer et al., The Development of Abstractions in Adolescence and Adulthood, in Beyond Formal Operations: Late Adolescent and Adult Cognitive Development 43, 57 (Michael L. Commons et al. eds., 1984); GAP, supra note 146, at 34.

characteristic reasoning across many tasks. . . . [M]ost psychologists believe that similar skills develop at different rates" over different tasks.[164]

Second, in stressful situations and spontaneous, unstructured settings generally, adolescents often will not use the highest level of abstraction of which they are capable at that particular point in time.[165] One study found that when adolescents and young adults cannot "cope" with a particular situation or task, they use a "fallback strategy"—instead of attempting to complete a task or problem using the highest level of abstraction of which they are capable, they will use a lower-level skill, such as reducing the task or problem to a concrete recitation of facts or numbers.[166] Differences between children's experiences and opportunities for problem solving, for example, can lead to wide variations in juveniles' abilities to respond and react in different situations.[167]

For these reasons, models of juvenile decisionmaking wholly based on cognitive capacities are incomplete because they do not account for other changes that occur during adolescence.[168] The next two subsections briefly describe models that explore how factors unique to adolescence—including distinctive perceptions of risk and time, emotional upheaval, and changing relations with parents, peers, and society as a whole—affect juvenile decisionmaking.

3. *The Impact of Perceptions of Risk and Time, and Emotional Upheaval on Decisionmaking*

Adolescents have attitudes about risk and time that differ from those of adults.[169] For example, adolescents take more risks with health and safety than do adults, often viewing themselves as invulner-

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164 See Scott et al., supra note 99, at 225 (citing J.H. Flavell, Cognitive Development (1985); R.S. Siegler, Children's Thinking (2d ed. 1991)).

165 See Fischer et al., supra note 163, at 70.

166 Id. at 69. Juveniles will, however, use their highest skills of abstraction in structured situations or when they are highly motivated to perform. See id. at 70.

Child-development specialist Peter Blos explained that factors which signal the end of adolescence and the entrance into adulthood are a "new mode of dealing with the exigencies of life" and the greater stability and irreversibility of behavior and attitudes, even under stress. Peter Blos, Character Formation in Adolescence, in 23 The Psychoanalytic Study of the Child 245, 245 (1968).

167 GAP, supra note 146, at 30. For example, a child's social and economic class will greatly affect his or her cognitive development. Id. at 33. Additionally, cultural experiences may affect decisionmaking ability and performance. See Scott et al., supra note 99, at 226.

168 See Scott et al., supra note 99, at 222-23.

169 See id. at 230-31.

able to the potential negative consequences of risk taking.[170] Adolescents may calculate the probability of a given risk differently than adults.[171] Also, in making decisions, adolescents will focus less on protecting themselves from possible losses than in gaining something and will "weigh the negative consequences of *not* engaging in risky behaviors more heavily than adults."[172] Moreover, "adolescents seem to discount the future more than adults and to weigh more heavily the short-term consequences of decisions—both risks and benefits."[173] Their unique outlook on risk and time affects how adolescents use information in making decisions and causes them to attach subjective values to the potential outcomes of those decisions which differ from those which adults would assign.[174] These factors, in turn, may cause juveniles to make different decisions than adults when faced with the same set of circumstances.[175]

Adolescents' cognitive abilities also can be distorted by a wide variety of factors, including fantasy, stress, family problems, and peer pressure.[176] Describing adolescence as a period of "storm and stress," Anna Freud explained that

> it is normal for an adolescent to behave for a considerable length of time in an inconsistent manner; to fight his impulses and to accept them; to ward them off successfully and to be overrun by them; to love his parents and to hate them; to revolt against them and to be dependent on them.[177]

Adolescence is characterized by emotional upheavals, which are indicators of juveniles' attempts to deal with the qualitative and quantitative changes in "drive activity" such as sexual urges and aggression.[178] Thus, "[a]t the very time that they begin to be able to

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170 Id.

171 Id. at 234.

172 Id. at 231 (citations omitted).

173 Id. (citation omitted).

174 See id. at 232-35.

175 See id. at 232.

176 GAP, supra note 146, at 34-35 (citations omitted).

177 Anna Freud, Adolescence, in 13 The Psychoanalytic Study of the Child 255, 275 (Ruth S. Eissler et al. eds., 1958). Freud explained that the outward signs of these upheavals are so striking that it is often difficult to distinguish between normality and pathology in teenagers. "The adolescent manifestations come close to symptom formation of the neurotic, psychotic or dissocial order and merge almost imperceptibly into borderline states, initial, frustrated or fully fledged forms of almost all the mental illnesses." Id. at 267; see also John G. Looney & David G. Oldham, Normal Adolescent Development, in 2 Comprehensive Textbook of Psychiatry, supra note 146, at 1710 ("[M]anifestations of its complexity can be confused with pathological states.").

178 Freud, supra note 177, at 264; see also Joseph Adelson & Margery J. Doehrman, The Psychodynamic Approach to Adolescence, in Handbook of Adolescent Psychology 99, 102-03 (Joseph Adelson ed., 1980) ("[T]he task of *defending* against the emergence of

abstract, adolescents cannot fully use these capacities because of the pressure of their own emotions."[179]

Early psychodynamic models of development, such as Anna Freud's, which focused on the interplay between drive activity and defense mechanisms, have evolved to include theories about identity and relationship formation.[180] The three "developmental tasks" of adolescence are changes in: attitudes towards the body, relationships with parents, and relationships with peers.[181] Peer and parental influences can undoubtedly shape juvenile decisionmaking.[182] "Encounters" and relationships with nonfamilial adults also play a role in adolescent development.[183] The next subsection discusses how the changing way in which teenagers relate to adults can affect their decisionmaking in encounters with police.

4. *Interactions with Authority Figures in Coercive Settings*

Juveniles' interactions with police officers in coercive settings must be viewed within the context of the critical changes in social relationships which adolescents experience. In forming a sense of self while trying to find a place in society, the adolescent struggles with

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these drives has for some years been understood as the central intrapsychic problem of adolescence . . . .").

179 GAP, supra note 146, at 32 (citing Anna Freud, The Widening Scope of Child Psychology: Normal and Abnormal, in The Writings of Anna Freud, 1970-1980 (1981)); see also Peter Blos, The Adolescent Passage: Developmental Issues 407 (1979); Freud, supra note 177, at 264.

Taking Anna Freud's cue, other child specialists are exploring the interaction between the teenager's growing ability to hypothesize and abstract, and the emotional turmoil and fantasies characteristic of adolescence. Looney and Oldham divide adolescence into three phases. The first stage, early adolescence, is the onset of puberty and lasts about two years. Major body changes lead many children to believe that their minds may be out of control. Moreover, communicating with adults may be difficult, especially for those who are still thinking "concretely"—i.e., they have difficulty thinking beyond that immediate point in time. See Looney & Oldham, supra note 177, at 1711. The next is a transitional stage which lasts another two years, when adolescents start employing abstract thought. However, "[a]lthough this capacity develops, its effective usage does not. Adolescents tend to play with abstract thought, much as younger children play with toys. Adolescents explore a wide variety of 'what if' propositions, and some of them are even bizarre." Id. The third phase of adolescence—"adolescence proper"—continues for two to three years. Adolescents experience "strong feelings and emotions," while at the same time begin to show some "practicality in their use of abstract thinking." Id. at 1712.

180 Lerner, supra note 161, at 54-55.

181 See id. at 60 (citing Moses Laufer, The Central Masturbation Fantasy, the Final Sexual Organization, and Adolescence, in 31 The Psychoanalytic Study of the Child 297 (1976)).

182 See Scott et al., supra note 99, at 229-30.

183 Lerner, supra note 161, at 62, 66.

competing urges for conformity and rebellion.[184] "Salient developmental issues for adolescents include negotiating about power and control in the context of changing relationships with peers and parents."[185] In what Peter Blos has termed the "second individuation process,"[186] adolescents begin to break away from their families; but in order to loosen the "infantile object relations" and form more complex relationships with adults, adolescents must regress.[187] For example, teenagers will often "polarize" their characterization of individuals in their lives, idealizing some and devaluing or even villainizing others.[188]

Social-cognitive theories of development explore juveniles' understanding of both themselves and others in social contexts. Robert Selman's model of "social perspective taking"[189] considers evolving conceptions of individuals, friendships, peer groups, and parent-child relations over five stages of development.[190] For example, in tracing the evolution in conceptions of individuals, Selman notes that children from ages six to about ten or eleven develop an understanding that individuals' thoughts and motives underlie their actions.[191] At this stage, however, children generally do not perceive that people can feel one way and say that they feel another.[192] It is not until the next stage, spanning roughly ages eleven through fifteen, that juveniles realize that individuals can mask their inner selves from outside view.[193] Then, starting at around age fifteen, "people are seen as able to have mixed thoughts, feelings, or motives toward the same object at the same time."[194] During this stage of development, however, adolescents will overgeneralize or stereotype a trait in a particular person to define that person's personality.[195] Theories such as Selman's speak to an adolescent's ability to recognize that police have their own agendas and can have mixed motives for taking certain actions. Such theo-

184 See id. at 62-63 (citing, in part, the work of Erik H. Erikson, Childhood and Society (1950), Insight and Responsibility (1964), and Identity: Youth and Crisis (1968)).

185 Scott et al., supra note 99, at 230 (citations omitted).

186 Blos, supra note 179, at 141.

187 Id. at 152, 156.

188 Lerner, supra note 161, at 66 (citing Alan Sugarman et al., The Psychological Dimensions of Borderline Adolescents, in Borderline Phenomena and the Rorschach Test (Jay S. Kwawer et al. eds., 1980)).

189 Robert L. Selman, The Growth of Interpersonal Understanding: Developmental and Clinical Analyses 11-47 (1980).

190 Id. at 131-51.

191 Id. at 132, 180.

192 Id. at 132-33.

193 Id. at 133, 180.

194 Id. at 134, 180.

195 Id. at 134.

ries can help us understand, for example, whether a juvenile recognizes that, because a police officer can have both benevolent and adverse motives for approaching the juvenile on the street, the juvenile will be primarily responsible for protecting his rights in that confrontation.

Similarly, Lawrence Kohlberg's model of moral development can help explain juveniles' interactions with authority figures such as police.[196] Kohlberg suggests that adolescence is marked by "conventional" morality—"conforming to and upholding the rules and expectations and conventions of society or authority just because they are society's rules, expectations, or conventions."[197] Conventional morality is contrasted to the "postconventional" level, which Kohlberg hypothesizes is only reached by a small percentage of adults, and then only after age twenty.[198] At the postconventional level, an individual understands and follows society's rules, but only after grappling with the moral principles underlying these rules and deciding to accept them as his or her own values.[199] Thus, to the extent that a minor is still functioning at the "conventional" level of morality, he or she may be more inclined to comply with a police officer's demands than a person who operates at a "postconventional" level.

III

A JUVENILE STANDARD FOR CONSENT SEARCHES AND SEIZURES

This Note argues that courts should apply the insights of development theory in their analyses of juvenile consent searches and seizures. Special standards and procedures must be developed for minors if the Fourth Amendment is to provide juveniles with the same level of protection that it affords adults. Towards this end, this Part sets forth a preliminary framework for assessing search and seizure questions involving juveniles which best incorporates the learning of these fields. Specifically, this Part describes the practices police officers should follow in the field, as well as how courts should evaluate the voluntariness of juvenile consent searches and apply a reasonable juvenile standard in judging whether a minor has been illegally seized.

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196 See Lawrence Kohlberg, The Psychology of Moral Development: The Nature and Validity of Moral Stages (1984).

197 Id. at 172.

198 Id.

199 See id. at 173.

A. Consent Searches

This Note proposes that courts employ the second paradigm described in Part I for assessing juvenile consent searches. To review, the paradigm has two components in determining if the consent was voluntary: (1) viewing the totality of the circumstances through the unique lens of a minor and (2) placing greater emphasis on the role of informed consent, by requiring the state to prove either that police advised the juvenile that he had the right to refuse consent or that the juvenile knew his rights.[200]

The court would apply a "youthful" totality of the circumstances analysis in all cases, including those in which minors were advised that they could refuse consent, and they nevertheless agreed to the search. As the juvenile-confession case law informs us,[201] a prior warning should be a necessary—although not sufficient—condition for a finding that consent to a search was voluntarily given, absent evidence that the juvenile knew he had the right to refuse consent. To assess the circumstances objectively through the eyes of the teenager, the court must take into account that a minor, as compared to an adult, would be more likely to think that he could not refuse the police officer[202] and less likely to understand the implications of consenting.[203]

As demonstrated by the confession[204] and abortion[205] cases, courts are able to conduct particularized assessments of the maturity of individual juvenile defendants to determine if their consent was truly voluntarily "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."[206] Courts can make these assessments more meaningful by, for example, asking questions designed by child-development specialists to evaluate a minor's aptitude for understanding what a right is and what it means to exercise it, as well as his ability to hypothesize the various outcomes of making different decisions, and other factors essential to a finding of voluntariness. By doing this, courts will base their assessments of juveniles on rigorous scholarship as opposed to individual idiosyncrasies.

Children in custody are often given *Miranda* warnings prior to interrogations precisely to overcome the inherent coerciveness of arrest. This Note argues that it is often as stressful, if not more so, for

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200 See supra text accompanying notes 44-57.
201 See supra Part II.A.1.
202 See supra Parts II.B.1, II.B.4.
203 See supra Part II.B.2.
204 See supra Part II.A.1.
205 See supra Part II.A.2.
206 In re Gault, 387 U.S. 1, 55 (1967).

minors to be faced with the prospect of arrest as it is for them to be under arrest.[207] *Miranda* warnings are administered to juveniles in order to reduce the coerciveness of the situation and to increase the likelihood that a waiver of rights is truly voluntary. This rationale supports advising juveniles of their rights in consent searches.

The *Miranda* studies and cognitive development literature provide guidance in wording a warning tailored specifically to juveniles. For example, because a teen's ability to hypothesize the outcomes of different decisions is inconsistent in anxiety-filled circumstances,[208] it is critical to explain to a juvenile what *cannot* happen to him, not just what will happen, if he chooses to refuse permission for a search. Thus, a warning prior to waiver must convey to a minor that the police officer can do nothing to prevent him from walking away, and that he cannot be arrested simply because he walks away.

In addition, the text of the warning must be simple and repetitive, allowing the juvenile a number of "exit" points. This Note proposes the following sample consent-search warning; it relies on, to some extent, two examples of specialized *Miranda* warnings for children,[209] as well as a sample explanation to be used by attorneys in preparing juvenile clients for a colloquy on waiver of rights in court.[210]

> At this point, I don't have a reason to think you have done or are about to do a crime. And I don't have any proof that you're doing something against the law. But I would like to see what's in your [here officer must list specifically what he wishes to search]. Because I don't have reason to think you have done or are about to do a crime, you can say no to me. You can tell me that I can't search your [the place that the police officer earlier specified], and I can do nothing to you. I can't stop you from leaving, or use the fact that you left to come find you later.
>
> If you do give me permission to search your [insert specified item], and I find anything that shows that you've done or are doing something against the law, I can use that to arrest you. And a judge

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207 For one thing, when a juvenile is stopped by officers on the street, he is isolated from other people who can provide support; similarly, there is no one to regulate the officers' conduct. However, once a child is arrested and brought to a police station and/or the courthouse, the law requires that adults who can act on the minor's behalf (i.e., his parents or guardians, or an attorney) be present when the juvenile is asked to waive constitutional rights. See discussion of children's Fifth Amendment rights supra Part II.A.1.

208 See supra text accompanying notes 165-66.

209 See New Hampshire v. Benoit, 490 A.2d 295 app. (N.H. 1985) (providing example of simplified *Miranda* warning designed for juveniles); Larry E. Holtz, *Miranda* in a Juvenile Setting: A Child's Right to Silence, 78 J. Crim. L. & Criminology 534, 551 n.95 app. (1987) (same).

210 See 1 Hertz et al., supra note 112, § 14.23(a).

later on in court can use whatever I find in your [insert specified item] to send you to jail. Do you understand that?

Do you understand that you can tell me that you do not want me to search your [insert specified item], and that I have to leave you alone if you say no to me?

Do you understand that if you say no to me that you can walk away and I can't do anything to stop you?

Do you understand that if you say no and walk away, I can't use the fact that you said no and walked away to cause any trouble for you later on?

Do you have any questions about any of the things I just told you?

If the minor consents to the search, there still must be a safety valve to permit the child to pull out of the search one more time. Thus, before the search, the juvenile should be told:

> Now that you've given me permission to search your [item specified], again I'm reminding you that I can use anything I find that shows you're involved in a crime to arrest you, and a judge can use it later to send you to jail. Do you understand? Do you still give me permission to search your [item specified]?

To ensure that the consent was knowing and voluntary, the court—in conducting a "youthful" totality of the circumstances analysis—must inquire into the exact responses given by the juvenile to the questions in the *Miranda*-like warning, as well as the minor's demeanor during the delivery of the warning and while responding to the questions.

B. Stops and Seizures

This Note rejects the "force or submission test"[211] for determining when a juvenile has been seized. This Note has established that courts that use the "reasonable person/free to leave test" typically do not adequately factor the minor defendant's youth into the inquiry.[212] The traditional application of the "reasonable person/free to leave" test thus is skewed against young people because courts typically do not capture important differences in the way adolescents versus adults think, reason, and react in stressful situations. For this reason, the traditional "reasonable person" test provides less protection under the Fourth Amendment for juveniles than it provides for adults.[213]

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211 See supra Part I.B.1.a.

212 See supra Part I.B.2.

213 This Note is not unique in making the argument that the "reasonable person/free to leave" test is skewed against certain communities because it does not account for specific attributes and experiences of that segment of the population. For example, one commentator has argued that a "generic" reasonable-person test for analyzing consent searches and

Thus, this Note proposes a reasonable juvenile test: Would a reasonable juvenile in the defendant's shoes, given the totality of the circumstances, have believed that he was free to end the police encounter and walk away?

On its face, a reasonable juvenile seizure test is similar to the reasonable juvenile standard used by some courts in determining whether a minor is "in custody" for *Miranda* purposes,[214] suggesting that these cases could provide guidance for developing a test for juvenile seizures. However, the "in custody" case law is not helpful because the opinions often simply recite the conclusion that a reasonable "X-year-old" either would or would not have believed that he was free to leave.[215] While these opinions typically catalog the circumstances surrounding the alleged seizure, they fail to spell out the attributes of the youth that support the assertion that a reasonable youth would have thought he was, or was not, in custody.[216]

The *Miranda* studies and child-development literature once again inform the formulation of a reasonable juvenile seizure test. As noted above, minors, as compared to adults, are less likely to know that a police officer cannot stop them without an articulable reasonable suspicion.[217] Juveniles, because they are less resistant to authority figures, are also less likely to act on their right to walk away from an officer lacking reasonable suspicion and, as argued above, refuse a consent search.[218] Finally, minors are less capable of quickly hypothesizing and weighing the different courses of action that they can pursue when stopped by police.[219]

Based on these factors, this Note proposes that courts should generally recognize a lower threshold for what constitutes a seizure of a juvenile as compared to an adult. Courts should still conduct case-by-case evaluations of both the circumstances of the stop and the matur-

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seizures is biased against the poor and racial and ethnic minorities because it does not factor the past, often abusive experiences of those communities with police into the analysis. See Robert V. Ward, Consenting to a Search and Seizure in Poor and Minority Neighborhoods: No Place for a "Reasonable Person," 36 How. L.J. 239, 241, 245 (1993). For these reasons, the test is not an accurate indicator of whether consent was voluntarily given or if an encounter between police and a citizen was consensual. See id. at 253-54. This commentator thus puts forward an alternative framework for assessing consent searches and seizures which instructs courts to take into account the defendant's race, ethnicity, and socioeconomic status, the history of police-citizen relations in the defendant's community, and the defendant's own experiences with police. See id. at 253-57.

214 See supra note 117.

215 See supra note 117.

216 See supra note 117.

217 See supra Part II.B.1.

218 See supra Part II.B.4.

219 See supra Part II.B.2, 4.

ity of the juvenile defendant. Since a minor's ability to hypothesize is limited and used erratically in stressful situations, a juvenile's past experience with police, whether direct or observed, becomes particularly relevant to the totality of the circumstances inquiry. Because of these limitations, a juvenile would be more likely to rely on this past experience as an indicator of what could happen and what alternatives are available to him and less likely to be able to conjecture outcomes outside his own experience.

As explained in Part III.A, courts could pose questions to the minor to assess his level of emotional and cognitive development. Once this is done, the court could analyze the circumstances of the police encounter through the lens of the particular juvenile's level of development to evaluate whether the juvenile was seized for purposes of the Fourth Amendment.

CONCLUSION

One could argue that the models proposed by this Note provide juveniles with *more* protection than adults have from unreasonable searches and seizures. For example, the framework suggests that police officers be required to administer a comprehensive warning to juveniles before conducting consent searches. Adults, however, are not constitutionally entitled to any warning at all.

However, as a society we have chosen to protect juveniles from their own immaturity in a variety of contexts.[220] Adults are allowed to make "poor" choices because second-guessing their choices would unacceptably undermine their autonomy; an adult's "poor" choices are assumed to reflect the adult's subjective preferences.[221] By contrast, a juvenile's poor choices are seen as the product of the developmental factors discussed in Part II, and it is assumed that the youth will "outgrow" these choices and make different ones as an adult.[222] This Note argues that the Fourth Amendment can extend the same level of protection to juveniles as it does to adults only if these differences are taken into account.

To accomplish this task, we must incorporate our understanding of juveniles' cognitive development into legal theories and tests. The standards and tests proposed in this Note create a special role for child and adolescent development specialists in the juvenile justice system. The cursory review of development scholarship in Part II

220 See Scott et al., supra note 99, at 227 (citing as examples establishment of separate juvenile justice system, infancy doctrine in contract law, and restrictions on adolescent decisions about medical treatment, employment, and marriage).

221 See id. at 228.

222 See id.

does not begin to approach the level of sophistication which the involvement of these specialists could bring to search and seizure analysis.

As this Note has demonstrated, the law already contains a foundation on which to build a particularized role for the child-development community in assessing Fourth Amendment events.[223] The interrogation and abortion cases discussed in Part II.A show that the courts have recognized that to protect juveniles' constitutional rights, judges must account for the fact that minors are developmentally different from adults. Courts, however, have struggled to articulate this difference in a manner that would allow its application to the assessment of constitutional events involving juveniles. This Note has sought to begin refining the articulation of this difference and its translation into specialized search and seizure standards for juveniles.

[223] See supra Part II.A.