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Brief of the Week: Taking a hard look at police in schools

Tony Mauro

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Angela Vigil, director of Baker & McKenzie's pro bono program, wishes she could take the justices of the Supreme Court to some modern-day public schools.

What the Court would find, she said, is that many have police rooms next to classrooms, where police interrogations of students can and often do take place – often leading to coerced and false confessions.

"Our schools have become almost like satellite police stations," said her client Steven Drizin, head of the Center on Wrongful Convictions of Youth at Northwestern University School of Law.

Since the Court doesn't often take field trips, the next best thing is an amicus curiae brief by Vigil on behalf of Drizin's center and other juvenile law advocates and experts in the case of *J.D.B. v. North Carolina*, set for argument March 23.

The case asks whether a trial judge can consider a juvenile suspect's age in determining whether he or she was actually in custody while being interrogated by police for the purpose of deciding whether a *Miranda* violation occurred. The issue arose in the case of a 13-year-old juvenile questioned in a Chapel Hill middle school by police and school officials in connection with a rash of home burglaries.

Excluding a suspect's age from the custody calculus, Vigil said, would be "one more feather on the scale contributing to false confessions, which neither side wants."

Vigil's brief is one of an array of amicus curiae briefs in the case, argue that juveniles' age – and related issues of maturity and brain development -- should be a factor in deciding whether a suspect could have reasonably felt free to leave the interrogation. The Court has never ruled on the issue, though in *Yarborough v. Alvarado*, a 2004 case decided on other grounds, four justices indicated they thought age should be a factor.

Advocates for the defendant have some reason to be optimistic, because of a series of recent cases in which the Court has agreed that juveniles deserve greater protections. In *Graham v. Florida* last year, the Court held that life in prison without parole was an unconstitutional sentence for juveniles in non-homicide crimes. That built on 2005's *Roper v. Simmons*, which outlawed the death penalty for juveniles.

"Before, the Court said juveniles should be treated differently because it was death, and now they said juveniles should be treated differently because they're kids," said Vigil, a veteran advocate for juveniles who has handled cases involving false confessions by young defendants.

"This is a burgeoning area of the law," said Vigil, adding that judges are increasingly willing to allow testimony from experts on false confessions

Briefs by the Juvenile Law Center, the American Civil Liberties Union, the National Association of Criminal Defense Lawyers, and the American Bar Association discuss the relevance of youth as a factor in deciding whether a suspect feels free to leave an interrogation, especially in a school setting.

Vigil's brief takes a different tack, emphasizing what the practical impact of not allowing age to be considered as a factor would be: namely "an increase in un-counseled and potentially unreliable confessions by children."

The brief offers empirical studies as well as real cases of false confessions by juveniles and adults alike. Roughly a quarter of the 261 DNA exonerations came in cases in which the defendant confessed to the crime under police interrogation. A separate study found that nearly two-thirds of false confessors were under age 25.

The Court itself recognized in a 2009 case, *Corley v. United States*, that the pressures of interrogation can cause a "frighteningly high" occurrence of false confessions. The Court in that case cited an article co-authored by Drizin.

In 2008, according to the brief, an Oregon 12-year-old confessed to shooting a dog with a pellet gun after interrogation by police and school officials at a middle school. Charges were dropped after ballistics tests found the bullet that killed the dog could not have come from the youth's gun.

As that example suggests, children are especially prone to confessing wrongdoing when they did nothing wrong if they are at school and confronting both police and school administrators.

"Matters that used to be handled by school administrators now often involve the police," said the center's Drizin. "Just because the questioning takes place at a school doesn't mean it is not a custodial interrogation. The game is still the same."

Even if police tells juvenile suspects they can walk away and not answer questions, children in a school setting are faced with a dilemma that makes the offer a false one, Drizin said. "Walking away from a school official who is talking to you? That is often a disciplinary violation. It is very important for the Court to make a statement that children need greater protection."

Tony Mauro can be contacted at tmauro@alm.com.