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Juvenile justice long time coming, but maybe Illinois bill can lead way

The chance that the U.S. Supreme Court will grant any particular cert petition is vanishingly small. Nevertheless, I am hoping that the court will take a hard look at *Joseph H. v. California*, No. 15-1086 (petition filed Jan. 14, 2016).

The case comes from the California Court of Appeal. I first learned of it through a statement filed by three justices of the California Supreme Court dissenting from that court's decision to deny a petition for review.

It was written by Justice Goodwin Liu. (You may recall that Liu was nominated for a judgeship on the 9th U.S. Circuit Court of Appeals in 2010. When Senate Republicans refused to bring his confirmation to a vote, Liu withdrew and subsequently accepted an appointment to the California Supreme Court in 2011.)

Joseph H. was 10 years old when he shot and killed his father who was asleep at the time. He was convicted of murder largely on the basis of a confession he made during custodial interrogation.

The Court of Appeal found that the 10-year-old had validly waived his *Miranda* rights "despite his young age, his ADHD [attention deficit hyperactivity disorder] and low-average intelligence." For this reason, Liu contended that his court should have granted review to consider "whether and, if so, how the concept of a voluntary, knowing and intelligent *Miranda* waiver can be meaningfully applied to a child as young as 10 years old."

Liu notes that in 2011, Joseph was one of 613 children under the age of 12 arrested for a felony in California. Thus, police in California faced the issue of interrogating these children almost twice a day. California courts have found proper *Miranda* waivers made by children as young as 12, but Joseph H. is the first California case to find a valid waiver by a child under 12.

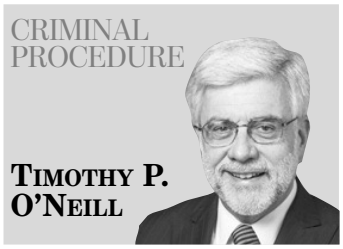
In fact, Liu said that a 1991 case from Florida appears to be the only case to ever find a valid *Miranda* waiver from a 10-year-old. *W.M. v. State*, 585 So.2d 979 (1991).

Liu extensively quoted from the colloquy preserved on videotape of the police interrogation. He correctly characterizes the interrogating officer as "courteous and not overbearing."

Yet Liu notes that this begs the question of whether a 10-year-old can ever be said to truly understand either the nature of *Miranda* rights or the consequences of a waiver.

He cites a number of recent U.S. Supreme Court decisions that have recently relied on the growing body of scientific research that recognizes the significant difference in mental capabilities between adults and children.

So where is Illinois in this? Fortunately what happened to Joseph in California could not have transpired in Illinois. This is because Illinois law would specifically forbid it.



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The Juvenile Court Act provides that a minor who was under 13 at the time of an act that if committed by an adult would be first-degree murder (or several other serious offenses) must be represented by counsel during the entire custodial interrogation. In other words, by law a *Miranda* waiver is an impossibility for such a minor; a lawyer must be involved. 705 ILCS 405/5-170 (a).

This law has been on the books since 2001. But since then, as noted above, the U.S. Supreme Court has produced a series of constitutional decisions holding that juveniles require special attention.

For example, the Eighth Amendment forbids the imposition of capital punishment on juveniles. *Roper v. Simmons*, 543 U.S. 551 (2005). It also prohibits life-without-parole sentences for juveniles who commit non-homicide offenses. *Graham v. Florida*, 560 U.S. 48 (2010).

The Juvenile Court Act provides that a minor who was under 13 at the time of an act that if committed by an adult would be first-degree murder (or several other serious offenses) must be represented by counsel during the entire custodial interrogation.

It further prohibits mandatory life-without-parole for juveniles who commit murder. *Miller v. Alabama*, 132 S.Ct. 2455 (2012). And recently the court found *Miller* to be retroactive. *Montgomery v. Louisiana*, 577 U.S. (2016).

This provides background for an important piece of legislation now pending in Springfield. Senate Bill 2370 is co-sponsored by Sens. Patricia Van Pelt, Mattie Hunter, Jacqueline Collins and Kimberly Lightford. It would amend Section 405/170(a) in two ways.

First, it would apply the statute to anyone under the age of 18, rather than 13. Second, it would do away with the statute's applicability to only a handful of serious offenses; instead, it would now apply to all offenses. In other words, the bill would make it impossible for anyone under the age of 18 at the time of any offense to ever waive a lawyer under *Miranda*. The police would thus be forbidden to conduct an interrogation without an attorney present.

The bill's passage would bring a refreshing dose of reality to an area filled with legal fictions. It would force us to concede that juveniles are simply incapable of making an informed decision about whether or not to waive their *Miranda* rights. As Elizabeth E. Clarke of the Juvenile Justice Initiative has observed, "To say a child under 18 cannot sign a contract, but can sit alone under the full weight of law enforcement standing above him and waive his *Miranda* rights is just absurd."

So this year we have two opportunities to see some real progress made in juvenile justice. On the national front, the Supreme Court's granting cert in *Joseph H.* would signal the court's interest in re-examining the issue of juveniles and *Miranda* warnings from a constitutional perspective.

And, more importantly for Illinois, SB 2370 would mandate the presence of counsel at any custodial interrogation of minors under 18 at the time of the commission of the offense.

For juveniles facing police interrogation, these changes cannot come soon enough.