WHO WANTS TO TALK TO YOUR CHILD ABOUT WHAT????

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INTRO:

Teenaged children are increasingly creative in finding ways to get into trouble. This is not late-breaking news for any of you who presently have adolescent children or grandchildren living in your homes. For those of you have previously had teens in your home, realistically think back and recall the joys of dealing with kids immersed in hormones who took their leads from the latest lyrics and what their friends said was the absolutely best way to have fun. For those of you who have yet to experience the delights of parenting teens, let you mind candidly travel back in time to your own youth and return with us now to those thrilling days of yesteryear and the wonderful judgment that we all exhibited.

Now add:

> Current technology; especially the ability to connect via high definition video & audio with hundreds of a kid's nearest and dearest friends in an instant;
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> Access to designer recreational pharmaceuticals that make the old days of six kids sharing a beer or smoking a joint seem like playing checkers at an assisted-living facility;
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> A society that increasingly abrogates parenting responsibility to the schools;

Neighbors who think that the best way to deal with childish hijinks is to take the matter to court; and

PARENTING BY POLICE - far too many parents in too many segments of our community whose primary parenting technique is to call the cops because their child is disrespectful.

And where does a child find herself when the fecal material collides with the climate control device? Juvenile Court. If you think that Juvenile Court is a warm and fuzzy place overrun with do-gooders, social workers, therapists and dozens of free programs that encourage a teen to express themselves in artistic ways and who are there to shape these eager young minds into future community leaders without any baggage that will follow them into adulthood, you could not be more wrong! Juvenile Probation Officer once came from a social work and therapeutic background. Now they come from a law enforcement and criminal justice point of view. Cops who used to pick up a teen who might have been sampling alcohol and gotten rowdy would bring him home to mom & dad. Now delinquency petitions are filed and children are taken to juvie jail.

JUVENILE COURT AIN'T VEGAS ANY MORE. What happens in Juvenile Court no longer stays in Juvenile Court. Adult sentencing guidelines give great weight to a juvenile court record. Childhood indiscretions too often incur life-long consequences that are, at least, life-altering, if not life destroying.

A recently published study over a number of years done by a Laurence Steinberg, a child neuropsychologist at Temple University measured the onset puberty and end of adolescence, compared to just a few decades past with surprising results. In the 1970s when did puberty begin & end? How does it compare to now? What does this mean?

HOW DOES THIS ALL GET STARTED?

Kids almost always think that they can talk their way out of any situation. They're wrong! More often than not, Jimmy & Suzie simply succeed in removing any doubt and talk their way into more trouble than they started with.

Teach your children well: LAWYER UP NO MATTER WHAT. It is NEVER in a child's best interests to talk to law enforcement.

The past 15 – 20 years has seen tremendous research in the area of adolescent brain development. Fortunately, the U.S. Supreme Court has been

presented with and has endorsed these neuroscientific studies in a series of cases over the past 10 years:

Roper v. Simmons, 543 U.S. 551 (2005)(no capital punishment)

Graham v. Florida, 560 U.S. 48 (2010)(no LWOP for non-homicides)

J.D.B. v. North Carolina, 131 S.Ct 2394 (2011) (age is relevant in questioning a child)

Miller v. Alabama, 132 S. Ct. 2455 (2012)(mandatory LWOP prohibited)

As you can tell, the South leads the nation in this area. *Roper* was from Missouri. The rest of the nation would have no idea what their constitutional rights were, if not for the leadership that the South has taken in this area!

J.D.B. v. North Carolina

JDB clearly holds that the age of a child is relevant to the *Miranda* custody analysis, requiring a subjective analysis of what a "reasonable child of like age" would do under the circumstances. The result was the suppression of a confession to a series of burglaries.

J.D.B. was a 13-year-old special education 7th grader, who was removed from his classroom by a uniformed officer and taken to a small room. Behind a closed door, he was then interrogated by the uniformed officer, a school resource officer, the assistant principal and an adult administrative intern for 30-45 minutes. He was not advised that he was free to leave the room or end the interrogation, nor was he advised of his juvenile *Miranda* rights. The assistant principal told him to "do the right thing," warning him that "the truth always comes out in the end." He was told he would be taken to juvenile detention if he did not "come clean."

At this point, J.D.B. confessed that he and a friend were responsible for the break-ins. Only at this point, did the officer advise J.D.B. that he did not have to answer questions, was free to leave, and was read juvenile *Miranda*. A confession was drafted and signed and J.D.B. was permitted to return to class and go home at the end of the day.

After delinquency petitions were filed, J.D.B.'s juvenile defender sought to suppress the confession, arguing that he had been interrogated in a custodial setting without first being provided *Miranda* warnings. The JU Ct denied the motion, finding that a custodial interrogation was not involved. A divided North Carolina Supreme Court

affirmed, specifically declining to extend the *Miranda* test to include considerations of the age of the suspect.

Justice Sotomayor (joined by Kennedy, Ginsburg, Breyer and Kagan) rejected a one-size-fits-all analysis and emphatically held that if a child's age is "objectively apparent to a reasonable officer," age must be considered in the *Miranda* analysis. Justice Sotomayor instructed that youth is a fact that generates common-sense conclusions about behavior and perception. Such conclusions do not require specialized training, as they are obvious to anyone who was once a child himself, including police officers and judges:

> In short, officers and judges need no imaginative powers, knowledge of developmental psychology, training in cognitive science, or expertise in social and cultural anthropology to account for a child's age. They simply need the common sense to know that a 7-year-old is not a 13-year-old and neither is an adult.
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> Our history is replete with laws and judicial recognition that children cannot be viewed simply as miniature adults.
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> The law has historically reflected the same assumption that children characteristically lack the capacity to exercise mature judgment and possess only an incomplete ability to understand the world around them.
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> The legal disqualifications placed on children as a class … exhibit the settled understanding that the differentiating characteristics of youth are universal.

Justice Sotomayor was mindful of the sound scientific research finding that custodian interrogation can be so coercive as to induce a frighteningly high percentage of people to confess to crimes they never committed. This causes the heightened concern for safeguarding the rights of juvenile suspects in particular.

With *Roper*, *Graham, J.D.B. and Miller* SCOTUS has recognized significant characteristics of juveniles: (1) they have **limited decision-making capabilities**; (2) they **are extremely susceptible to outside influences**; (3) they have more **difficulty with exercising self-control** as compared to adults; (4) they **tend to discount the future and weigh more heavily short-term risks and benefits**; and (5) they experience heightened pressure from immediate coercion, whether from adults or peers, real or imagined.

What's A Mother To Do? What If They Want To Talk With My Child At School????

I was recently retained by the mother of a 14-year-old who was a freshman at a local high school. An incident had occurred at a school function involving students from 2 schools. The Principal & Assistant Principal started their investigation by looking at social media. They hit the mother lode! The boy was one of several who were mentioned on FB of having been involved.

The AP called the boy to the office and interviewed him. The boy told Mom about it when he got home. Mom went ballistic and called a friend who worked at a local law firm. That firm is a fine civil firm, but their lawyers couldn't find juvenile court without a GPS. Her friend talked to one of the lawyers in the firm and passed along this advice: all Mom needs to do to put a stop to this in the future is to deliver written instructions to the school that none of her children (3 in that high school at the time) were to be questioned about anything without her husband or her present.

When the school opened the next morning, Mom delivered the typed note that she and her husband had signed to the AP, who assured her that nobody, not even law enforcement would talk with any of her children on school property without one of the parents being present. That night, Mom gathered all of her children together and instructed them that if any of them were being questioned, they should say nothing except I want to call my parents and then wait for one or both to show up.

Of course, the next day, the P & AP both brought the 14-year-old in to question him further. Mom was not called. The boy didn't ask to call a parent. The boy didn't refuse to answer questions. Once again, talked and talked and talked. Then, he came home and told Mom all about it. Mom called her friend back and was then referred to me. I met with Mom, Dad & the boy that evening.

We had a long talk. When I asked the child why he talked after being told by his parents not to, all he could say was "I don't know. I just answered the questions."

A parent can neither exercise nor waive their child's constitutional rights – only the child can do so. *Smith v. State*, 484 So. 2d 560 (Ala. Crim. App. 1986). I made the child practice with me what to say, especially if the school resource officer or some other law enforcement officer was present.

A few days later, the P, the AP, the school resource office & 2 investigators called the child to the office. Of course, the boy once again answered all their questions and then some. Later he told me "We were all in the AP's office and the door was closed. I had to answer their questions. There was no way to say no!"

How Bad Can It Be In School?

Safford Unified School District v. Redding, 557 U.S. 364 (2009)

This §1983 civil case involves the strip-search of Savana Redding, a 13-year-old female 8th grader, by school officials looking for prescription strength ibuprofen and over-the-counter strength naproxen. The Supreme Court held that the child's 4th Amendment rights were violated, under the specific circumstances of the case. The other language of the case gives considerable cause for concern.

A week prior to the date in question, the Assistant Principal (AP) was told by another student, Jordan, that he was sick after taking pills he got from a classmate, Marissa. Jordan handed AP a remaining pill, which the school nurse later identified as 400 mg ibuprofen.

Marissa and Savana had been previously identified as a part of an "usually rowdy group of girls" who were suspected of bringing alcohol and cigarettes to a school dance. Jordan told AP that he had been to a pre-dance party at Savana's house where alcohol was served.

AP first brought Marissa to his office, where she was made to turn out her pockets and deposit the contents of her purse, producing four prescription-strength (400 mg) ibuprofen, and one over-the-counter (200 mg) naproxen, all of which are banned under school rules without advance permission. AP also searched a day planner Marissa had that contained knives, lighters and a cigarette. Marissa told AP that the pills and the day planner had come from Savana.

AP then summoned 13-year-old Savana from her math class to his office. He showed her the day planner containing knives, lighters and a cigarette. Savana admitted the planner was hers, but said that she had lent it to Marissa days before. She denied knowing anything about the contraband.

AP then showed the pills he had taken from Marissa. Savana denied knowledge of the pills. AP said that he had a report that she was giving pills to fellow students. She denied it and agreed to let him search her belongings. AP and a female assistant, searched Savana's backpack, finding nothing.

AP had the assistant take Savana to the school nurse's office to search her clothes for pills. The women first had her remove her jacket, socks and shoes and found nothing. This left Savana in stretch pants and a t-shirt (both without pockets). The women then had Savana remove her shirt and pants and instructed her to pull her bra out and shake it, and to pull out the elastic on her underpants, thus exposing her breasts and pelvic area to some degree. No pills were found.

Savana's mother filed suit against the school district, AP, the assistant and the nurse, alleging that the strip search violated Savana's 4th Amendment rights.

Justice Souter wrote the opinion for the Court and was joined by all but Justice Thomas in finding the search unconstitutional under the circumstances.

Student in-school searches by school personnel are not subject to the same requisites as law enforcement searches. Less than probable cause is required. *New Jersey v. T.L.O.*, 469 U.S. 325 (1985), held that a school search "will be permissible in its scope when the measures adopted are reasonably related to the objectives of the search and not excessively intrusive in light of the age and sex of the student and the nature of the infraction." Id., at 342.

In the *Redding* case, the Supreme Court adopted a school search standard focusing upon whether there was a **"moderate chance of finding evidence of wrongdoing."**

Souter specifically found that it was only at the point where Savana was required to partially remove her bra and panties and shake them out, that the school search violated the 4th Amendment. Requiring her to strip down to her underwear was allowable under the circumstances of this case. He relied heavily on the fact that the type and quantity of drugs being sought posed a limited threat and were "nondangerous school contraband" that did not "raise the specter of stashes in intimate places."

Thus, **the Supreme Court clearly indicated that there are circumstances where young adolescents can be subjected to the abject humiliation of a strip search, so long as there is both a moderate chance of finding evidence of wrongdoing and that the contraband poses a danger.**

With respect to Savana's civil claims, the Supreme Court found that the AP, female assistant and school nurse were all immune from civil liability in this case.

What would have happened if Savana had insisted on calling a parent? What if she had lawyered up?

<u>Epilogue</u>

"With great power comes great responsibility." - Voltaire & Uncle Ben Parker to his nephew, Peter Parker (Spider-Man).

No one has greater power than an adult in a position of authority in questioning a child.