

The Right Against Self Incrimination: Challenging Confessions on the Basis of Capacity

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I. Introduction: Overview of topics covered and materials

By the end of this presentation and review of materials, you should be able to:

- Discuss case law relevant to juveniles' capacity to waive Miranda Rights;
- Describe specific characteristics of "normal" adolescent development;
- Critically analyze your clients' waivers by considering the "totality of the circumstances;"
- Understand the social and psychological research related to juveniles' capacity to waive Miranda rights; and
- Critically analyze and challenge forensic mental health evaluations of juveniles' capacity to waive Miranda rights.

II. Background: Case Law and North Carolina Procedures

"We cannot believe that a lad of tender years is a match for the police in such a contest. He needs counsel and support if he is not to become the victim first of fear, then of panic. He needs someone on whom to lean lest the overpowering presence of the law, as he knows it, crush him. No friend stood at the side of this 15-year-old boy as the police, working in relays, questioned him hour after hour, from midnight until dawn. No lawyer stood guard to make sure that the police went so far and no farther, to see to it that they stopped short of the point where he became the victim of coercion. No counsel or friend was called during the critical hours of questioning."

A. Case Law

Refer to Capacity to Waive or Invoke Miranda Rights Table of Cases

Capacity to Waive Miranda Rights: Case Law

Case	Issue(s)	Facts of the Case	Decision/Implications
Haley v. Ohio, 332 U.S. 596 (1948),	Coerced confession Juvenile confession	Involved the admissibility of a confession of murder from a 15 year old male in a state criminal court of general jurisdiction.	The Fourteenth Amendment applied to prohibit the use of the coerced confession. Discusses age and immaturity as factors.
Gallegos v. Colorado (1962)	Juvenile confession	14 year old suspect charged with murder. He was detained, and his mother was not allowed to see him because of the hours of visitation.	Reiterated that age constitutes a special circumstance that affects the voluntariness of confessions; held that the confession was obtained in violation of due process, based "on the totality of the circumstances."
Miranda v. Arizona (1966)	Notification of rights before and at the time of in-custody confessions	Four cases in which the defendants were questioned without being informed of rights before or while in custody.	Defined the right of suspects to be informed that they have the right to avoid self-incrimination (5 th Amdt) and the right to counsel (14 th Amdt) prior to or during in-custody legal proceedings. Key phrase: the waiver must have been made <i>voluntarily, knowingly, and intelligently</i> .
Kent v. US, 383 U.S. 541 (1966)	Waiver to adult jurisdiction Rights afforded juveniles	16 year old male charged with housebreaking, robbery, and rape waived to adult court without a hearing or statement as to why he was waived. After apprehension, he was held for one week at a children's home and underwent mental health evaluations. It is unclear when the mother learned that her son was apprehended. He was later convicted and given a lengthy sentence.	The S. Court remanded the case to District court, finding that juveniles require a hearing (formal or informal) with counsel for waiver to adult court. A list of considerations for waiver was provided. Extended rights of adults to juveniles. Emphasized the necessity that "the basic requirements of due process and fairness" be satisfied in such proceedings.
In re Gault 387 US 1 (1967)	Rights afforded juveniles in delinquency proceedings	Gault was apprehended for making lewd calls to a lady. Without notice of charges, counsel, formal hearings, ability to confront witnesses, etc..., he was detained and later sentenced to an institution	Extended rts to delinq hearings: notice of charges in timely manner; rt to counsel; rt to confront and cross witnesses; rt against self-incrimination; appellate review; and transcript of proceedings.

Case	Issue(s)	Facts of the Case	Decision/Implications
Fare v. Michael C. 442 U.S. 707 (1979)	Standard for valid waiver of juveniles/ admissibility of juv confessions.	Involved a 16 year old male taken into custody for murder. During the reading of the rights, the suspect asked to speak to his probation officer. This request was denied. He then agreed to talk to the officer without an attorney present.	Asking for the probation officer does not constitute an invocation of rights. Reaffirmed that the “totality of circumstances” test is the appropriate standard to evaluate the validity of waivers of rights. Listed a variety of factors for judges to consider: age, experience, education, background, and intelligence to determine “whether he has the capacity to understand the warnings given him, the nature of his Fifth Amdt rights, and the consequences of those rights.”
Colorado v. Connelly 479 U.S. 157 (1986)	Coercion in confessions	Does the mental state of the defendant interfere with "rational intellect" and "free will?" The defendant flew from Boston to Denver to confess to a murder committed several months earlier in Colorado. The police gave him warnings and repeatedly reminded him that he did not need to talk. The police saw no evidence of mental illness, although this was later demonstrated. The defense asserted that although he knew his rights he felt so compelled by command delusions from God that he confessed.	In the absence of police coercion, a defendant’s mental state alone would not render a confession involuntary. “Voluntary” refers to police conduct rather than the subjective susceptibility of the defendant.
Yarborough v. Alvarado (2004)	Definition of “in custody”	17 year old convicted of 2 nd degree murder and burglary, mostly based on incriminating statements made during a 2-hour interrogation (parents not allowed). He was allowed to leave afterwards and not arrested. Q: Whether, in applying the objective test for a "custody" determination under <i>Miranda</i> , a court must consider the age and experience of a person if he or she is a juvenile.	The State had reached a reasonable conclusion that he was not in custody when he was interviewed. The Court cited a number of factors that indicated that he was not in custody (e.g., he went to the station voluntarily, was never told he could not leave, was told the interview would be brief, and was allowed to return home afterwards.) The Ct stressed the importance of a clear rule for police to apply but did not allow for a different standard for juveniles b/c it would be more difficult for police to determine when <i>Miranda</i> warnings are necessary.

B. State Law

§ 7B-2101. Interrogation procedures.

- (A) Any juvenile in custody must be advised prior to questioning:
- (1) That the juvenile has a right to remain silent;
 - (2) That any statement the juvenile does make can be and may be used against the juvenile;
 - (3) That the juvenile has a right to have a parent, guardian, or custodian present during questioning; and
 - (4) That the juvenile has a right to consult with an attorney and that one will be appointed for the juvenile if the juvenile is not represented and wants representation.
- (B) When the juvenile is less than 14 years of age, no in-custody admission or confession resulting from interrogation may be admitted into evidence unless the confession or admission was made in the presence of the juvenile's parent, guardian, custodian, or attorney. If an attorney is not present, the parent, guardian, or custodian as well as the juvenile must be advised of the juvenile's rights as set out in subsection (a) of this section; however, a parent, guardian, or custodian may not waive any right on behalf of the juvenile.
- (C) If the juvenile indicates in any manner and at any stage of questioning pursuant to this section that the juvenile does not wish to be questioned further, the officer shall cease questioning.
- (D) Before admitting into evidence any statement resulting from custodial interrogation, the court shall find that the juvenile knowingly, willingly, and understandingly waived the juvenile's rights. (1979, c. 815, s. 1; 1998-202, s.

III. A Primer in Developmental Psychology

A. Characteristics of Adolescent Development (Steinberg & Schwartz, 2000)

- Adolescence is a transitional time of rapid and dramatic changes in physical, intellectual, emotional, and social capabilities.
- Adolescence is a period during which experiences of others have a great deal of influence over the course of development.
- Despite the rapid and constant change, adolescence is a period during which many developmental trajectories become firmly established and increasingly difficult to alter.
- Adolescence is a period of tremendous variability, both within and between individuals.

B. Features of Adolescent Development

1. “Normative” adolescent development (refer to *Overview of Adolescent Development Table*).
2. The influence of poverty, mental illness, developmental disability, abuse/neglect and other factors on “normative” development.

C. Problems with Research and Development:

1. There is no “average” adolescent
2. Correlation does not equal causation
3. The application of research findings may or may not apply to particular case

The Brain, from <http://brainethics.files.wordpress.com>

Overview of Adolescent Development

Dimension	Major Changes	Effect on Behavior	Relevance to Legal Arena
Physical	Growth spurt; development of sex characteristics; and “hormonal” changes	<p>Early maturing youths are more likely to experience problem behaviors, perhaps because they are likely to associate with older peer groups.</p> <p>Increase in aggression.</p>	Adolescents who develop early physically may be at a disadvantage in court since their adult-like appearance may suggest to adults a higher capacity for decision making than is warranted.
Brain	<p>Growth of Frontal lobes (also see intellectual, below)</p> <p>Gray matter in the frontal lobe is overproduced, followed by a period of myelination</p>	<p>Inconsistent behavior/maturity</p> <p>Some researchers suggest that adolescents are more likely to rely on “emotional” parts of the brain rather than the frontal lobes.</p> <p>Poor decisions marked by failure to consider the consequences. This short-term thinking, combined with impulsivity, results in rather dangerous behaviors</p>	<p>More interactions with the law.</p> <p>Less likely to engage in logical decision-making strategies when interacting with officers, attorneys, and other legal personnel.</p>
Intellectual	The development of abstract thinking, and efficient and effective thinking mechanisms begin to develop (see brain, above)	As adolescents develop, they are better able to think in terms of hypothetical situations, longer-term consequences.	As above; adolescents may be less likely to waive or invoke their rights <i>and</i> be more likely to acquiesce, particularly if they are susceptible to the influence of others due to mental disability or stress.

Dimension	Major Changes	Effect on Behavior	Relevance to Legal Arena
Emotional	Identity, self-esteem, and autonomy	Inconsistency in behaviors, desires, and thoughts about self. Increase in risk-taking behaviors. More assertions of beliefs and less reliance on authority figures in later years.	Inconsistency in responding to legal personnel and parents/guardians. Possible difficulty making decisions, or they may make decisions impulsively.
Social	<p>Increase in importance of peers and susceptibility to peer influence</p> <p>Emergence of interest in romantic relationships</p> <p>Onset of sexual activity</p>	<p>Increase in peer related activities (phone, “hanging out,” etc...)</p> <p>Increased reliance on peers in making decisions.</p> <p>Increase in risk taking situations with respect to sexual behavior</p>	<p>Gang involvement</p> <p>“Group offending” is higher among adolescents than adults.</p> <p>Following the group after arrest in making legal decisions.</p>

IV. Reviewing the Confession

A. What the Court Considers: Circumstances of the Interrogation (Grisso, 1998)

In Days Prior to Arrest:	Stressors in the adolescent's life Mental Status
At Time of Arrest:	Time of day Officers involved; what was said Mental/Emotional state of adolescent (including intoxication) Parents' involvement
Transportation to Station:	Mode of transportation Parties present When they arrived
Prior to Questioning:	Time of arrival and time of questioning Physical conditions during waiting period
Questioning:	Physical properties of room Parties present Physical arrangement of seating What was said in preparation for questioning How the rights were given
Parent Communications:	Whether the adolescent asked parent any questions beforehand What the parents advised and why
Sequence of Questioning:	Observations of behavior and emotion of youth Observations of behavior and emotion of officers Parents' reflections on their own behavior, thoughts, emotions, and expectations

What the Court Considers: Characteristics of the Juvenile (Grisso, 1998)

Age:	Cases involving youths 12 years and younger have usually resulted in findings that they lacked the requisite understanding Adolescents aged 13, 14, and 15 have been associated with more variable outcomes Adolescents aged 16 to 18 years have most often found that they could understand the warnings.
Intelligence:	No particular IQ or range has been seen as indicative of incapacity to waive rights; however, those with lower IQ scores have been considered to lack capacity.
Prior Experience:	Less experience has been said to suggest naïveté, while more experience has led to presumptions of more sophisticated knowledge of rights and their significance.
Education Level:	Sometimes considered relevant are developmental disabilities, particularly when school records and achievement scores affirm an adolescent's deficits.

How do these findings compare to research findings regarding adolescents' actual capacities?

B. Research Findings Related to Adolescents' Capacity to Waive Miranda Rights

- Frequency: Adolescents have been found to be more likely to waive their rights than adults.
- Age: In general, adolescents aged 14 years and younger performed significantly more poorly than did older adolescents or young adults. Youths aged 15 and 16 did not perform more poorly than adults as a group. However, youths aged 15 or 16 with lower IQ scores (below 80) performed more poorly than adults with similarly lower IQ scores and showed no better understanding than did youths aged 14 years (Grisso). Other researchers (J.L. Viljoen) have found that defendants aged 15 years and younger were impaired in their understanding of rights.
- Intelligence/Academic Achievement: Few studies and mixed results. In general, persons with lower IQs perform more poorly than those with higher IQs. There appears to be some relationship between verbal ability and academic achievement and the Miranda instruments/language; however, some researchers have failed to find significant relationships between academic achievement and overall Miranda comprehension. Special education has been found to be related to Miranda comprehension.
- Other Factors: There is some research investigating the capacities of juveniles who have psychiatric illness or behavioral difficulties or who are from different socioeconomic backgrounds, as well as parental involvement. Interrogative suggestibility has been found to be inversely related to rights comprehension (Thomsen, 2006).

Developing Your Argument: “Situational Factors” to Consider (adapted from Grisso, 1998)

Pre-Questioning Conditions:	<p>Was the adolescent confined for a period of time? Was the adolescent allowed to talk to anyone during that time? Was the adolescent given food/water? Allowed to rest? What were the conditions of the holding cell? Was anything done to instill fear into the adolescent?</p>
Social Structure of the Questioning:	<p>Where did the questioning take place? Who was present? Where did each party sit (e.g., did the parent sit in front of or behind the officer; beside the client)?</p>
How the Warnings were Given:	<p>Did the officer read the warnings as written or alter them? Were they read quickly? Was the adolescent given a written copy (can the adolescent read?)? Was the adolescent asked to sign the Miranda form? Did s/he sign other forms at the same time? Did the officer(s) ask the adolescent to summarize the meaning or just if s/he understood the warning? How many times were the warnings given? How was the person instructed to sign the form (agreeing to waive or understanding the right to waive versus understanding the right not to waive)?</p>
Parents’ Involvement	<p>Were there subtle (or not so subtle) ways in which the parent(s)/ guardian(s) influenced the adolescent? Did the parents understand the waiver? What was the mental state of the parent/guardian (e.g., anxious, angry)?</p>
Style of Questioning	<p>Was it a “bright light” tactic? A “compassionate” tactic? Did the officer stress the evidence against the person? Did the officer present him/herself as a person offering assistance? How long did the interrogation last? How many sessions were there? Was the juvenile reminded each time of his/her rights?</p>
Documentation of Rights Waiver	<p>How did the officers document the waiver (the signed form vs. video-taped)? If recorded, what statements, if any, were made prior to the recording? If the statement is written, is the statement the words of the adolescent or the officer?</p>

V. Making a Referral for a Mental Health Evaluation

A. When to Request a MH Evaluation

- Especially young defendants (aged 15 and younger)
- Defendants with intellectual limitations
- Defendants with mental health disabilities
- Defendants who seem emotionally immature or particularly susceptible to the influence of others
- When in doubt...

B. Decisions

Once you've decided to have an evaluation conducted, you will need to make a decision as to whom should be the evaluator.

- Private versus State (DDH) evaluators
- Experience: doctorate, adolescence, forensic
- Psychiatrist/Psychologist and other health professionals
- You may need/want more than one evaluator.

C. Information Evaluators Will Need

- A clear statement as to why the adolescent's capacity to waive Miranda Rights is questioned – is it related to IQ, special education, significant stress, mental illness?
- School records
- All past psychological, educational, and forensic evaluations and test results
- Mental health records, including medications
- Delinquency records
- Police Investigative Report and accompanying records, including video tapes
- Statements of anyone present before, during, and immediately following the confession, including officers
- Statements of parents/guardians

C. The Evaluation Process

The evaluator seeks to help the court determine if the defendant's confession was...

Knowing: Did the defendant understand that s/he was waiving rights?
What do the Miranda Rights mean?
What is a right?

Intelligent: Was the waiver the product of a rational thinking process?

Voluntary: Was the situation – in its totality and its interaction with the defendant's state of mind – so coercive that the defendant could not exercise free will?

How is the evaluation conducted?

1. Review of Records
2. Clinical Interview(s)
3. Interviews of collateral informants
4. Additional clinical interviews
5. Testing

D. Instruments for Assessing Understanding and Appreciation of Miranda Rights

Comprehension of Miranda Rights (CMR): each component of the warnings are presented, and the youth is asked to tell the examiner what it says in his/her own words.

Comprehension of Miranda Rights – Recognition (CMR-R): requires no verbal paraphrase. For each warning statement the person is told that the examiner will offer other statements that mean either the same thing or something different.

Comprehension of Miranda Vocabulary (CMV): Vocabulary test that uses six words taken from the Miranda warning.

Function of Rights in Interrogation (FRI): assesses a youth's appreciation of the relevance of the Miranda warnings in the context of the legal process. Assesses the person's "background knowledge" necessary to appreciate the rights (that an attorney is an advocate). The FRI involves four vignettes and the person is asked a series of questions about each.

VI. The Report: What to Expect and What to Challenge

1. Did the evaluator describe the juvenile's current abilities and areas of deficits, compared (if possible) to other groups?
2. Did the evaluator explain deficits in performance (e.g., poor cognitive ability, immaturity, faking)?
3. Did the evaluator make inferences, based on the person's current strengths and deficits, about the defendant's functioning at the time of police questioning?
4. Did the evaluator talk about the person's functioning and those aspects of the defendant's functioning that might make him/her especially vulnerable to the influence of the police (instead of simply stating that the confession was or was not voluntary).
5. Did the evaluator overstep his/her bounds or area(s) of expertise (e.g., ultimate issue issue, non-forensically trained evaluator)?

VII. Recommended Readings and References

Web Sites

- The MacArthur Foundation Research Network on Adolescent Development and Juvenile Justice

<http://www.adjj.org/content/index.php>
- The University of Virginia Institute of Law, Psychiatry, and Public Police Juvenile Forensic Fact Sheets

http://www.ilppp.virginia.edu/Juvenile_Forensic_Fact_Sheets.html
- Barry Feld. *Juveniles' Competence to Exercise Miranda Rights: An Empirical Study of Policy and Practice*

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