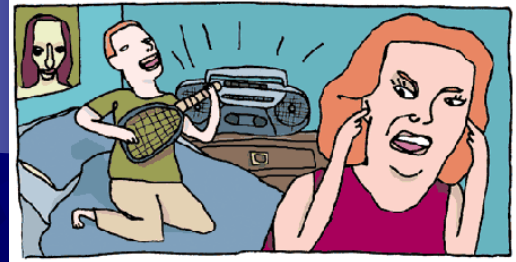


Juveniles' Competence to Proceed in the Legal Process

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Adolescent Development and Implications for Competence



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Developmental Domains

- Physical development
- Cognitive development
- Emotional development
- Identity development
- Psychosocial development

Outline

- Quick review of developmental issues
- Juveniles' competence to exercise and waive the right to avoid self Incrimination
- Juveniles' competence to proceed with the legal process

Adolescents Develop at Different Rates and in Different Ways

- Not all kids develop at the same rate, in the same way, and at the same time
- Development in one domain is not accompanied by development in another domain
- Development in any domain is gradual and non-linear, with steps forwards and backwards

Implications

- One cannot assume a linear and perfect relationship between development, capacities, and age



Competence to Exercise One's Constitutional Right to Avoid Self Incrimination



Psychosocial Development

- Responsibility
 - Ability to be self reliant and unaffected by external pressure in decision making
- Perspective
 - Temporal-ability to appreciate short term and long term consequences
 - Interpersonal-ability to take others' perspectives
- Temperance
 - Ability to exercise self restraint and control one's impulses

Significance of Confessions

- 80% of suspects waive their Miranda rights and submit to questioning (Leo, 1996)
- Over 60% of suspects make self incriminating admissions or confessions during custodial interrogation (Gudjonsson, 1992)
- Confession evidence may be crucial or important in 20% of criminal cases (Gudjonsson, 1992)

Implications of Psychosocial Development

- Ability to appraise risks and consequences
- Ability to act with prudence and after consideration; ability to delay gratification
- Ability to resist peer pressure
- Ability to experience victim empathy

Confession Considerations

- Accuracy
 - True (admissible)
 - False (admissible)
- Suspect's Knowledge Regarding Constitutional Rights
 - Knowledgeable (admissible)
 - Ignorant or unknowing (inadmissible)
- Suspect's Competence to Understand & Exercise Rights
 - Competent (admissible)
 - Incompetent (inadmissible)
- Voluntariness
 - Voluntary (admissible)
 - Involuntary/Coerced-Compliant (inadmissible)
 - Involuntary/Coerced-Internalized (admissible-Colorado v. Connelly, 479 US 157, 1986)

Miranda v. Arizona 384 US 436 (1966)

- Persons subjected to custodial interrogation must be informed of
 - the right to remain silent,
 - the right to counsel regardless of ability to pay,
 - how information they provide might be used
- Many jurisdictions also inform the suspect of the right to terminate the interrogation at any point in time

Post Miranda Cases

- Determinations regarding the admissibility of confessions are to be made on a case by case basis, and take into account subject and contextual factors (Fare v. Michael C., 442 US 707, 1979)
 - Determination of whether waiver is voluntary depends upon the "child's age, experience, educational background, and intelligence...and whether he has the capacity to understand the warnings given him, the nature of his 5th amendment rights, and the consequences of waiving those rights..."

Miranda v. Arizona 384 US 436 (1966)

- The waiver must be knowing, voluntary and intelligent
- Note that, because the USSC only identified the rights the suspect must be informed of and did not identify the warning, there is no uniform warning across agencies

Grounds for Ruling Confessions Inadmissible

- Unknowing or ignorant waiver of rights
 - Lack of notice or knowledge of 5th amendment rights, e.g., law enforcement failed to notify suspect of rights *in a way that s/he understood*
- Incompetent waiver of rights
 - Lack of capacity to comprehend 5th amendment rights, e.g., suspect lacked the capacity to understand and waive rights due to person or situational factors
- Involuntary/coerced confession
 - Law enforcement acted in a way that renders confession involuntary, or the suspect is highly suggestible and persuadable

Miranda v. Arizona 384 US 436 (1966)

- A recent study by Rogers and his colleagues indicated that there were over 500 warnings in use in the US
 - Considerable variability of substance of the warnings, e.g., only 32% of forms indicated that suspects could access legal counsel without charge
 - Reading comprehension levels ranged from the third grade to college

Two Questions to Answer

- Did the defendant understand and appreciate the rights she waived?
 - That is, was it a competent waiver and confession?
- Was the defendant capable of exercising choice when she waived her rights?
 - That is, was it a voluntary waiver and confession?

Invalid Miranda Waivers: Competence

- 14 year old child detained for 5 days with no contact with parents or lawyer (*Gallegos v. Colorado*, 370 US 49, 1962)
- 15 year old child who was 2 years behind in school, limited comprehension of Miranda, and interrogated for 2 hours without mother being notified (*State v. Word*, 48 FSupp 182, 1991, 11th Cir)

Significance of the Miranda Warning-Understanding

- Right to remain silent
- Confession may be used in court to incriminate
- Right to an attorney before talking to police
- Right to an attorney regardless of ability to pay
- Can stop interrogation at any time

Valid Miranda Waivers: Competence

- 16 year old child who had a history of contact with the police was competent to waive Miranda (*Fare v. Michael C.*, 442 US 707, 1979)
- 12 year old boy with a history of emotional problems, who read at the 3rd grade level, and had an IQ of 62 was competent to waive rights (*TSD v. State*, 741 So2d 1142, Fla. 3rd DCA, 1999)

Significance of the Miranda Warning-Appreciation

- The nature of a right
- Right against self incrimination
- Attorney is an advocate prior to and during the trial process
- Adversarial nature of the process

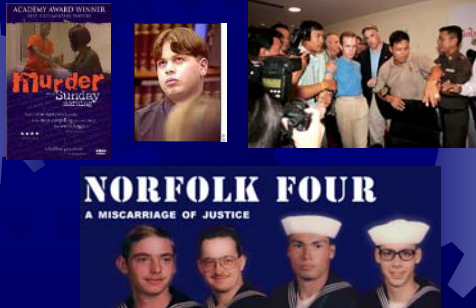
Factors Cited by Trial & Appellate Courts

- | | |
|--|---|
| <ul style="list-style-type: none">• Person Factors<ul style="list-style-type: none">• Age• Experience with law enforcement• Education• Intelligence | <ul style="list-style-type: none">• Contextual Factors<ul style="list-style-type: none">• Length of time suspect was held• Physical conditions of detention• Contact with others during detention or interrogation• Provision of necessities (e.g., food, sleep)• Intoxication• Police conduct• Questioning tactics |
|--|---|

Potential Contributors to Limited Capacity

- Person factors
 - Normal cognitive limitations associated with youth
 - Mental retardation
 - Mental disorder
 - Learning disability and related problems
- Situational variables
 - Substance use/intoxication
 - Parental involvement
 - Length, time, and place of interrogation
 - Sleep, nutrition
 - Number of LEOs and tactics employed
 - Coercion

False Confessions



Evaluation Process

- Retrospective
- Inferential
- Opinions about capacity at the time of the confession are offered based on assessment of current capacity and understanding of the situational circumstances

Types of False Confessions

Voluntary

An innocent person "confesses" wrongly takes responsibility for an offense with no coercion or promise (e.g., Jon-Benet Ramsey)

Coerced-compliant

An innocent suspect realizes s/he is not guilty but "confesses" to the crime to receive a promised reward or avoid an adverse penalty (Brendon Butler)

Coerced-internalized

An innocent suspect comes to believe s/he is guilty as a function of interrogation actions (e.g., Michael Crowe)

Nuts and Bolts of Evaluation

- Relevant records
- Law enforcement documents
- Interviews with collaterals
- Testing with the defendant
- Interview with the defendant

Causes of False Confessions

- Limited cognitive ability
- Mental disorder
- Susceptibility to persuasion
- Situational impairment
- Intimidation
- Naivete

Relevant Records

- Arrest report
- Interrogation
 - Audio/video
 - Transcript
 - Summary in arrest report
- Miranda waiver form/card
 - The warning may not have been read from card
 - Note language in which warning was read and consider reading level

Relevant Records

- LEO depositions
- Jail/detention center
- Medical
- Mental health
- Academic

Psychological Testing

- Intellectual assessment
- Academic achievement
 - Reading recognition
 - Reading comprehension
 - Aural comprehension
- Assessment of Miranda Comprehension
- Assessment of response style

Clinical Interview with the Defendant

- Relevant history
- Details of arrest
- Miranda warning administration
- Circumstances of the interrogation
- Current capacity and understanding

Grisso's Miranda Waiver Measures

- Developed via an NIMH grant
- Normed on over 600 St. Louis adults and juveniles, both with and without a history of criminal justice contact
 - Comprehension of Miranda Rights
 - Comprehension of Miranda Rights-Recognition
 - Comprehension of Miranda Rights-True/False
 - Function of Rights in Interrogation
- Undergoing re-norming

Clinical Interviews with Significant Others

- Aspects of defendant's history
- Knowledge of circumstances surrounding detention and interrogation

Presentation of Opinions

- Description of person factors and related abilities at time of confession (inferred)
- Description of contextual factors as they might affect capacity
- Identification of potential causes of deficits, and rule out of other explanations (e.g., dissimulation)

Checklist for Attorneys: When to Consider the Issue

- Confession is key
- Younger defendants (< 16)
- History of poor academic performance or placement in special education programs

Checklist for Attorneys: What to Get Your Hands On

- School records
- Medical records
- Arrest report
- Transcript and video or audio record of interrogation
- Deposition of interrogating officers

Checklist for Attorneys: When to Consider the Issue

- History of significant emotional, behavioral, or cognitive impairments
- Special circumstances surrounding interrogation...
 - Extended interrogation times
 - Drizin & Leo reported that, of 125 false confession cases, they investigated, 34% were between 6 and 12 hours, and 39% were between 12 and 24 hours (Mean = 16.3 hours)

Questions to Answer... One Way or the Other

- In what form was the warning presented?
- Who provided the warning?
- When and where was the warning presented? Who was present?
- When and where did the interrogation occur?
- How long and at what time was the interrogation?

Checklist for Attorneys: When to Consider the Issue

- Special circumstances surrounding interrogation...
 - Sleep deprivation
 - Presentation of false evidence
 - Promises...(e.g., leniency, going home, sleep)

Questions to Answer... One Way or the Other

- How was the warning memorialized?
- How was the interrogation memorialized?
- How was my client's response memorialized?
- Was all of the warning, interrogation and my client's response memorialized, or just part? Why?

Questions to Answer... One Way or the Other

- Was my client experiencing any situational impairments that might limit his/her understanding of these Constitutional rights or the capacity to act voluntarily?
- Does my client have any enduring impairments that might limit his/her understanding of these Constitutional rights or the capacity to act voluntarily?

References

- DeClue, G. (2005). *Interrogations and Disputed Confessions: A Manual for Forensic Psychological Practice*. Sarasota, FL: Professional Resource Press.
- Otto, R. K., & Goldstein, A. M. (2005). Juveniles' competence to confess and competence to proceed with the juvenile justice process. In K. Heilbrun, N. Goldstein, & R. Redding (Eds.), *Current Perspectives on Juvenile Delinquency: Prevention, Assessment, and Intervention* (pp.179-208). New York: Oxford Press.
- Frumkin, B. (2000). Competency to waive Miranda rights: Clinical and legal issues. *Mental and Physical Disability Law Reporter*, 24, 326-331.
- Grisso, T., & Schwartz, R. (2000). *Youth on trial*. Chicago: U. of Chicago Press.

Questions to Answer... One Way or the Other

- Did the interrogators engage in any behavior that compromised by my client's understanding of these Constitutional rights, or of his/her capacity to act voluntarily?

References

- Oberlander, L., & Goldstein, N. (2001). A review and update on the practice of evaluating Miranda comprehension. *Behavioral Sciences and the Law*, 19, 453-471.
- Richardson, G., Kelley, T., & Bryce, A. (1998). The response alternatives of suggestible and non-suggestible adolescent offenders. *Personality and Individual Differences*, 24, 295-297.
- Richardson, G., Gudjonsson, G., & Kelly, T. (1995). Interrogative suggestibility in an adolescent forensic population. *Journal of Adolescence*, 18, 211-216.
- Sigelman, CK et al. (1981). When in doubt say yes: Acquiescence in interviews with mentally retarded persons. *Mental Retardation*, 19, 52-58.

References

- ***Lassiter, G. D., & Meissner, C. A. (2010). *Police interrogations and false confessions: Current research, practice, and policy recommendations*. Washington, DC: American Psychological Association.
- ***Kassin et al. (2010). *Police-induced confessions: Risk factors and recommendations*. *Law & Human Behavior*.
- Gudjonsson, G. (1992). *The psychology of confessions, interrogations, and testimony*. New York: Wiley.
- Kassin, S. (1997). The psychology of confession evidence. *American Psychologist*, 52, 221-233.
- Leo, R. (1996). Miranda's revenge: Police interrogation as a confidence game. *Law & Society Review*, 30, 259-288.
- Fulero, S., & Everington, C. (1995). Assessing competency to waive Miranda rights in defendants with mental retardation. *Law & Human Behavior*, 19, 533-543.

Competence to Proceed in the Legal Process



Kids and the Criminal Court

- Until the end of the 18th century, there was no juvenile court, and minors were tried as adults
 - Infancy to age 7: Age was an absolute defense to criminal responsibility
 - Ages 7 to 14: Rebuttable presumption of capacity/responsibility
 - Ages 15 and above: Presumed capacity/responsibility
- In 1899 the first juvenile court is established in Chicago

An Important Question

- If kids appearing in juvenile proceedings are entitled to a variety of Constitutional rights (see above), must they have the capacity to participate in the legal proceedings and exercise those rights?

Critiques of the Juvenile Court

- The Supreme Court, in a series of 1960s cases...
 - Described some juvenile courts as "kangaroo courts," (*In re Gault, 1967*)
 - Concluded that kids in juvenile court were subject to the "worst of both worlds" (*Kent v. US, 1966*), and
 - Ruled that kids in juvenile proceedings were entitled to many protections afforded adults in criminal court, including...

Juveniles' Competence to Proceed

- Supreme Court has not been asked to decide whether the Constitution requires that kids appearing in juvenile court be competent to proceed, and at least one state supreme court (Oklahoma) has ruled that children need not be competent to proceed

Constitutional Rights in Juvenile Proceedings

- Notice
- Attorney
- Avoid self incrimination
- Hearing
- Confront accusers
- Proof of responsibility beyond a reasonable doubt

Juveniles' Competence to Proceed

- A number of jurisdictions have determined that kids must be competent to proceed/participate, and they have adopted the adult competence standard (Dusky) for use with minors

Purpose of the Competence to Proceed Requirement

- Preserve the integrity of the criminal process
- Reduce the risk of erroneous convictions
- Protect the individual's decision-making autonomy

Issues to Keep in Mind

- Competence is ultimately a legal issue
- Some argue that competence is context specific, and that the greater the severity of the consequences in a juvenile proceeding, the more that adjudicative competence in juvenile court should resemble the competence required for adult criminal court

Adults' Competence to Proceed

- *Dusky v. US* (362 US 402, 1960)
- Sufficient present ability to consult with one's attorney with a reasonable degree of rational understanding and demonstrate a rational and factual understanding of the proceedings

Issues to Keep in Mind

- Competence to "stand trial" is irrelevant to the majority of kids (competence to enter a "plea" or receive a disposition is likely more relevant)
- There is no clear relationship between competence and IQ or psychopathology (e.g., psychosis does not equal incompetence, mental retardation does not equal incompetence)

Bonnie's Conceptualization of Competence

- Adjudicative Competence
 - Understanding of the legal system and the roles of those involved
 - Understanding of individual charges and allegations
- Decisional Competence
 - Ability to weigh and manipulate information
 - Ability to work with one's attorney and make rational decisions about one's case

Issues to Keep in Mind

- The capacities required for trial in juvenile court are likely to be different than those in criminal court because the youth will have to understand different concepts and outcomes
- Developmental issues make assessment of kids' competencies more challenging than assessing adults

Issues to Keep in Mind

- Appreciation may be the factor most often missed by evaluators, and may be one of the most important issues given the primary ways in which adolescents differ from adults
- There are no good “tests” or measures of competence for kids
- Competency of kids is best assessed using a structured clinical evaluation (see Grisso’s JACI or the Fitness Interview Test-Revised)

Competence of Kids in the JJ Process

- Grisso et al.
 - (2003, Law & Human Behavior)
 - www.mac-adoldev-juvjustice.org
- Subjects
 - Age: 11-12 , 13-14, 15-17, 18-24
 - Context: Legal and no legal involvement
- Measures
 - MacCAT-CA (kid version)
 - Wechsler Abbreviated Scale of Intelligence

Issues to Keep in Mind

- The majority of children do not need to be placed in residential settings for competence restoration (cf. Virginia and Florida)
- “Unrestorable” children cannot be committed for restoration (*Jackson v. Indiana*)
- Children incapacitated as a function of normal “limitations” associated with youth should not be committed for restoration

Competence of Kids in the JJ Process

- Kids aged 15 and younger are more likely to be impaired in ways related to capacity than older kids and young adults
- IQ is related to capacity
- 1/3 of 11-13 YO’s and 1/5 of normal 14-15 YO’s are as impaired with respect to capacity as adults with severe and persistent mental illness who have been adjudicated incompetent to proceed

What Do We Know About the Competence of Kids to Participate in the Legal Process?



Competence of Kids in the JJ Process

- 16-17 YO’s, as a group, are not much different than young adults in their capacities
- Age differences were apparent with respect to Ss’ performance on measures of future orientation and resistance to peer influence, suggesting that younger Ss may manifest poorer understanding and reasoning about trials than older adolescents and adults

Clinical Evaluation of Competence to Proceed

- Assessment of current mental state
 - Emotional, behavioral and cognitive functioning
 - Developmental issues
- Assessment of ability to participate
 - Work with one's attorney
 - Understand and participate in the proceedings
- Identification of the relationship between current functioning and competence related abilities
- Recommendations for remediation/treatment (when indicated)

Competence to Proceed: Dusky

- **Factual and rational understanding of the proceedings**
- Capacity to
 - Understand and participate in legal proceedings
 - Manifest appropriate courtroom behavior
 - Testify

Clinical Evaluation of Competence to Proceed

- Record review
 - Arrest report
 - Delinquency petition
 - Relevant mental health, medical, and academic records
- Third party informants
 - Attorney
 - Detention or jail staff
 - Detention or jail records
 - Significant others
- Clinical evaluation
 - Interview
 - Psychological testing (as needed)

Competence to Proceed: Dusky

- **Work with counsel with a reasonable degree of rational understanding**
- Capacity to
 - Trust and work collaboratively with counsel
 - Disclose to counsel relevant facts
 - Reason about available options by weighing their consequences, and make self interested decisions
 - Challenge prosecution witnesses

Competence to Proceed: Dusky

- **Factual and rational understanding of the proceedings**
- Capacity to understand and appreciate
 - The legal process and its operation
 - Legal actors and their responsibilities
 - Rights as a respondent
 - Pleas and their significance
 - Charges, allegations, and possible sanctions
 - Strength of state's case
 - Likely outcomes
 - The process and potential consequences of various pleas

Appropriate Competence Assessment Tools

- Fitness Interview Test-Revised (Roesch, Zapf, & Eaves, 2006)
 - Professional Resource Press
 - www.prpress.com
 - 1-800-443-3364
- Juvenile Adjudicative Competence Interview (Grisso, 2005)
 - Professional Resource Press
 - www.prpress.com
 - 1-800-443-3364

Goals of the Report Summarizing the Competence Evaluation

- Identify and describe any competence related deficits and causes
- Describe the causal connection between the youth's clinical and developmental status and deficits in competence related abilities
- Offer a recommendation regarding adjudication as competent/incompetent

Reviewing the Report

- Did the examiner offer factual bases for opinions?
- Did the examiner provide facts/data that were inconsistent with opinions that were offered?
- Did the examiner consider issues of treatability/restorability?

Reviewing the Report

- How much time did the examiner spend completing the evaluation?
- Did the examiner understand the legal issue?
- Did the examiner access and consider all relevant information?

References

- Forensic Evaluation-General
- *Melton, G., Petrila, J., Poythress, N., Slobogin, C., Lyons, P., & Otto, R. K. (2007). *Psychological evaluations for the courts, 3rd edition*. New York: Guilford.
- Grisso, T. (2003). *Evaluating competencies, 2nd edition*. New York: Kluwer/Plenum.

Reviewing the Report

- Did the examiner consider developmental issues as they impact capacity?
- Was any testing that was used appropriate?
- Did the examiner assess something beyond knowledge (i.e., appreciation and decision making)?

References

- Juvenile Evaluation
- *Grisso, T. (2005). *Clinical evaluations for juveniles' competence to stand trial: A guide for legal professionals*. Sarasota, FL: Professional Resource Press.
- *Grisso, T., & Schwartz, R. (Eds.) (2000). *Youth on trial*. Chicago: University of Chicago Press.

References

- Juvenile Evaluation

- Otto, R. & Borum, R. (2003). Juvenile forensic evaluation. In W. O'Donahue & E. Levensky (Eds.), *Handbook of forensic psychology* (pp. 873-895). New York: Academic.
- Otto, R.K., Borum, R., & Epstein, M. (in press). Evaluating children in the juvenile justice process. Chapter to appear in D. Faust (Ed.), *Coping with psychological and psychiatric testimony*.

References

- Juvenile Evaluation

- Calvin, E., Marcus, S., Oleyer, G., & Scali, M. (2006). *Juvenile Defender Delinquency Notebook* (2nd ed.) Washington, DC: National Juvenile Defender Center.
- Kruh, I., & Grisso, T. (2007). *Assessment of juveniles' competence to stand trial*. New York: Oxford.

Questions

