JUVENILE CONFESSIONS

DEFENDER INITIATIVE CONFERENCE

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In Re Gault at 50

Under our Constitution, the condition of being a boy does not justify a Kangaroo court.

Justice Abe Fortas

In Re Gault 387 U.S. 28 (1967)

In Re Gault

An alleged prank telephone call to a neighbor led to the arrest, detention, conviction and commitment of a 15 year old boy.

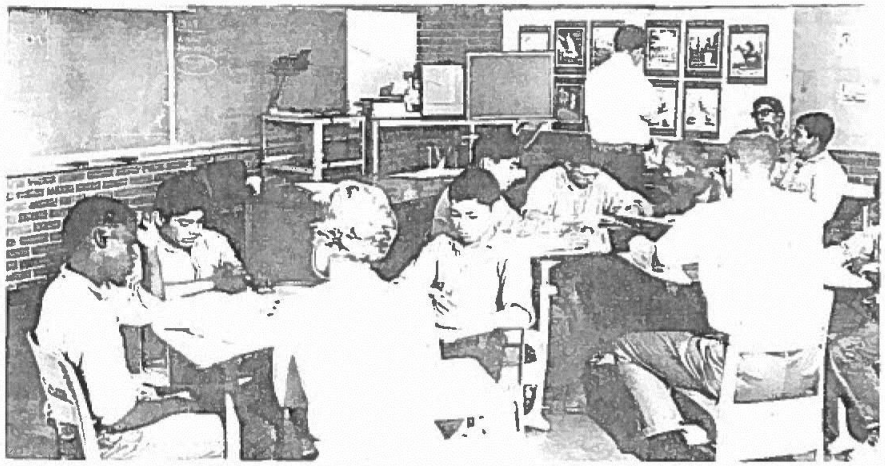
Only thing missing was a trial.

In Re Gault

- Hearing before Judge Robert McGhee (June, 1964)
  - No Accuser
  - No sworn testimony
  - No transcript made
  - No record prepared
  - No attorneys present
- Judge McGhee questioned Gerry directly and ordered Gerry…

COMMITTED HIM TO FORT GRANT

"FOR THE PERIOD OF HIS MINORITY, UNLESS SOONER DISCHARGED."



Academic Study in Modern Facilities at A.S.I.S.

In Re Gault

The United State Supreme Court issued an opinion holding that Juveniles have the same *due process* rights as adults including:

- the right to timely notification of the charges,
- the right to confront witnesses,
- the right against self-incrimination, and
- the right to counsel.

In Re Gault

The Supreme Court also held

that, ***absent a valid confession****,*
a determination of delinquency … cannot be sustained in the absence of sworn testimony subjected to the opportunity for cross-examination.

JUVENILE CONFESSIONS

What is a valid Confession?

SHOULD JUVENILE CONFESSIONS BE ADMISSIBLE?

JUVENILE CONFESSIONS

WHEN SHOULD THEY BE ADMISSIBLE?

WHO WROTE IT?

"Juveniles may be especially vulnerable to the pressures of interrogation, which can cause them to give involuntary or even false confessions."

A) Bob Boruchowitz

B) Justice Sotomayor

C) International Association of Chiefs of Police

Kids are Different

- For death penalty
  - *Roper v Simmons*
- For life without Parole
  - *Miller*, *Graham*
- Other sentencing issues – *State v O'Dell*

WHY?

The Adolescent Brain

The pre-frontal cortex is responsible for judgment, problem-solving, and decision-making. It regulates impulsive behavior by acting as a brake on the parts of the brain that are activated by fear and stress.

Source: Int'l Association of Chiefs of Police (2012)

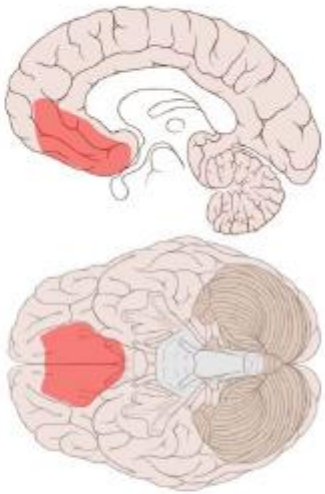


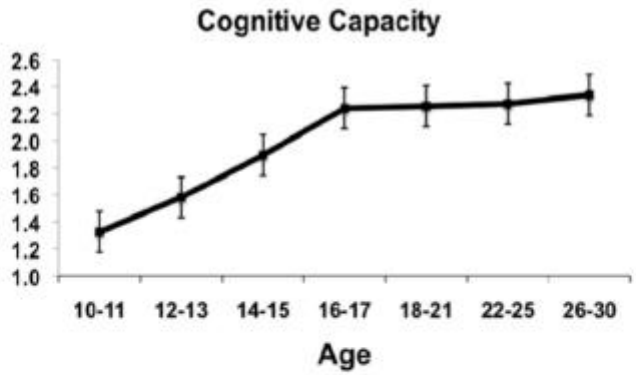
Image source: By derivative work: fineach (talk) Brain_human_sagittal_section.svg: Patrick J. Lynch, medical illustrator Brain_human_cranial_nerves.svg Patrick J. Lynch, medical illustrator [GFDL (http://www.gnu.org/copyleft/fdl.html) or CC-BY-3.0 (http://creativecommons.org/licenses/by/3.0)], via Wikimedia Commons.

The pre-frontal cortex does not fully develop until the end of adolescence, leading to classic "teenage" behaviors:

- ✓ Difficulty weighing and assessing risks (e.g. driving too fast)
- ✓ Emphasis on immediate rewards rather than long-term consequences (e.g. having unprotected sex)
- ✓ Vulnerability to external influence (e.g. caving in to peer pressure)

GENERAL COGNITIVE CAPACITY

Figure 2
General Cognitive Capacity (Standardized Composite Scores) as a Function of Age (in Years)



Steinberg et al. (2009)

SUPREME COURT: KIDS ARE DIFFERENT!

Roper v. Simmons (2005)

Youth are:

- immature and reckless
- more susceptible to peer pressure
- developing and therefore transient by nature

Graham v. Florida (2010)

"…because juveniles have lessoned culpability they are less deserving of the most severe punishments."

JDB v. North Carolina (2011)

[Youth] "often lack the experience, perspective, and judgment to recognize and avoid choices that could be detrimental to them…"

Miller v. Alabama (2012)

"the same characteristics that render juveniles less culpable than adults—their immaturity, recklessness, and impetuosity—make them less likely to consider potential punishment."

Montgomery v. Louisiana (2016)

"In light of what this Court has said in *Roper*, *Graham*, and *Miller* … children are constitutionally different from adults in their level of culpability…"

Kids Are Different

When else do the characteristics identified in *Roper et.al* justify different treatment for juveniles?

Interrogation

Custodial Interrogation

When are you in custody?

Officer, am I free to leave?

Officer, am I under arrest?

Custodial Interrogation

WHAT'S IT LIKE?

What should be considered in the "totality of the circumstances" when analyzing the admissibility of a statement made by a juvenile?

Miranda / No Miranda?

Middle school student brought into principle's office for questioning about a theft.

- Escorted by a SRO
- Questioned by a school administrator
- Parents not notified
- Never told he was free to leave,
  - but he was
- He was 13 years old

J.D.B.

In *J.D.B. v. North Carolina*, the Supreme Court was asked

"[W]hether the *Miranda* custody analysis includes consideration of a juvenile suspect's age." More specifically, whether "a child's age 'would have affected how a **reasonable person' in the suspect's position** 'would perceive his or her freedom to leave.'"

J.D.B.

Justice Sotomeyor answered **Yes, age matters**.

So long as the child's age was known to the officer at the time of police questioning, or would have been objectively apparent to any reasonable officer, its inclusion in the ***custody analysis*** *is consistent with the objective nature of the test. . .*

J.D.B. and Confessions

- Does J.D.B. lead us to a "Reasonable Child" standard in determining Waiver of rights?
  - "The United States Supreme Court Adopts a Reasonable Juvenile Standard in J.D.B. v. North Carolina for Purposes of the Miranda Custody Analysis: Can a More Reasoned Justice System for Juveniles Be Far Behind?" by Marsha Levick and Elizabeth-Ann Tierney,

Miranda Warnings

King County Miranda Card

You have the right to remain silent.

2. You have the right at this time to an attorney. RL2.3

3. Anything you say can and will be used against you in a court of law. RL5.4

4. If you are under the age of 18, anything you say can be used against you in a Juvenile Court prosecution

for a juvenile offense and can also be used against you in an adult court criminal prosecution if the juvenile court decides that you are to be tried as an adult. RL 4.8

5. You have the right to talk to an attorney before answering any questions. RL 7.6

6. You have the right to have an attorney present during the questioning. RL6.7

7. If you cannot afford an attorney, one will be appointed for you without cost, if you so desire. RL 8.4

8. You can exercise these rights at any time. RL3.7

9. Do you understand these rights? RL 4.4

Having been informed of these rights, do you wish to talk with me? *If the answer is **YES**, then ask:*

Have any threats or promises been made to you to convince you to waive your rights? RL 5.4

Overall reading level is about 5th Grade

Miranda Warnings

"You have the right at this time to talk to a lawyer and have your lawyer present with you while you are being questioned." RL7.7

"If you cannot afford to hire a lawyer, one will be appointed to represent you before questioning, if you wish." RL10

"Waiver" ??

- Supreme Court

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INTERROGATION THAT EXPLOITS THE VULNERABILITIES OF YOUTH

Two-track approach

MAXIMIZE Certainty of Guilt

MINIMIZE Culpability

MAXIMIZING GUILT

CONFRONT/ASSERT

REJECT/DISMISS DENIALS

REFER TO EVIDENCE, EXTANT OR NOT

MINIMIZING CULPABILITY

UNDERSTANDING/EMPATHY/DESIRE TO HELP

SUGGEST EXPLANATIONS

- FORCED CHOICE

AN EXAMPLE

237 Cal.App.4th 568
Court of Appeal,
First District, Division 2, California.

IN RE ELIAS V., a Person Coming
Under the Juvenile Court Law.
The People, Plaintiff and Respondent,
v.
Elias V., Defendant and Appellant.

A140263
|
Filed June 9, 2015
|
As Modified June 24, 2015

ELIAS V.

13 Y/O

Alleged to have committed lewd & lascivious act (touching genitals of friend's 3 y/o sister)

Delays in getting investigation started

At school

20-30 minutes

INTERROGATION FEATURES

Detective Buchignani posited Elias's guilt quickly and dispositively.

Brushing off his repeated denials of her accusations, Buchignani told Elias he was "obviously nervous because you're not telling me the truth about what happened."

SEARCHING FOR CONFESSION, NOT TRUTH

Buchignani repeatedly referred to Elias's guilt as an **established fact** and displayed interest only in **confirming details**, such as why and how Elias committed the act, and **never allowing the possibility** he may not have committed any unlawful act.

USING DECEPTION

CW had “explained it perfectly”

Mother saw it

“Why were you kissing her before the touching?”

We’ll make you take a lie-detector.

A WAY OUT?

Why did you feel you wanted to do that? What did it feel like, was it ***exciting***? Was it, what was it? People your age are ***curious*** that

just happens sometimes. I understand that. Your body's changing and things are happening to you. If you found it exciting then....

MISLEADING A (NOT) MURDERER?

"I want to assure you that Mark and I both are in your corner[.] We're on your side."

"[F]rom what I'm seeing … I'm thinking you're all right."

We can (not) help

"Honesty here Brendan is the thing that's gonna help you. OK, no matter what you did, we can work through that. OK.

We can't make any promises but we'll stand behind you no matter what you did. OK. Because you're being the good guy here."

FALSE FRIENDS

I've got ... kids somewhat your age, I'm lookin' at you and I see you in him and I see him in you, I really do, and I know how that would hurt me too. … Mark and I, yeah we're cops, we're investigators and stuff like that, *but I'm not right now.* I'm a father that has a kid your age too. I wanna be here for you. There's nothing I'd like more than to come over and give you a hug cuz I know you're hurtin'.

Closer to home

THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION ONE

STATE OF WASHINGTON,

Respondent,

v.

ALEX I.,

Appellant.

BE A MAN

Because much of the interaction between Alex and the arresting officers was recorded, the trial court was able to hear what was said. From the beginning, it was apparent the officers were aware of Alex's age. Officer Jensen took advantage of Alex's youth, telling him to "man up" and tell the truth. RP 30. When Alex would not make a statement, the officers said to Alex that "he doesn't know what being a man is." RP 34. Alex was then accused of being just a kid. RP 35.

MOMMA'S BOY

The officers also intimated that Alex's parents would not have their car impounded if Alex confessed, asking Alex whether his father liked the van and then telling him it would be impounded. RP 33. When Alex equivocated on his statement, Officer Jensen again told Alex that it was because of him that his mother would be without the van for at least a week. RP 43.

EXPLOITING WEAKNESS

Cousin arrested alongside him tells officers he had recently broken his wrist.

Within Alex's hearing, Officer states "it might get broken again."

WHAT CAN BE DONE?

REQUIRE RECORDING

REQUIRE COUNSEL

PROHIBIT DECEPTION