

Juvenile Law Update

Presentation for
Juvenile Justice Vision 20/20
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The Holy Grail of Recent Landmark Cases

- **United States Supreme Court**
 - *Roper v Simmons (2005)*
 - The Eighth and Fourteenth Amendments forbid imposition of the death penalty on offenders who were under the age of 18 when their crimes were committed.
 - *Graham v Florida (2010)*
 - The Eighth and Fourteenth Amendments forbid imposition of the life without parole on offenders who were under the age of 18 when their non-homicide crimes were committed.
 - *Miller v. Alabama (2012)*
 - The Eighth and Fourteenth Amendments forbids sentencing scheme that mandates life in prison without possibility of parole for juvenile homicide offenders
 - *J.D.B. v North Carolina (2011)*
 - Police must consider a child's age when determining the issue of custody for purposes of providing *Miranda*

Juvenile Law Updates

- **And most recently. . .**
 - *Montgomery v Louisiana (1/25/16)*
 - Ruled that *Miller v. Alabama* is retroactive
 - *Miller* held that imposition of a mandatory life without parole sentence for a juvenile under the age of 18 (on the date of the offense) violates the Eight Amendment prohibition on "cruel and unusual punishment."
 - Michigan Supreme Court previously ruled it was not retroactive

**The Evolving Face of
Juvenile Justice**
The Times They Are A-Changing. . .

**RUSS MARLAN, EXECUTIVE BUREAU
ADMINISTRATOR, MICHIGAN DEPARTMENT OF
CORRECTIONS:**

"There's been an evolution in the criminal justice system. We're moving from a model that gets tough on crime to one that is smart on crime and uses what works."

**Communicating Differently With
Juveniles is a Major Key to Success**

- Interrogation and *Miranda*
- Talking WITH juveniles
 - Changing the CONVERSATION with juveniles
- And then...
 - We will change the conversation

Miranda
More Than Words

The *Miranda* warnings

- You have the right to remain silent.
- Anything you say can, and will, be used against you in a court of law.
- You have the right to an attorney, now and during questioning.
- If you can not afford a lawyer, one will be appointed for you at public expense.
 - Do you understand these rights as I've read them to you?

Nature of Pre-Miranda Interrogations

- 19th century police departments, according to one sociologist, were "brutal and corrupt."
- Conducted in secret; suspect isolated
 - More susceptible
 - Increased level of violence
 - Beatings usually to areas of body that could not be observed by anyone—especially the judge
- 1931, U.S. Attorney: "Report on Lawlessness in Law Enforcement"



Due Process and Interrogation Law

- A person is denied due process of law if an *involuntary* statement (i.e., a statement obtained as the result of undue police pressure) is used against him at a criminal trial
 - 5th-federal
 - 14th-states
- **Voluntariness Rule**
 - A coerced statement is inadmissible in a state or federal trial under the due process clause and the 5th Amendment privilege against self-incrimination
 - Voluntariness determined based on the totality of the circumstances
 - Must consider both the characteristics of the defendant and the details of the interrogation
 - Was the defendant's will overborne?

Voluntariness Factors

- **Factors courts look to regarding voluntariness:**
- Actual or threatened use of physical violence
- Deprivation of food, water or sleep for extended period
- Psychological pressures
 - Length of custodial detention
 - Prolonged interrogation
 - Day or night
 - Secret
 - Personal characteristics of suspect
(intelligence, education, psych. make-up, experience with system)

John E. Reid: The Father of the Modern Interrogation Technique



- Chicago LEO
- Consultant and polygraph expert
- Reputation as someone who could get people to confess
 - He used modern science, combining his polygraphic skills with an understanding of human psychology

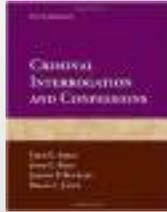
<http://myriad.com/contact-us/?no-lead-tip-Evaluating-Admission-Agents-S&E-Source=John+Reid+1101010207040&ad=CS+ad+PSNR>

The case of Darrell Parker 1955

- On December 14, 1955, Darrel Parker came home for lunch from his job as a forester in Lincoln, Nebraska.
- He found his wife, Nancy, dead in their bedroom. Her face was battered, her hands and feet were bound, and a cord had been knotted around her neck.
- The medical examiner later determined that she had been raped before the murder.
- Parker was initially questioned and released.
- However, after funeral he was asked to come back in for questioning.
- Parker was interrogated by John Reid for nine hours; he was hooked up to a polygraph.
 - Reid told Parker he was lying
 - Introduced the story he wanted Parker to confess to.
- Parker confessed. He recanted the next day, but the jury convicted him.

The Parker Case Catapulted John Reid to Rock Star Status

- After the Parker case, John Reid and his technique became popular.
- His business took off, he hired more people, and ultimately—along with Fred Inbau, wrote *Criminal Interrogations and Confessions*.
 - Became "the Bible" regarding modern interrogation techniques.
- In promoting his business, John Reid once said something to the effect:
 - That police who used his interrogation techniques would get more confessions than a priest.



Meanwhile

Eight years later. . .

Ernesto Miranda



- Ernesto Miranda was an eighth grade dropout. He had been in and out of trouble with the law since he was a juvenile.
 - Stints in juvenile detention facilities and in the Army did not reform him.
- In Spring 1963, Miranda lived with his common law wife and he worked for a produce company.
 - On the day in question, he picked up a young woman who was walking home after seeing a movie. Instead of giving the young woman a ride home, he reportedly raped her. After the rape, Miranda dropped the young woman off.

Miranda is arrested

- Through witness statements and investigation, police concluded Miranda was the perpetrator.
- Detectives went to Miranda's home and asked him to come to the station.
- He was put in Interrogation Room #2
 - Reverse lineup
- After two hours in the interrogation, the officers obtained a written confession signed by Miranda. The confession had a paragraph typed at the top which stated the confession was made "with full knowledge of my legal rights, understanding any statement I make may be used against me."

The Court Cited The Reid Interrogation Technique in the Opinion

- Court discussed the psychologically coercive techniques police were using to obtain confessions
 - Cited the Inbau and Reid manual for training police to use the Reid method of interrogation
- The techniques led the court to reach a startling conclusion (presumption)
 - *All custodial interrogation is inherently coercive*

The Reid Technique

- 3 parts:
 - The pre-interview (Behavioral Analysis Interview)
 - Determine whether suspect is lying
 - Look at non-verbal cues
 - Set the stage to convey dominance, authority and (perhaps) false info about the case
 - Conclude person is lying/guilty and leave the room
 - The interrogation
 - If the suspect denies committing the crime, utilize a 9-step process to obtain the conviction
 - The Confession

Interrogation—Reid Style

- Confrontational, no note-taking, and controlled environment
- 9 steps
 - Direct confrontation
 - Develop a theme as to why someone would have committed the crime
 - Overcome suspect's denial
 - Overcome suspect's objections
 - Recognize passive mood
 - Retain suspect's attention
 - Ask alternate questions of guilt
 - Finally, document oral confession

Miranda, the holding

- Suspect has constitutional right not to be compelled to make incriminating statements in the interrogation process
- To enforce this right, *Miranda* holds that any statement obtained as a result of
 - *custodial interrogation*
 - is inadmissible at a criminal trial
 - *unless* the prosecutor proves the police provided safeguards effective to secure the suspect's privilege against self-incrimination

Once Warnings Are Given, The Individual Has Two Choices

| | |
|---|--|
| Waive | Invoke |
| <ul style="list-style-type: none">• The government bears a "heavy burden" that the individual's waiver was:<ul style="list-style-type: none">• Knowing• Intelligent, and• Voluntary | <ul style="list-style-type: none">• Individual must clearly and unambiguously invoke <i>Miranda</i> rights.<ul style="list-style-type: none">• I don't want to talk.• I want my lawyer. |

What if right to silence is invoked?

- Police must stop questioning.
- Police may wait a reasonable period of time
 - After waiting a reasonable period of time and re-*Mirandizing*, police may try to obtain a waiver and question
- Or, the suspect may reinitiate communication with police.

What if the right to counsel is invoked?

- *Edwards vs Arizona*
 - Once a suspect invokes her right to counsel, police must cease interrogation until counsel has been made available to suspect.
- UNLESS
 - Suspect initiates further communications police
 - A comment or inquiry that can be said to open up a generalized discussion relating *directly or indirectly* to the investigation.

Interrogation Techniques

In the Role of Juvenile Interrogations and False Confessions

The Dissenters' Concerns Did Not Come True

- The dissenting justices in *Miranda* were concerned that if police had to tell suspects they could remain silent and could request a lawyer, police would no longer obtain confessions.
- An overwhelming number of people suspected/accused of crimes make some form of statement regarding guilt prior to trial.
- Given the psychologically coercive tactics that are the basis of the Reid method of interrogation, false confessions are a concern.
 - Researchers have been sounding the alarm for false confessions for quite some time
 - Currently, no way to measure the number of false confessions made by those subjected to the Reid technique

But DNA Exoneration Cases Provide An Alarming Glimpse

- In fact, according to the Innocence Project (as of 4.28.16), 341 people have been exonerated by DNA evidence.
 - In at least 25% of those cases, the defendants confessed. That's right, they confessed to a crime they did not commit.
 - Why? Sometimes people confess for reasons that have nothing to do with the interrogation technique the police officer used—maybe protecting a friend or family member.
- But experimental research has shown there is a correlation between interrogation tactics and false confessions.
- Approximately 65% were under the age of 25 at the time they confessed and 32% were under 18.

Central Park Five

- Five teenagers convicted of gang-raping a female jogger in New York's Central Park (1989)
 - The five men initially denied the crime. Later, four of them confessed after hours of arduous interrogation. Eventually, all four recanted their confessions.
 - Even though the DNA did not match, they were still convicted due in large part to their initial confessions.
- In 2002, a convicted rapist and murderer confessed to the Central Park rape. His DNA matched.
- All five were exonerated—after serving 13 years in prison.

**Scholars, Advocates,
Lawmakers, and the Public
Call for Interrogation Reform**

The calls for reform focus on four main areas:

- Interrogation recording statutes
- Adopt the PEACE model of questioning
- Isolate the confession
- Create presumptions and jury instructions

Interrogation Recording Statutes

- Currently, over half the states have no legal requirement for police to record interrogations
 - 22 states have adopted some type of recording statute
- Michigan's recording statute
 - Limited to major felonies (20 years or more)
 - Recording must include the advice of rights and the entire interrogation. *Statute does not require recording of the interview which precedes the interrogation.*
 - The suspect can object to the recording—which must be documented.
 - Must be recorded on equipment that is non-alterable and must be time stamped
 - Failure to record doesn't preclude the officer from testifying about the person's statement
 - If officer fails to record, defendant is entitled to a jury instruction
 - No civil cause of action for non-compliance

**Benefits of Recording
Interrogations**

- Studies show police behavior improves
- No questions as to what was said
 - Can help and hurt both sides
- Creates transparency
- Improves public trust
- Even the DOJ permits/encourages recording

PEACE

- Method of questioning used by most English-speaking countries
- Similar to methods used by investigative journalists
- Main components:
 - Plan and Prepare
 - Engage and Explain
 - Account
 - Conclude
 - Evaluate
- Advantages of using the PEACE method of questioning:
 - Police still obtain roughly same amount of confessions
 - Psychologically coercive aspect is removed
 - Reduce chance of false confessions

Isolate Confession

- Isolate other people working on the investigation/case from knowing whether or not the individual confessed
 - Based on sound scientific practices
 - i.e., blind testing

Reforms Effecting the Courtroom

- Exclusionary Provisions in Recording Statutes
 - Statement inadmissible if non-compliance
- Jury Instructions
 - Inform jury police did not comply with recording statute
 - Presumption favorable to defense
- Use of Expert Witnesses
 - The impact the Reid technique has on false confessions
 - The coercive nature of the Reid technique
 - Factors specific to the particular case

What happened to Mr. Parker?



- In 2011, Nebraska's attorney general, Jon Bruning, publicly apologized to Parker, who was by then eighty years old.
- The attorney general shook Parker's hand, and offered him the full five hundred thousand dollars in damages allowed under Nebraska's restorative law for exonerates.
- "Today, we are righting the wrong done to Darrel Parker more than fifty years ago," Bruning said. "Under coercive circumstances, he confessed to a crime he did not commit."

Brendan Dassey

- *Making a Murderer*
 - Steve Avery's nephew
 - Confessed to heinous torture and murder of a reporter
- Coercive interrogation—without counsel and with permission
 - What will come of his case?

Miranda and Juveniles

- Officers should read juveniles simplified Miranda warnings that require only a third-grade comprehension level
 1. You have the right to remain silent. That means you do not have to say anything.
 2. Anything you say can be used against you in court.
 3. You have the right to get help from a lawyer right now.
 4. If you cannot pay a lawyer, we will get you one here for free.
 5. You have the right to stop this interview at any time.
 6. Do you want to talk to me?
 7. Do you want to have a lawyer with you while you talk to me?
- <http://www.law.northwestern.edu/professional-life/professional-education/online/dassey-cle/documents/CLF-Brendan-Dassey-Additional-Written-Materials.pdf>

When appropriate, officers should inform young suspects that speaking to police may subject the child to adult criminal consequences

- Make sure that the child understands the concept of “adult criminal consequences” – along with any other concepts that the child may not grasp – before proceeding with questioning.
 - Is this too much of a burden on LEOs? Is it giving legal advice?
 - <http://www.law.northwestern.edu/professional-life/professional-education/online/dassey-cle/documents/CLJ-Brendan-Dassey-Additional-Written-Materials.pdf>

An Executive’s Guide to Effective Juvenile Interview and Interrogation

- Police should modify their interrogation technique for juveniles
 - Start by using open-ended, free-recall questions that ask the child to produce a narrative.
 - Use targeted but open-ended questions to get more information.
 - Probe while avoiding outright accusations and deception, if you suspect the juvenile is lying.
- Use questions beginning with “who,” “what,” “where,” “when,” and “how” to get more information about specific parts of the juvenile’s story/statement.
- International Association of Chiefs of Police
- <http://www.law.northwestern.edu/professional-life/professional-education/online/dassey-cle/documents/CLJ-Brendan-Dassey-Additional-Written-Materials.pdf>

Reid Technique and Juveniles

- It is our general recommendation that a person under the age of 10 should not be subjected to active persuasion techniques during interrogation (themes, alternative questions). At this age the child is susceptible to suggestion and is motivated to please a person in authority. The interaction between the investigator and child should be limited to a question and answer session which is centered on factual information and simple logic. Although children in this age group generally have good memory skills, it is selective and the investigator must be cautious in forming opinions of deception based on inconsistent recall. In this younger age group the primary difficulty with respect to interrogation is the child’s undeveloped level of social responsibility and inability to comprehend the concept of future consequences; their lives focus around “here and now” concepts.

On the other hand, most adolescents have developed a sense of social responsibility to the extent that they know if they admit committing a serious crime they will suffer some future consequence. For this reason a confrontational interrogation may be used with this age group involving some active persuasion. The extent of persuasive tactics should not be dictated by the seriousness of the crime, but rather the maturity of the child.

- <http://www.reid.com/6-when-to-quit.html>

Other Recommendations for Interrogating Juveniles

- Parent or guardian should be present
 - Friendly person/youth advocate
- Interrogation sessions should break after one hour
 - Not questioned more than 4 hours
- Avoid middle of the night interrogation
- Avoid deception
- Avoid promises of leniency or promises that you can help
- Avoid “legalese” or overly-technical terms

Talking *With* Juveniles

Changing How We Communicate with Juveniles in the Criminal Justice System



- Talking to youth is different than talking to an adult
 - They listen and hear differently
 - And most importantly, they process and understand differently
- Parents have known this since... forever.
 - Why hasn't the criminal justice system embraced these "truisms?"

The Washington State Judicial Colloquies Project

- Two fundamental ideas:
 - To help juveniles and their families to have a better understanding of the court system and proceedings.
 - An improved understanding will facilitate better compliance and results.
- Rewrote language for:
 - First appearances
 - Conditions of Release
 - Probable Cause Findings
 - Detention findings
 - Conditions of probations
 - Explanation of Consequences
- http://www.teamchild.org/docs/uploads/JHDAN_Judicial_Colloquies_FINAL.pdf

Let's Give it a Try



<http://www.wisegEEK.org/what-is-the-solution-to-juvenile-delinquency.htm#didyouknowour>

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