

**WHAT WERE YOU
THINKING?**

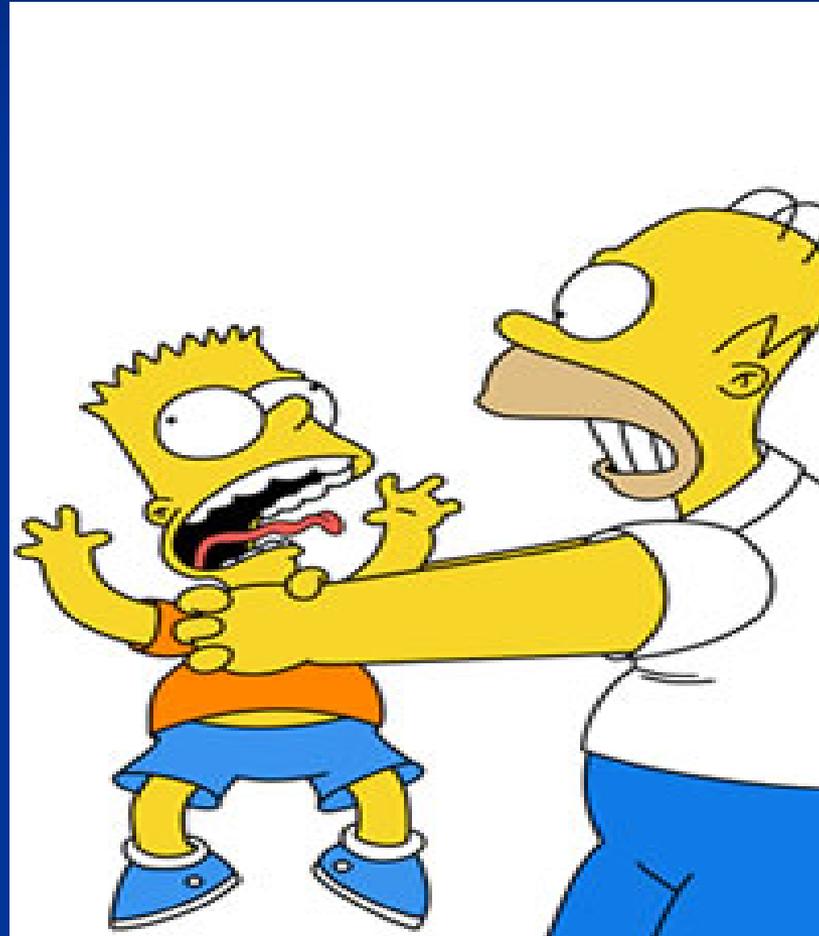
**Adolescent Development
Research and Its
Legal Implications**

Legal Context

- **Capacity:** Inability to commit a criminal act
- **Competence:** Mental capacity to understand court proceedings and assist counsel
- **Culpability:** Blameworthiness
- **Consent:** Effect on voluntary, knowing and intelligent waiver of constitutional rights
- **Conversation:** “How to talk so kids will listen and listen so kids will talk”

“The adolescent’s mind works differently from ours. Parents know it. This court has said it. Legislatures have presumed it for decades or more. And now, new scientific evidence sheds light on the differences.”

Parents Know It



This Court Has Said It . . .

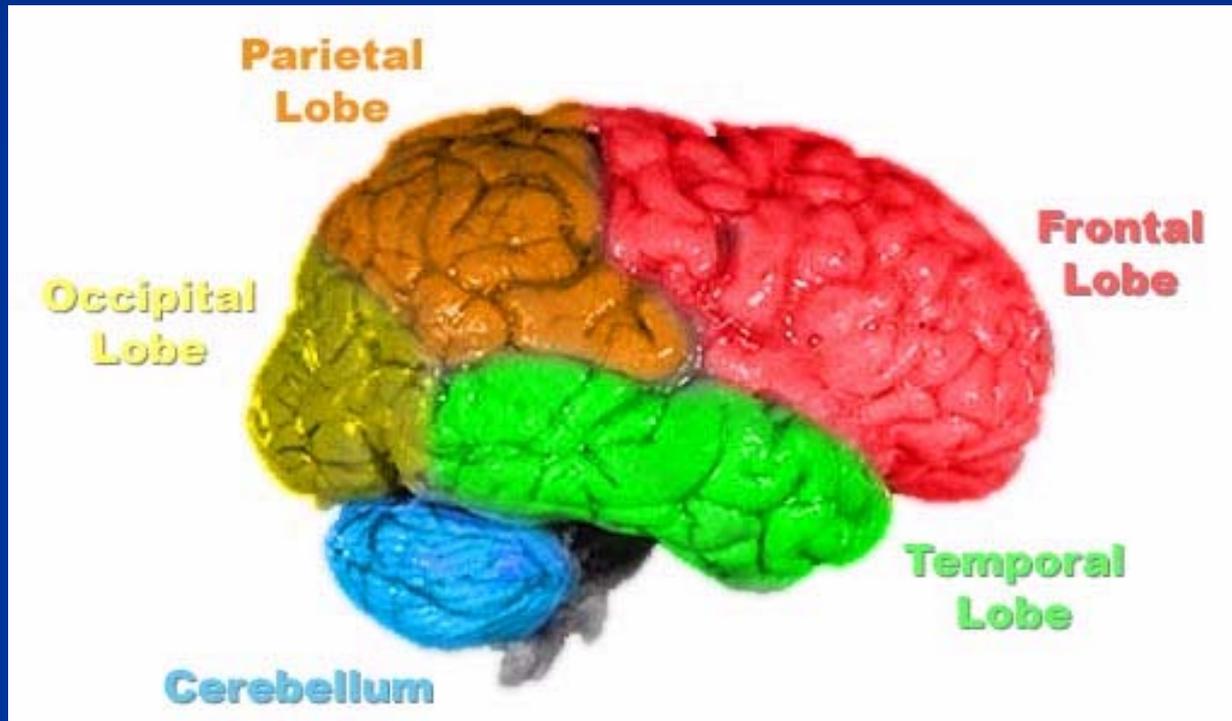
- **Haley v. Ohio**, 332 U.S. 596 (1948).
 - “A mere child an easy victim of the law Age 15 is a tender and difficult age for a boy of any race. He cannot be judged by the more exacting standards of maturity. . . . This is the period of great instability which the crisis of adolescence produces. . . . A lad of tender years . . . needs counsel and support He needs someone on whom to lean”
- **McKeiver v. Pennsylvania**, 403 U.S. 528 (1971).
 - “Reprehensible acts by juveniles are not deemed the consequences of mature and malevolent choice but of environmental pressures (or lack of them) or other forces beyond their control.”

Legislatures Have Presumed It . . .

“Immature minors often lack the ability to make fully informed choices that take account of both immediate and long-range consequences.”

Wis. Stat. § 48.375(1).

New scientific evidence sheds light on the differences. . . .



Amygdala

- Part of limbic system – emotional center
- Designed to detect danger and produce rapid protective responses without conscious participation: primitive impulses of aggression, anger and fear
- MRI shows limbic system, particularly amygdala, is more active in adolescent brains than adult brains

Prefrontal Cortex

- Part of the “executive functions” of response inhibition, emotional regulation, planning and organization
- Associated with decision-making, risk assessment, judging future consequences, evaluating reward and punishment, impulse control, deception, impulse control, and making moral judgments
- Modulates amygdala
- Less active in adolescents than adults, develops last, in early to mid-twenties.

Structural Immaturity

- Adolescents have fewer, slower connections between amygdala and prefrontal cortex
- Myelination incomplete – makes communication between different parts of the brain faster and more reliable
- Pruning incomplete – establishes some pathways and extinguishes others, improving functioning of reasoning centers

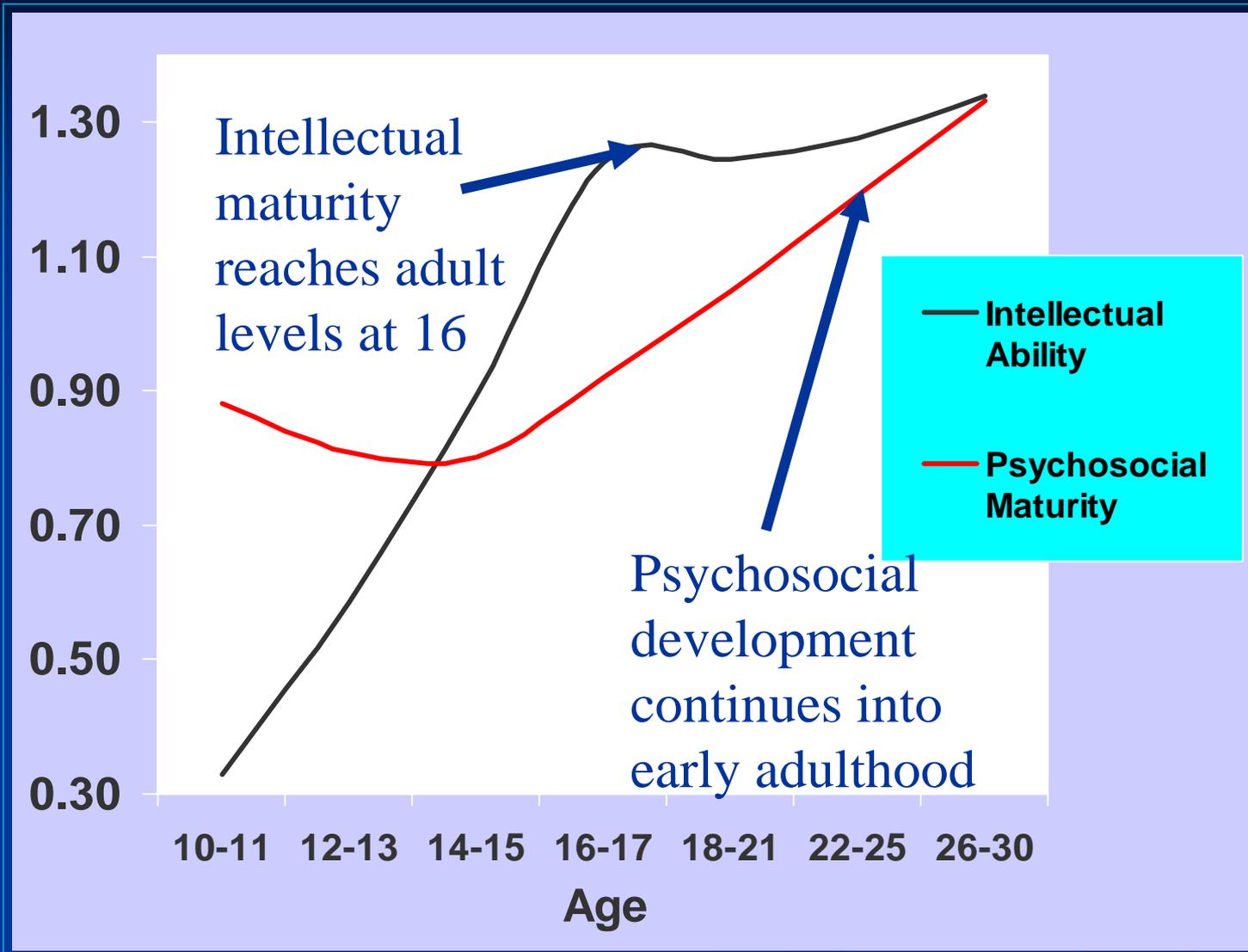
Added Disabilities

- “Normal” adolescent brain is immature
- Adolescent who has suffered trauma, violence, abuse, neglect has further impaired brain functioning
 - General idea: If in chronic survival mode, amygdala is constantly aroused, short circuits prefrontal cortex connection
- Adolescent who has abused drugs or alcohol, has further impaired brain functioning
 - *See “Perry Model”*

But He/She is Intelligent!

- Development Comes in Many Forms
- Cognitive is One
- Others Are:
 - Moral
 - Psycho-social
 - Biological/Physical
- They Don't All Arrive Together!

The Immaturity Gap



Cold Cognition – Hot Cognition

- Stealing is *Wrong*

On a dare from a popular peer

- Weapons at School are illegal

Friend shows you knife in his backpack

- Unprotected sex is dangerous, can lead to pregnancy and STDs

Backseat of a car

Risk Assessment

- First, perceived invulnerability
 - Simply Do Not See Risks
- Second, inaccurate risk-benefit analysis:
 - Over-value benefits, under-value risks
 - Values may be different: Peer approval may be worth any consequence.
- Third, present-oriented thinking:
 - Discount future, consider short-term risks, benefits

Egocentrism

- Adolescents often become self-conscious and self-absorbed – believes others are constantly watching and evaluating
- As a result:
 - Combined with present-oriented thinking, I am hopeless, cannot see way out of difficulties.
 - No one can understand me.
 - Less ability to empathize – appear unremorseful.

Interpreting Others

- Adolescents misinterpret facial expressions and emotions. More likely to perceive other's actions as negative, threatening, or hostile.
- Special problems for adolescents with disabilities:
 - Neglected children – less accurate
 - Abused children – over-identify anger
 - Mood disorders – over-identify anger

Capacity

- Capacity: Inability to commit a criminal act because unable to know right from wrong or engage in requisite intentional conduct
 - NGI
 - **In re Stephen T.**, 2002 WI App 3, 250 Wis. 2d 26
 - **J.D.B. v. North Carolina**, 131 S. Ct. 2394 (2011)
 - Even where “reasonable person” standard applies, law reflects reality that children are not adults
 - **Maichle v. Jonovic**, 207 Wis. 2d 367 – civil negligence, reasonableness from standpoint of reasonable child

Culpability

Culpability: (Blameworthiness - Role In Crime, Defendant's Personal Characteristics)

Eddings v. Oklahoma, 455 U.S. 104 (1982).

“Crimes committed by youth may be just as harmful to victims as those committed by older persons, but they deserve less punishment because adolescents may have less capacity to control their conduct and to think in long range terms than adults.”

- **Thompson v. Oklahoma**, 487 U.S. 815 (1987)
 - “less culpability should attach to a crime committed by a juvenile than to a comparable crime committed by an adult”
 - Death penalty for <16 cruel and unusual

Roper v. Simmons, 543 U.S. 551 (2005)

Comparative immaturity and irresponsibility, as confirmed by scientific and sociological studies. Impetuous, ill-considered actions and an underdeveloped sense of responsibility, are hallmarks of youth.



Differences

Juveniles are more vulnerable or susceptible to negative influences and outside pressures, including peer pressures.



Differences

- Personality traits of juveniles are more transitory, less fixed, than those of an adult. Greater possibility that a minor's character deficiencies will be reformed.
 - Note: More than $\frac{3}{4}$ of youth who commit crimes prior to age 21 will age out of those behaviors by age 21.

SO: Death Penalty < Age 18 is Cruel and Unusual

Graham v. Florida, 130 S. Ct. 2011 (2009)

Holding: Life Without Parole is Cruel and Unusual Punishment When Defendant Was Under 18 at the Time of the Crime and No One Died

Reasoning: Same as *Roper*

Significance: Not “just death penalty”
jurisprudence

Miller v. Alabama
Jackson v. Arkansas

- 132 S. Ct. 2455 (June 25, 2012)

Holding: Mandatory Life Without Parole is Cruel and Unusual Punishment When Defendant Was Under 18 at the Time of the Crime, Even if Someone Died

Reasoning: Same as *Roper, Graham*

Significance: Sentencing cannot proceed “as though they were not children.”

Consent to Waive Rights

In re Jerrell J., 2005

WI 105, 283 Wis. 2d

145, 699 N.W. 2d

110: “the condition of being a child renders one ‘uncommonly susceptible to police pressures.’”



“Capacity to Waive Miranda Rights: An Empirical Analysis”

- 20.9% juveniles under age 15 understand all four Miranda warnings
- Also 15-16-year-olds with IQs under 80
- 16-year-olds understand as well as 17-22-year-old “adults”

Dr. Thomas Grisso, 1980

Objective Question – in Custody?

- *J.D.B. v. North Carolina*, 131 S. Ct. 2394 (2011)
 - Objective custody analysis includes consideration of age if it “was known to the officer” or “would have been objectively apparent to any reasonable officer”
 - Does not require personal psychological analysis – childhood yields objective conclusions like “most susceptible to influence” and “outside pressures”
- *In re Dionicia M.*, 2010 WI App 134, 329 Wis. 2d 524, 791 N.W. 2d 236

A Child is a Child

There is nothing a child can do that would turn him/her into an adult. It is a fact that the only thing that can turn a child into an adult is the gift of the passage of time.

Javier Stauring,
LA Juvenile Detention Ministry

Some Sources

- *Roper v. Simmons* Briefs, 2003 U.S. Briefs 633
 - Brief of the American Medical Assoc., 2004 US. S. Ct. Briefs LEXIS 437
 - Brief of the American Psychological Assoc., 2004 US. S. Ct. Briefs LEXIS 431

- Models for Change, “Toward Developmentally Appropriate Practice: A Juvenile Court Training Curriculum,” Module 1, Adolescent Development, 2010 by the National Juvenile Defender Center

- Praveen Kambam and Christopher Thompson, “Development of Decision Making Capacities in Children and Adolescents: Psychological and Neurological Perspectives and Their Implications for Juvenile Defendants,” *Behav. Sci. Law* 27:173-190 (2009).

Sources Continued

- Marsha Levick, “*J.D.B. v. North Carolina*: The U.S. Supreme Court Heralds the Emergence of the ‘Reasonable Juvenile’ in American Criminal Law,” *Criminal Law Reporter*, Vol. 89, No. 20, 753 (Aug. 24, 2011)
- David Eagleman, “The Brain on Trial,” *The Atlantic*, www.theatlantic.com/magazine/print/2011/07/the-brain-on-trial (July/August, 2011).
- National Juvenile Defender Center, www.njdc.info
- Juvenile Law Center, www.jlc.org