How adolescent brain and behavioral development can affect competency, culpability and other determinations in criminal court

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Youth (and young adults) Have a “lack of maturity and underdeveloped sense of responsibility”, leading to recklessness, impulsivity and heedless risk-taking
Adolescents (and young adults) “are more vulnerable . . . to negative influences and outside pressures,” including from their family and peers; they have limited “contro[l] over their own environment” and lack the ability to extricate themselves from horrific, crime-producing settings.
Gaps between youth and adults

A child’s / young’s adult’s character is “more transitory and less fixed than that of an adult”
Developmental Domains

Cognitive

Emotional

Psychosocial

Brain

Physical/Biological
Keep in mind

- Age is not an indicator for level of development in the various domains
Summary of Brain Science

- MRI technology
- Different parts of brain develop at different times
- “Effective” communication between parts of the brain varies
The last part of the brain to develop governs:

- Impulsivity
- Judgment
- Planning for the Future
- Foresight of Consequences
Rate of Development

- Back to front
- Varies among youth
- Earliest fully developed in 18 or 19
- Average 21-24
Developmental Domains
Normative Adolescent Development

Cognitive Capacity

1. Possibilities
2. Abstraction
3. Thinking about thinking (metacognition)
4. Thinking in multiple dimensions
5. Relativity
Normative Adolescent Development

Psychosocial Capacity

1. Relating to others (peers & authority)
2. Interaction with the environment (cultural norms and etiquette)
3. Regulation of emotions
4. Self-reliance and independence
5. Concepts of time and planning
Normative Adolescent Development

- Susceptibility to Peer Influences (positive and negative)
- Future Orientation and the Ability to Delay Rewards
- Sensation-Seeking and Impulsivity
- Identity Development
Basics of “Normative” Adolescent Development

- Normative behavior is typical, common, or normal behavior for youth during adolescence. (e.g., experimenting with drugs, sex, shoplifting, skipping school, staying out late, taking risks)

- No two adolescents develop at the same rate or in the same pattern.
Adolescent Development
Inhibitors

Various factors can undermine adolescent development & decision making:

- Stress and Fear
- Learning Difficulties
- Previous Victimization
- Peers
Executive Functioning Influences

**Hot Cognition**
- under stress, in the heat of the moment, during emotional arousal
- Emotionally influenced thinking – more susceptible to impulse, risk-taking, influence of others

**Cold Cognition**
- calm environment
- time and tools to make well-thought out decisions
- more logical and reasoned thinking
Simple Science Plus

- Trauma
  - Child Abuse and Neglect
  - Head Injuries
  - Environmental

- Disabilities
  - Processing Problems
  - Fetal Alcohol Syndrome
  - Other deficits
The evolving legal recognition of developmental differences

- Montgomery v. LA (2016)
The evolving legal recognition of developmental differences


  “As any parent knows and as the scientific and sociological studies...tend to confirm, ‘[a] lack of maturity and an underdeveloped sense of responsibility are found in youth more often than adults and are more understandable among the young.

  These qualities often result in impetuous and ill-considered actions and decisions.””
The evolving legal recognition of developmental differences

- “Roper established that because juveniles have lessened culpability, they are less deserving of the most severe punishments.

As compared to adults, juveniles have a “lack of maturity an undeveloped sense of responsibility; they are more vulnerable or susceptible to negative influences and outside pressures, including peer pressure” and
Emerging Recognition of the Significance of Adolescence in Criminal Context

Graham v. Florida, cont.

their characters are ‘not as well formed.’”

- Retribution
- Deterrence
- Incapacitation
- Rehabilitation
The evolving legal recognition of developmental differences

  - The law has historically reflected the same assumption that children characteristically lack the capacity to exercise mature judgment and possess only an incomplete ability to understand the world around them.
Understanding the Science

- Need to actually read the studies
- Some more accessible than others
- See summary handouts
- Create summaries for judges
Applying the Science

Pre-trial
- Detention / Bail / Detention / Incarceration
- Suppression issues
  - Custody
  - Waiver
  - Invocation
  - Consent
- Competency to Stand Trial / Assist in Defense
Applying the Science

Challenging the law

- Mandatory Minimums
- Three strikes laws
- What “criminal history” means
- Excessive sentences / de facto life Pre-trial
- Other ideas
Impact on Behavior Date of Offense

- Impulsivity
  - Reacting; fight versus flight; sensation seeking

- Lack of Planning
  - Premeditation by whose standards

- Lack of Appreciating consequences
  - “It happened so fast” / It happened “to me”
  - What it means to carry a weapon
  - Prom money now v. possibility of jail later?

- Peer Pressure
The “Reasonable Youth or Young Adult” Standard

- Look at each decision point in context
- Normalize each step
- Normalize the behavior
The “Reasonable Child or Young Adult” Standard

- Knowing
- Recklessness
- Diminished Capacity
- Self Defense / Defense of Others
  - Perception of hostility / threats
  - The “Face test”
Jury Issues

- Voir dire
- Expert in front of jury
- Jury instructions
Case Decision Making

How and when we talk to our clients

Advising on pleas

  long term v. short term consequences

  weighing pros and cons

  how to stay in compliance

Plea Colloquies
Sentencing Questions

- Punishment
  - Teens / young adults less culpable

- Deterrence
  - Individual / Societal
    - Not for this group

- Rehabilitation
  - More amenable
18 USC § 3353 (a) (1)

Court considers:

Nature and circumstances of offense

History and characteristics of the defendant
18 USC § 3353 (a) (2)

the need for the sentence imposed

-to reflect seriousness of offense, promote respect for law and provide just punishment for the offense
-to afford adequate deterrence to criminal conduct
-to protect the public from further crimes of D
-to provide needed educational or vocational training, medical care, or other correctional treatment in the most effective manner
18 USC § 3553 (3)

Kinds of sentences available

- fine, probation, imprisonment, supervised release
18 USC § 3353 (4)
Consideration of Guidelines

“Relevant Conduct” that was “reasonably foreseeable”
Downward Departures (time permitting)

- Characteristic of offender
- Circumstances of crime
Influencing the PSI

- Introduce your narrative
- Provide PO with records
- Prepare your client for the interview
- Prepare the family members
- Other interviewees / statements
- Expose to PO to science/ articles
Influencing the Judge

- Ask for a hearing and submit sentencing memo
- Expert witness as evaluator or educator
- Live Testimony/ Report/ General Affidavit
- Submission of Reports / Studies
  - Summaries help
- Judicial Notice of science (from cases or training)
Exposing Judge, PO and Prosecutor

- Expert as an Evaluator
- Expert as an Educator
- Judicial / Group Trainings
Where to look for Experts

- Research Studies
- Local Universities
- Children’s Hospitals
- School Psychologists / Counselors
- Family Counselors who work with youth/young adults
- Substance Abuse Experts
Other ways development matters

- How you “judge” your client
- How you set expectations
- How you relate to your client
  - And where (the hallway is not happening)
- How you talk about your client
A comment about the handouts
Remember

None of this means that a teen or young adult cannot make decisions about his case so long as s/he is provided the proper environment in which to do so.
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