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Waiver of Counsel in Juvenile Court

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Abstract

A valid waiver of the 6th Amendment right to counsel, a foundational due process entitlement, must be knowing, intelligent, and voluntary. Yet, many youth waive the right to an attorney in delinquency proceedings. Moreover, at the adjudication stage of delinquency proceedings waiver of counsel is, almost without exception, connected to an “admission,” or guilty plea. Research suggests that adolescents’ immature psychosocial development may affect their decisional capacities regarding constitutional rights in ways that fully mature capacities would not. The goal of this study was to examine age-based differences in knowledge and beliefs regarding the role of counsel, presumptions about counsel, and maturity of judgment when making decisions about waiving the right to counsel or the right to trial in a plea context. One hundred twenty-five justice-experienced adolescents ages 11 to 18 and 96 parents completed semi-structured interviews assessing their understanding, beliefs, and decisions regarding the right to counsel and the right to a trial. Virtually all adolescents and adults believed having an attorney is better than waiving counsel. Adolescents differed significantly from parents in some aspects of understanding the role of lawyers as well as their assessment of risks and benefits of the right to counsel and taking a plea. However, a number of parents also held misconceptions about lawyers and pleas. Implications for changes in policy and practice are discussed.

Waiver of Counsel in Juvenile Court

The Sixth Amendment states "[i]n all criminal prosecutions, the accused shall enjoy the right . . . to have the Assistance of Counsel for his defence." (U.S. Constit, amend. VI). This right is part of the Constitutional jurisdiction of the Court (Johnson v. Zerbst, 1938). Without it, the court may not proceed because it is recognized that, to do so, jeopardizes the defendant's fundamental rights to life and liberty. This recognized risk to defendants is based upon the idea that lack of provision of counsel to defendants, who are likely unfamiliar with legal processes, puts them at a disadvantage in mounting a defense. In 1967, in *In re Gault*, the Court extended due process rights to juveniles, emphasizing their importance in light of the vulnerability of youth. This extension of rights included the idea that, for the requirements of fairness and due process to be met, all youth must be given the opportunity to consult with legal counsel (*In re Gault*, 1967). Though jurisdictions have moved in the direction of granting juveniles the rights to which they are entitled, *Gault* remains largely unimplemented. Many jurisdictions do not take steps to ensure that juveniles' waivers of counsel are made knowingly, intelligently, and voluntarily. In order for a juvenile's waiver to be knowing, intelligent and voluntary, he or she must not only be given the opportunity to consult with counsel, but he/she must also understand the import of this right and appreciate the consequences of waiver. Without such knowledge and appreciation, the right to counsel as outlined in *Gault* becomes meaningless.

Juvenile defense attorneys are in a position to promote better decision making amongst juvenile defendants by encouraging active participation and providing young clients with valuable legal information (Buss, 2000; Henning, 2005). They are tasked with informing youth of their rights at trial and the potential consequences youth may face by waiving those rights. Pleading guilty is often met with a host of direct and collateral consequences that children and

families may be unaware of. For example, certain delinquency adjudications may result in deportation, barriers to employment, or removal from school or public housing (Henning, 2004). Whether a juvenile should waive the right to trial in exchange for a plea bargain requires a nuanced understanding of the legal evidence against them along with an appreciation of the long-term costs or benefits associated with that decision. It is the attorney's responsibility to ensure their juvenile client fully comprehends and appreciates the rights they are waiving and makes a rational and reasoned plea decision (Shepherd, 2001). Therefore, without the effective assistance of counsel, young defendants are at an increased risk of waiving their rights to trial unknowing and unintelligently.

The U.S. Supreme Court has held that the right to counsel may be waived only upon a showing that the waiver is knowing, intelligent and voluntary (*Von Moltke v. Gillies*, 1948). Many states permit waiver by a juvenile after cursory inquiry by the court. Others require that the juvenile consult with a parent, lawyer or other adult. Some provide for standby counsel, who usually knows very little about the offender or the offense. At the trial (or adjudicatory) stage, waiver of counsel is, almost without exception, connected to an "admission," or guilty plea. Juveniles differ from adults, who may actually represent themselves at trial. Juveniles do not represent themselves at trial. Thus, waiver of counsel is also about waiving a right to trial. Estimates suggest approximately 90% of youth waive their right to trial in exchange for a plea bargain (Jones, 2004; Kaban & Quinlan, 2004). It is unclear how many of these juvenile defendants were represented by counsel.

The consequences of these policies can be observed among studies of rates of waiver. Research shows great variation in the number of youth represented by counsel, ranging anywhere from 15% to 95% of juveniles in a given jurisdiction (Aday, 1986; Clarke & Koch, 1980; Feld,

1988, 1991, 1993; Langley, 1972; Reasons, 1970). Furthermore, some studies have provided evidence that racial disparities may exist in representation of counsel, with minorities being less likely to be represented by counsel than Whites (Feld, 1988, 1991, 1993).

The Luzerne County kids-for-cash scandal emphasized the importance of counsel. Over half of the youth over a five-year period waived their right to counsel. The absence of counsel enabled Judge Mark Ciavarella to ignore other significant rights. Ciavarella took no steps to ensure that children's guilty pleas were knowing and voluntary as required. He regularly failed to inform youth of their right to a trial, their right to confront and cross-examine witnesses, and the government's burden of proving every element of its case beyond a reasonable doubt. He also regularly failed to ask if youth understood they were giving up these rights before pleading guilty. Many of the 4,500 youth who were adjudicated delinquent were charged with conduct that was not criminal, or that was not the offense for which they were adjudicated delinquent. Others were incarcerated for trivial misbehavior. The absence of effective counsel in Luzerne County had catastrophic consequences (Juvenile Law Center, 2010). The Luzerne County juvenile court proved that strong mandates alone are insufficient to ensure that youth are treated fairly and that the law is followed.

A Developmental Framework for Understanding Juveniles' Capacities.

Recent conceptualizations of juvenile decision-making divide youths' capacities into two domains, general intellectual development and "judgment." Judgment is comprised of the other elements that contribute to our ability to make decisions and continues to develop, even into an individual's twenties (Scott et al., 1995). These judgment capacities are also often referred to as psychosocial maturity or immaturity. It is generally theorized as being comprised of (1) perception and appreciation of risk (recognizing risks exist and the likelihood and seriousness of

potential consequences); (2) future orientation or time perspective (ability to consider both short and long-term benefits and impacts of decisions); (3) autonomy (ability to assert oneself, resist being suggestible or compliant to authority figures and peers); and (4) Impulsivity (ability to delay responding to consider and weigh options) (Scott et al., 1995; Cauffman & Steinberg, 2000; Cauffman, Woolard, & Reppucci, 1999; Scott, 2000; Steinberg & Cauffman, 1996).

These psychosocial maturity factors result in differences between the way juveniles and adults use information and value various potential consequences of their decisions. In other words, their immaturity likely causes adolescents to differ in their analyses of a given situation, ultimately affecting the decision they make (Schmidt, Reppucci, & Woolard, 2003). Adolescents are less likely to appreciate risks in the way that adults do and are more likely to value them differently (Scott et al., 1995). They tend to be less likely to believe that something bad will happen and, even if they do, they are less likely to appreciate the seriousness of the potential consequences. Youth also value rewards over risks, are less risk averse, and consequently engage in more risky behaviors (Scott & Grisso, 2004). They are also more likely to value short-term gains and risks over long-term benefits and risks, and are less likely to think through the effects of their current actions on their future (Bonnie & Grisso, 2000; Scott et al., 1995). Further, research has long-demonstrated that juveniles are more compliant and suggestible than adults, and the influence of both adults and other juveniles have a greater impact of the decisions of youth (Bishop & Beckman, 1971; Costanza & Shaw, 1966; Grisso, 1997; Gudjonsson, 1992; Scott et al., 1995; Sutherland & Hayne, 2001).

All of these characteristics are salient to juveniles' legal decision-making. Their inability to fully appreciate risk may cause them to not fully understand the seriousness of their legal situation. Their developmental differences in consideration of short-term versus long-term

consequences may also cause them to seek immediate gains (e.g., release from custody) despite the risks, over rewards that seem more remote (e.g., avoiding conviction). Juveniles' tendency to acquiesce to peers and authority figures may prevent them from fully understanding their rights as entitlements that cannot be taken away (e.g., because they do not see themselves as autonomous decision-makers), and keep them from asserting their own wishes if they differ from others in their life. Juveniles also are more likely to answer "yes" in response to questions (i.e., acquiesce during plea colloquy), without first considering the import of their response. Thus, while by about age 15 juveniles may be able to learn information for a "knowing" waiver, their still developing capacities in other areas may prevent them from appreciating the application of this information, thwarting their ability to "intelligently" waive their right to counsel.

While juvenile's reasoning regarding their decision to waive counsel has not been directly evaluated, research examining the attorney-juvenile client relationship provides potential underlying reasons for juveniles' waivers. What one believes about attorneys or the attorney client relationship may have a direct bearing upon whether one chooses to waive counsel. If a defendant misunderstands or has distorted beliefs about that relationship, he or she may see it as less valuable, making a waiver of counsel more likely. For example, if a youth believed that what they tell their attorney could be used against them, he or she might be more likely not to avail themselves of the services of counsel.

Studies have found differences in decisions regarding the attorney-client relationship differ depending upon cognitive abilities, appreciation of legal proceedings, and ability to communicate with counsel. Specifically, those with higher scores on tests of cognition and appreciation of legal proceedings and those who were better able to communicate with counsel were more likely to disclose information related to their case (Viljoen, Klaver, & Roesch, 2005).

Other research has found age-related differences in juveniles' decision-making with regard to the attorney client relationship that are tied to the psychosocial characteristics outlined above.

Specifically, both older and younger juveniles indicated refusing to talk to their attorney or denying involvement might be advisable within the attorney-client relationship. Adolescents were also less likely than adults to recommend that hypothetical defendants communicate openly and honestly with their attorney (Schmidt, Reppucci, Woolard, 2003). Further, the same study found that age influenced time perspective in that juveniles were more likely to focus upon short term consequences and benefits, while adults were more likely to examine the long term.

Juveniles have difficulty understanding legally relevant language and the function of their legal rights when compared to both absolute standards and relative to their adult counterparts. Grisso and colleagues (2003) found that more than twice the number of juveniles (40%) as compared to adults (<20%) chose to waive their rights and confess and 75% of young adolescents chose to waive their right to trial (compared to only half of adults). Viljoen and colleagues (2005) found that youth under age 14 never asserted their 5th Amendment right to counsel (0.0%) and rarely asserted their right to silence (7.4%). More recently, parallel findings have emerged in research examining the waiver of the right to trial, a decision ideally made in consultation with a defense attorney. Specifically, adolescents are less likely to consider the long-term consequences of waiving the right to trial (Daftary-Kapur & Zottoli, 2014) and they are also more willing to falsely plead guilty than adults are (Redlich & Shteynberg, 2016). Moreover, it has also been shown that when young adolescents do waive their right to trial in exchange for a plea bargain, they are less likely than older defendants to consider the weight of the evidence against them when doing so (Viljoen et al., 2005).

Parent involvement in legal decision-making. Parents are often thought to be a beneficial addition to their child's legal decision-making and/or thought to act in an advocacy role. This picture is further complicated by the parents' own capacities. Underlying the idea of requiring that an adult be present are several assumptions: (1) the parent understands the rights they are expected to help their child interpret (2) the parent will assume a protective role (3) the parents' interests are in line with those of the child and (4) the parent will provide advice or counsel regarding to assist the juvenile in asserting or validly waiving their rights.

While there may be other legal and ethical reasons for the presence of parents during juvenile justice contact, if the purpose is to bolster decision-making capabilities and mitigate coercion, it is likely ineffective (Grisso & Pomiciter, 1970). Either due to conflicts of interest (e.g., juvenile's crime was against a family member), emotional arousal, or desire to teach their child a moral lesson, parents may not align with the best interests of their children (Farber, 2004; Woolard, Cleary, Harvell, & Chen, 2008). Further, several studies cast doubt on whether or not parents are able to supplement or bolster their child's understanding of their legal rights. Woolard and colleagues (2008) interviewed 170 parent-youth dyads and found that parents were not always accurate in their understanding of legal rights or the interrogation process. For example, only half of parents correctly understood that law enforcement officials can lie during an interrogation. Further, Cavanagh and Cauffman (2015) found that about 75% of mothers of justice-involved youth were unaware that their child was ultimately responsible for deciding how to plead. Many parents believed that this decision was ultimately up to the public defender. They also found that a majority of mothers (58%) believed that public defenders represent both parents and their juvenile defendant and 55% believed that juvenile records are automatically sealed. Well-intending parents may inadvertently undermine their children's constitutional rights.

Current Study

Overall, the research calls into question whether juveniles' waiver of their right to counsel is knowing, intelligent, and voluntary. Juveniles' waivers may not be knowing and intelligent in that they may not understand and appreciate the meaning and significance of this entitlement. Due to still-developing intellectual capacities, juveniles under the age of 15 may be at significant risk of invalidly waiving their rights. With regard to voluntariness, not only legal actors, but also parents, may put pressure on youth to waive their rights. Juveniles may not perceive any real choice.

The goal of this study is to examine age-based differences in knowledge and beliefs regarding the role of counsel, presumptions about counsel, and maturity of judgement when making decisions about whether to waive the right to counsel or the right to trial in a plea context. The study extends existing limited work on age-based differences in knowledge and decision making in several ways that improve ecological validity. The study examines knowledge, beliefs, and decisions among parent-youth pairs from the same family. This sampling strategy more closely approximates the real-life circumstances of waiver of counsel in which knowledge, beliefs, and decisions are nested within family units. It provides information about whether parents and youth understand these rights and whether assumptions that parents compensate for youths' lack of knowledge is reasonable. Recognizing that information does not necessarily translate into practical understanding (e.g., Woolard, Cleary, Harvell, & Chen, 2008) we use measures of critical misbeliefs that may affect waiver decision outcomes. It also sheds light on what might happen when a youth and parent disagree about asserting and waiving rights. Youth might defer to parents or reject their influence, and parents might override their child's choices or defer even when they disagree with that choice.

We address four key research areas:

- 1. Do youth and parents understand what lawyers do, why they do certain things, and the limits of the attorney-client relationship?**
- 2. Could parents compensate for their child’s knowledge gaps about the attorney’s role?**
- 3. Would parents and youth choose to be represented by counsel? If they disagreed about asserting or waiving the right to an attorney, what would happen?**
- 4. Would parents and youth choose to take a plea bargain and waive the right to trial? If they disagreed about this choice, what would happen?**

Methods

Sample

Eligibility criteria for youth participants included age (11-17), justice system contact, and proficiency in English. Parents and/or guardians of eligible youth were eligible to participate if they were proficient in English. Participants were identified through a variety of mechanisms, including distribution of flyers to youth-serving organizations, libraries, community centers, and pedestrians near the courthouse. Eligible persons interested in participating were scheduled for in-person interviews in the laboratory or a convenient community location such as a library meeting room. Participants were compensated \$50 each for their time. All recruitment and research activities were approved by the Georgetown University IRB. Data confidentiality was maintained through a National Institute of Justice Privacy Certificate.

Forty younger adolescents (11-14 years old), 85 older adolescents (15-17 years old¹), and 96 adults participated in the study. Fourteen youth did not have a parent participate in the study.

¹ Three participants were age 18 at the time of the interview. One youth was 13 days past his 18th birthday, one was 53 days past, and one was 91 days past. We include them in the older adolescent category.

Thirteen families had two eligible siblings participate and one family had three. Table 1 presents the demographic characteristics by age group. Almost all parents were female and African American with average age of 41.34 (s.d.=9.17). About one-third had ever been found guilty in court and one-fifth had ever been locked up overnight. About half of parents had completed some post-secondary education. About one-third of the sample had a Hollingshead socioeconomic status score of three or lower.²

² Ranging from 1 (lowest) to 5 (highest), the Hollingshead two-factor score of socioeconomic status is comprised of weighted standardized scores of the head of household's education and occupation.

Table 1
Demographic Characteristics by Age Group

Demographic Variable	Young Adolescents <i>n=40</i>		Older Adolescents <i>n=85</i>		Adults <i>n=96</i>	
	<i>n</i>	<i>%</i>	<i>n</i>	<i>%</i>	<i>n</i>	<i>%</i>
Age, mean(<i>sd</i>)	13.38(.87)		16.32(.83)		41.34(9.17)	
Gender						
Female	24	60%	35	41%	87	91%
Male	16	40%	50	59%	9	9%
Race/Ethnicity						
African American	38	95%	82	96%	88	92%
Asian	1	3%	1	1%	2	2%
Caucasian	1	3%	2	2%	6	6%
Hispanic	2	5%	3	4%	5	5%
WASI IQ Scores						
70 and below	4	10%	19	22%	23	24%
71-89	20	50%	45	53%	47	49%
90 and above	15	38%	20	24%	23	24%
Justice System Experience						
Ever Guilty	11	28%	49	58%	32	33%
Ever Locked Up	8	20%	31	36%	21	22%
Hollingshead SES Levels						
1	0	0%	1	1%	0	0%
2	1	3%	4	5%	10	10%
3	3	8%	2	2%	21	22%
4	18	45%	31	36%	33	34%
5	9	23%	31	36%	32	33%
Education						
High School or Below	40	100%	83	98%	52	54%
Some College	0	0%	2	2%	34	35%
College Degree	0	0%	0	0%	7	7%
Graduate Training	0	0%	0	0%	3	3%

Design and Measures

Understanding Lawyers and Pleading.³ We modified and developed 13 closed-ended questions that address limits of lawyer-client confidentiality and privilege, decision-making authority among the youth-parent-attorney triad, and pleading.

Role of lawyer (6 questions, range 0-2). Four questions about the roles of the client, lawyer, and what information the lawyer might want were taken from the Right to Counsel subscale of the *Miranda* Rights Comprehension Instruments (MRCI; Goldstein, Zelle, & Grisso, 2011). Responses are scored on a two-point scale that ranges from adequate to incorrect understanding. We added two questions that asked whether a lawyer must disclose a client's admission of guilt to the judge and another asked whether the lawyer will still defend a client from being found guilty. Full Understanding scores summed the six questions and could range from 0-12.

Lawyer Privilege (4 questions, each scored 0-1). Four true/false questions worth 1 point each asked participants whether the lawyer could share information from a youth without permission to the youth's parents, the judge, the police, or the probation officer.

Lawyers and Pleading (3 questions, each scored 0-1). We asked who gets to decide whether a youth takes a plea in three situations: when a youth is not represented by counsel, when the court appoints counsel for an indigent youth, and when a youth hires a private. Participants could choose the judge, the youth, the lawyer, or the youth's parents. The correct answer (worth 1 point) is the youth. Three open-ended questions asked participants what it

³ Based on work by Bergman & Berman-Barrett (2004), Peterson-Badali & Abramovitch (1992), and Pierce & Brodsky (2002).

means to plead guilty, to plead not guilty, and, after answer a yes/no question about whether one can plead not guilty if they actually committed a crime, why one can do that.

Positive attorney expectations⁴ (12 questions, each scored 1-5). Using a 5-point scale, participants rated the likelihood that their defense attorney would act in particular ways if they were going to court. These include working hard to defend you, treating you fairly, and follow through on promises that they make.

Intellectual functioning. We used the two-subtest form of the Wechsler Abbreviated Scale of Intelligence (WASI; Psychological Corporation, 1999). The Vocabulary and Matrix Reasoning subtests produce a full-scale IQ score that correlates .81 and .87 respectively with the WISC and the WAIS.

Thinking about Attorneys and Plea Agreements (TAPA). Based in part on the structure and scoring procedures of the Judgment in Legal Contexts measure (JILC; Woolard et al, 2003), this semi-structured interview takes participants through a 15-year-old character “Joe’s” decisions about the right to counsel at an arraignment hearing for an armed robbery charge and the right to trial when considering a plea agreement.⁵ The plea offer involves pleading guilty to assault, testifying against co-defendants, and serving two years in prison; going to trial risks a sentence of four to six years. Each vignette produces several quantitative and qualitative measures that examine options, choices, and reasoning about alternatives.

Options. We ask participants to say what their options are when deciding about an attorney and a plea agreement.

⁴ This set of questions is based in part on Boccaccini’s Trust in Lawyers scale (Boccaccini & Brodsky, 2002) and concepts of procedural justice and legal socialization (e.g., Trinker & Tyler, 2016; Zimmerman & Tyler, 2010).

⁵ Although the scoring criteria remain the same, details of each vignette differ from those in the original JILC instrument.

Choices and Reasoning. Participants are asked what they would do in Joe’s situation and why they would do that. Then they are asked to identify the best choice for the defendant – assert/waive the right to an attorney and take/reject the plea agreement.

Risk Recognition. Participants were asked to name all of the good things (benefits) and bad things (risks) about the best option and the alternative option. We calculated (1) the total number of risks identified across all vignette options and (2) the percentage of all consequences that were risks.

Risk Appraisal – Likelihood (5 questions, each scored 0-4) and Impact (5 questions, each scored 0-4). In each vignette about Joe we provided five sets of consequences and asked (1) which of the two was more likely to occur, and (2) how bad it would be if the negative consequence actually occurred. For example, one pair for the right to attorney vignette is “Lawyer will tell the judge everything Joe says” and “Lawyer won’t tell the judge everything Joe says.” One pair for the right to trial vignette is “Joe will have a criminal record” and “Joe won’t have a criminal record.” A Total Likelihood score summed responses across all five risks per vignette with higher scores representing greater likelihood that risks will occur. A Total Impact variable summed the five risks for each vignette where higher scores represent worse or more negative impact.

Future Orientation. We coded each of the consequences identified in the vignette as short-term (more immediate) or long-term (after several days). For example, “being able to return home today” would be coded as short-term and “will outcomes in the plea bargain vignette were defined as occurring the same day or with little delay (e.g., being able to return home today) while long-term outcomes were those consequences that occurred after several days or which spanned long periods of time (e.g., effects on future employment). We calculated (1)

the number of long-term consequences (good and bad) for asserting the right and waiving the right, and (2) the percentage of all consequences that were long term.

Parent-youth disagreement. At the end of each vignette we asked “if your [parent/child] wanted to [make the opposite choice as you] what would you do? We coded whether the participant changed her mind.

Family environment (27 items, range 0-1). To measure internal family functioning we used three nine-item subscales that constitute the Family Relationships Index from the Moos Family Environment Scale – Real Form (Moos & Moos, 2009). The Cohesion subscale measures family member support and help. Expressiveness assesses to what degree feelings are expressed openly and directly. Conflict indexes the anger and conflict expressed in family interactions.

Procedures

Pairs of interviewers were assigned to each participant dyad based on availability. Interviewers met participants at a mutually agreed upon location and went through informed consent and assent procedures. Once consent and assent were obtained, parents and youth were interviewed in separate rooms. Interviews took approximately 60 minutes. Participants were compensated in cash at the end of the interview. Trained coders completed additional coding and scoring post-interview. Ten percent of the protocols were coded by a second coder for reliability.

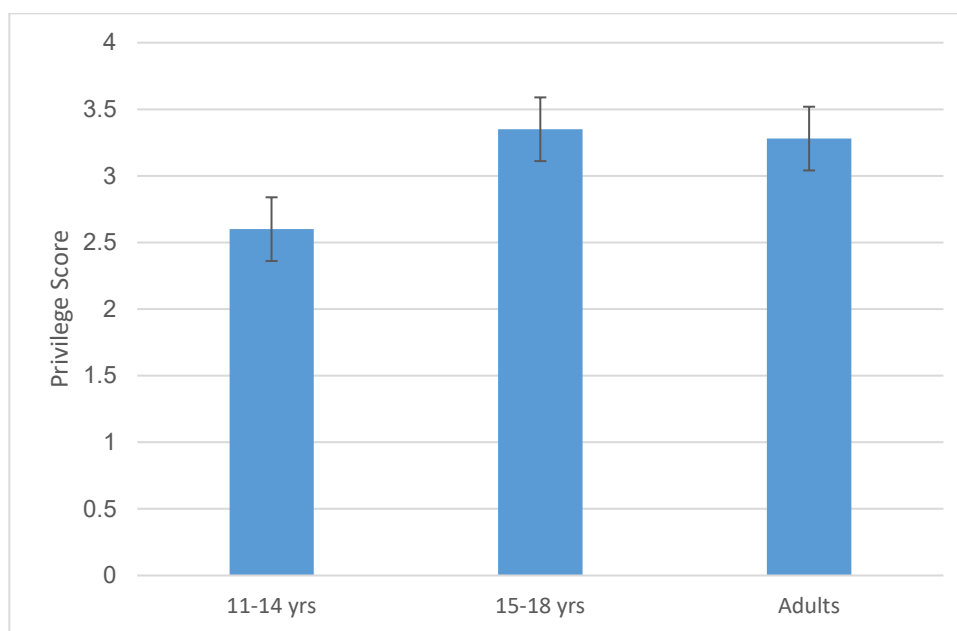
Results⁶

The Right to Counsel

Younger adolescents did not fully understand lawyer-client confidentiality.

Understanding lawyer privilege and confidentiality varied by age group ($F(2,209) = 7.95, p = .001$). Compared to older adolescents and adults, younger adolescents were less likely to understand that a lawyer cannot tell their parents, the judge, the police, or probation officers what a youth says without the youth's permission (see Figure 1).

Figure 1. Understanding Lawyer Privilege Total Scores by Age Group.



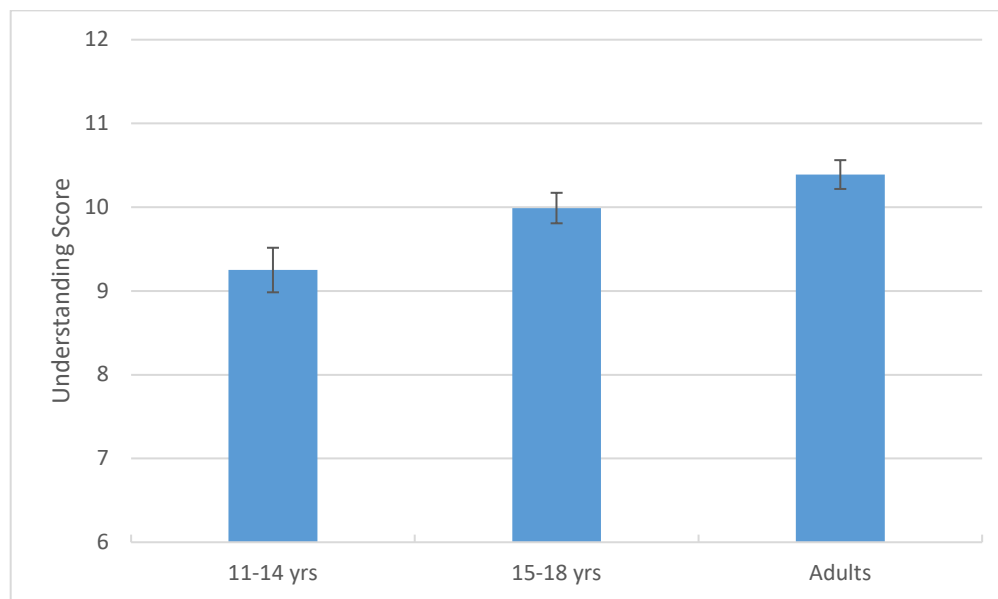
Younger and older adolescents understood the lawyers' role less completely than

adults. Full understanding of the lawyer's role differed by age group ($F(2,211) = 6.768, p =$

⁶ Although the younger and older youth did not differ significantly on their IQ percentile rank score, the younger youth did score slightly but significantly higher ($\bar{x} = 2.28, s. d. = 0.65$) than the older youth ($\bar{x} = 2.01, s. d. = 0.69$) when IQ was treated as a three-level categorical variable (less than 70, 70-89, 90 and above) ($F(1,121) = 4.29, p=.04$). We control for IQ in our analyses unless otherwise noted.

.001) (see Figure 2). Specifically, younger adolescents ($M = 9.25$, $SE = .27$) and older adolescents ($M = 9.99$, $SE = .18$) were less likely to fully understand the lawyer's role than adults ($M = 10.39$, $SE = .17$).

Figure 2. Lawyer Role Understanding Scores by Age Group.



However, parents would not always be able to compensate for their child's knowledge gap. Almost 45% of parents and 55% of youth failed to understand one or more key components. In 24% of the families, the parent and the youth each scored at least one zero on the six Understanding questions. In 18% of families, parents scored at least one zero but the youth did not. Only 7% of families had both youth and parent getting full credit for all six items.

Expectations of being treated well by attorneys did not vary by age, but some parents and youth have different expectations. There were no differences in attorney expectations across age groups or IQ. We calculated an absolute difference score between parents and youth as an index of disagreement about attorney expectations. This variable ranged from zero to 25 with a mean of 9.64 ($SD=6.57$).

In the story about “Joe,” almost all parents and youth knew that he had the right to attorney but most did not mention his option to waive that right. When asked what Joe’s options are, being represented by an attorney is virtually universally identified by parents (91.7%) and youth (93.6%). Only 8 youth and 8 adults in the entire sample failed to list “asking for an attorney” as an option. However, fewer 11 to 14-year-old participants said that one could waive the right to an attorney compared to older adolescents and adults ($X^2=7.58, p=.02, v=.185$).

Virtually everyone (99.1%) believed having an attorney was the best choice for Joe. Parents thought having a lawyer would produce better outcomes for the defendant and emphasized that having a lawyer will help the defendant understand what is happening in the court process. About half of the youth said that having a lawyer was better than not having one because a lawyer can help you. Some of the responses referenced a lawyer’s understanding of the process, but some simply argued the defendant needed the help.

Compared to adults, adolescents identified fewer risks of waiving the right to counsel and fewer benefits of having an attorney. When we examined the risks and benefits of representation and waiving representation separately, parents identified significantly more benefits to having an attorney ($M = 2.76, SE = .10$) than both younger ($M = 1.96, SE = .12$) and older ($M = 2.17, SE = .11$) adolescents $F(2,212) = 12.80, p < .001$. Similarly, parents identified more risks ($M = 2.24, SE = .10$) of waiving an attorney than younger ($M = 1.87, SE = .15$) and older adolescents ($M = 1.66, SE = .10$), $F(2, 212) = 9.02, p < .001$.

Adolescents thought the risks of having an attorney were more likely but not more negative in impact. Interestingly, adolescents thought the risks of having an attorney were more likely than the parents did ($F(2,209) = 5.75, p = .004$; young: $M = 11.74, SE =$

.43; older: $M = 10.94, SE = .30$; adult: $M = 10.09, SE = .28$). Specifically, adolescents were more likely to think that the lawyer would tell the judge what the youth said or that the youth would have to confess to the judge. Overall, adolescents did not think that the potential risks would have a more negative impact than adults, $F(2,212) = 0.76, p = .47$. Young adolescents ($M = 2.39, SE = .17$) saw the impact of a lawyer telling the judge everything Joe says as less damaging than parents did ($M = 3.24, SE = .11$), $F(2,212) = 4.80, p = .009$. Older adolescents ($M = 3.21, SE = .11$) did not differ from young adolescents or parents.

Adolescents and adults did not differ in the number of long-term consequences of the decision to assert or waive the right to an attorney. Participants reported anywhere from 0 to 14 long-term consequences associated with this decision. On average, participants identified 3.84 long term consequences ($SD=2.265$). These scores did not vary statistically by age. Parent and youth scores were not correlated.

Everyone would choose to have a lawyer in Joe's situation. In addition to participants' recommendations for the vignette character, we asked about the youth participant's choice if they were in a similar situation. Except for one 11-13-year-old and one 14-year-old, every youth said they would get an attorney; every parent wanted their child to have an attorney. Both youth and parents accurately predicted the other's desired choice: every parent thought that their child would decide to get an attorney⁷ and every child thought their parent would recommend having an attorney.

However, most parents would override their child's decision to waive the right to counsel. We were interested in what might happen if parents and youth disagreed about that decision. We asked parents what they would do if their child wanted to waive the right to an

⁷ The parents of the two youth who said they would waive the right to counsel were inaccurate; they predicted their children would want an attorney.

attorney and go unrepresented. About half of the parents indicated that they would override their child's decision to waive a lawyer. Some cited age and inexperience; others simply said that they would not allow it. About the same number of parents described efforts to convince or persuade their child to assert the right to counsel but most stopped short of saying they would go against their child's wishes. Some chose to talk about the odds of winning or losing, or remarked that they would get mad if their child wanted to waive the right, asking the child what was "wrong" with them. Ten parents said they would accept their child's choice. From a parenting perspective and a defense perspective, it makes sense that parents would want to override what they saw as a poor choice. From a legal perspective, however, the youth is the person who has the constitutional right to make that decision and it must be made voluntarily.

A small percentage of youth would waive the right to an attorney if told to do so by their parents. We asked youth what they would do if faced with a parent who wanted them to waive the right.⁸ Seventeen youth, ranging in age from 13 to 18, indicated they would go along with their parent's recommendation and waive the right to a lawyer. The reasons why fell into two categories. Twelve of the youth responded that their parents were smarter, knew best, or must have a good reason. A 17-year-old answered "Because she probably knows more than I do" (Y118). Similarly, a 14-year-old replied "Because I trust her and I think she thinks better than me" (Y145). The remaining five youth basically said that would follow their parents' wishes because their parent wanted them to do. A thirteen-year-old simply said "because my parent told me to" (Y120).

⁸ Because two youth said they would waive the right we did not analyze what they would do if their parent wanted them to assert the right to an attorney.

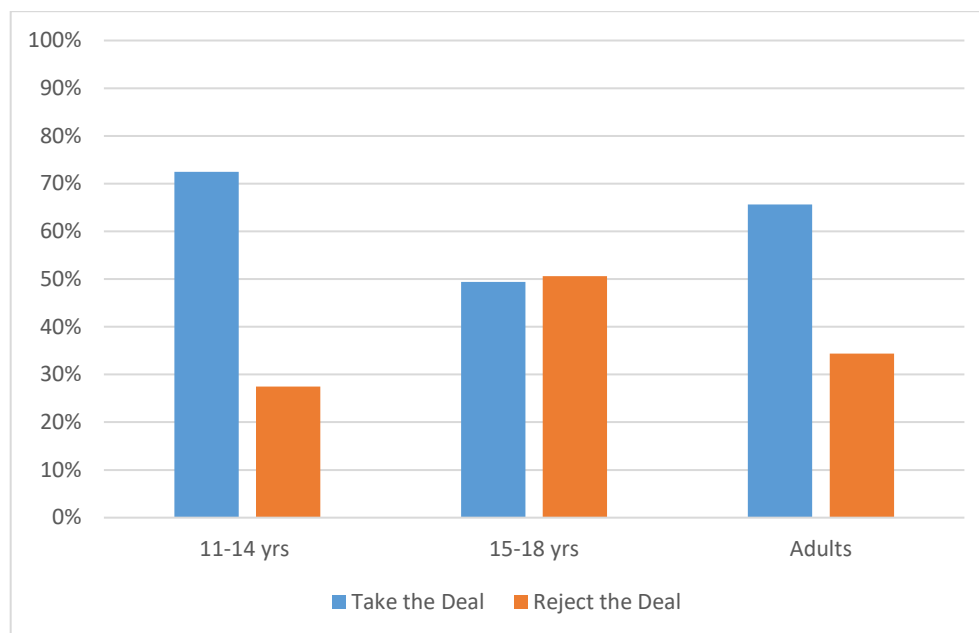
The Plea Bargain Decision

Some youth and adults believe that the judge or the parent gets to decide whether a youth pleads guilty, especially when the youth is not represented by a lawyer. When a youth goes unrepresented, 45% of youth and 30% of parents responded that the judge gets to decide whether a youth pleads guilty or not guilty. Forty-seven percent of youth and 45% of parents correctly respond that the youth is the one who decides about their own plea. About the same percentage of parents and youth respond correctly to the other two scenarios with a public defender and a private attorney hired by the parent. Among parents, 19% of parents believe that when the parent pays for an attorney, the parent gets to decide whether a youth pleads guilty or not guilty; a slightly higher number (22.5%) say they decide when no lawyer is involved.

In the story about “Joe,” most participants understood that he could accept or reject the plea offer. Most participants identified the option to accept (83.3%) or reject (68.3%) the plea offered. Interestingly, approximately one third (31.7%) of participants did not report rejecting a plea offered as an option available to them. Responses did not vary by age group.

Younger adolescents and parents were more likely than older adolescents to recommend that Joe take the plea. When recommending the best course of action for the vignette defendant, most participants recommended accepting the plea offer (60.6% of participants). Results show significant age differences in “best choice” responses, $X^2=7.270$; $p=.026$; $V=.026$ (see Figure 3). While older adolescents seem to be just as likely to recommend taking or rejecting the deal; younger adolescents and adults are more likely to recommending “taking the deal” as the best choice.

Figure 3. Best Choice for Plea Bargain Vignette Character by Age Group.



Adolescents identified fewer risks to the plea choice than adults did. Participants identified an average of 3.95 (SD=1.85) risks associated with the decision to accept or reject a plea offer. However, young adolescents ($M = 3.33$; $SE = .30$) and older adolescents ($M = 3.53$; $SE = .20$) identified fewer overall risks associated with the decision than adults ($M = 4.50$; $SE = .19$) did ($F(2,211) = 8.868$, $p = .000$).

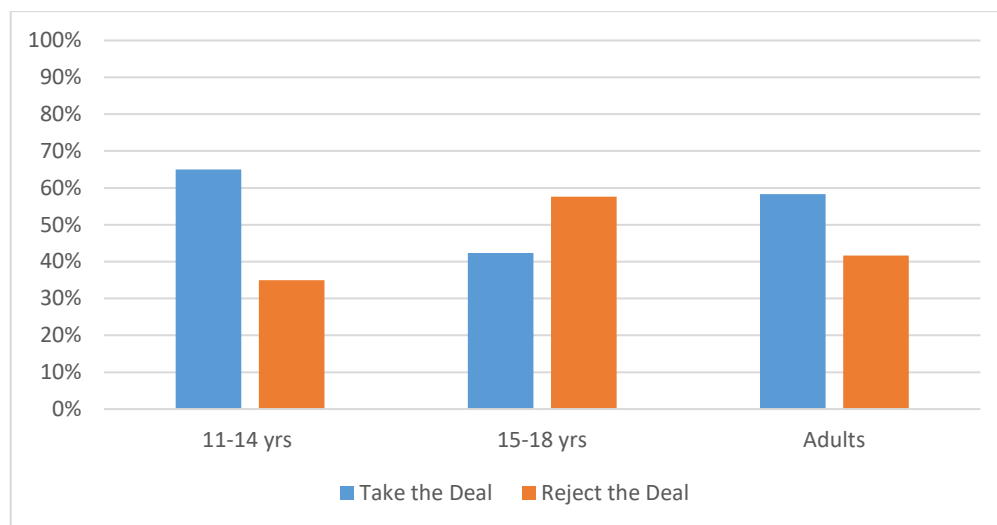
Adolescents did not differ from adults in assessments of the likelihood or impact of negative consequences with two exceptions: the likelihood that a trial would take longer than a plea and the impact of a criminal record. Specifically, young adolescents ($M = 2.74$, $SE = .17$) believed that a trial taking longer than a plea was less likely than older adolescents ($M = 3.25$, $SE = .11$) and adults ($M = 3.22$, $SE = .11$). The young adolescents ($M = 3.19$, $SE = .14$) also saw the impact of having a criminal record as less damaging than parents did

($M = 3.35, SE = .09$). Older adolescents ($M = 3.21, SE = .11$) did not differ from young adolescents or parents.

Adolescents identified fewer long-term consequences of the plea decision than adults. On average, participants identified 4.45 long term consequences ($SD=2.22$). The number of long-term consequences identified by participants varied by age group ($F(2,210)=6.020, p=.004$). Specifically, younger adolescents ($M = 3.84, SE = .37$) and older adolescents ($M = 4.08, SE = .25$) identified fewer long-term consequences than did adults ($M = 5.04, SE = .23$).

If in Joe’s situation, older adolescents were more likely to reject the plea than younger adolescents; parents believed their child would want to take the plea. Our three age groups varied significantly when asked what the youth participating in the study would choose, $X^2=7.846; p=.002; V=.02$. When asked specifically about their own choice, older adolescents were more likely to report rejecting the deal while younger adolescents are more likely to say they would take the deal and adults are more likely to believe their child would take the deal (see Figure 4).

Figure 4. Best Choice for Self/Child in Plea Bargain Vignette by Age Group



Summary of key findings

The Right to Counsel

- Compared to adults,
 - adolescents
 - understood the lawyers' role less completely than adults.
 - identified fewer risks of waiving the right to counsel
 - identified fewer benefits of having an attorney.
 - thought the risks of having an attorney were more likely
 - young adolescents
 - did not fully understand lawyer-client confidentiality
 - Adolescents and adults did not differ in
 - their expectations of being treated well by attorneys
 - their ability to identify the right to an attorney when faced with that choice
 - their belief that having an attorney is better than waiving the right to an attorney
 - the number of long-term consequences of the waiver decision
 - Most parents would override their child's decision to waive the right to counsel.
 - A small percentage of youth would waive the right if told to do so by their parents.
-

The Plea Bargain Decision

- Compared to adults,
 - adolescents
 - identified fewer risks to the plea choice
 - identified fewer long-term consequences of the plea decision
 - younger adolescents
 - thought it was less likely that a trial would take longer than a plea
 - thought having a criminal record would be less harmful
 - older adolescents
 - were less likely than other groups to recommend taking the plea
 - Adolescents and adults did not differ in that
 - some believed the judge gets to decide how a youth pleads, especially when a youth does not have a lawyer
 - most identified the options to accept or reject a plea offer
-

Discussion

In our study virtually all parents and youth believed having an attorney is better than not having one, but the National Juvenile Defender Center and others have documented variable rates of representation across juvenile courts. Most of our sample came from a jurisdiction in which nearly all youth are represented in court, which may help explain the high rates of choosing to be represented. Even so, we might have seen some variation in that decision if we had asked about less serious charges. Alternatively, it may be that most youth and adults do believe that having a lawyer is the best choice when a youth is in court. If that is the case, then further research needs to examine what might lead parents and/or youth to override that belief in specific circumstances of their own case. Practical barriers to representation such as monetary cost, the time it takes to obtain a lawyer (either through court appointment or hiring), and the potential lengthening of the court process may drive decision making in the moment. For example, some jurisdictions accept plea agreements at the arraignment hearing, negating the need to schedule a separate adjudication hearing. It is less likely that youth will be represented at arraignment so expediency might trump perceived benefits of representation, particularly for more minor offenses. Moreover, many states hold parents responsible for some costs of legal representation, even though it is provided by the state (Feierman, Mozaffar, Goldstein, & Haney-Caron, 2018). Even qualifying for eligibility for appointment of counsel can require significant documentation of a family's financial status and does not eliminate responsibility for other fees, including reimbursement of costs. Structural barriers to representation should not be underestimated.

Even so, it is important to understand how parents and youth think about the decision to waive counsel. Parents in our sample identified more risks associated with waiver and more

benefits associated with retaining counsel and more risks associated with waiving counsel than did adolescents. Interestingly, some youth seemed to think that potential risks associated with retaining counsel were more likely to happen than adults. This could be a result of juveniles having poorer understanding of the attorney's role than adults if they believe there are risks associated with obtaining counsel. For example, young adolescents were more likely than adults to believe that their attorney would share information with the judge and require the defendant to confess to the judge. Most young adolescents also seemed to struggle with whether or not their lawyer would have to tell the judge if they were actually guilty. While young adolescents believed it likely the attorney would share information with the judge, they seemed to find this information less problematic than their parents did. This is possibly because they also misunderstand the lawyer's advocacy role, privilege, or lack appreciation for the potential ramifications of such a disclosure. For example, when you do not understand that it is your lawyer's responsibility to maintain confidentiality, these data suggest that youth may not find it problematic if/when attorneys do break confidentiality. Without an understanding of the attorney's advocacy role, perhaps young adolescents would also misunderstand the adversarial process and are more likely to think confessing/pleading guilty an appropriate course of action.

Consistent with previous work, most parents report they would override their child's constitutional right to waive counsel. Only four parents said that would go along with the child's choice to waive the right to a lawyer. These findings are consistent with prior research that examined parents' knowledge about the right to remain silent. These data represent the unique conundrum that faces youth and parents in the justice system. From a developmental perspective, parents might be quite within the bounds of rational, if not reasonable parenting strategies, to believe they have better decision-making skills and perspective than their adolescent child.

Particularly when the jeopardy that their child faces includes conviction and punishment, parents apparently believe that a more paternalistic approach is most appropriate. However, the decision to assert or waive constitutional rights must be knowingly and voluntarily made by the defendant herself, even if other people believe that decision is not in the youth's best interests. A simple colloquy in a court hearing might not be sufficient to suss out whether a parent has overridden a youth's wishes. The youth themselves might not even question a parent's authority to make the final determination about the right to counsel. How do we distinguish freely following advice from involuntarily ceding to parental wishes? Adolescents' capacities to make these choices are important, and different legal advocacy groups may argue for different approaches.

Generally, these results highlight that research cannot understand the reasons why parents and youth make certain choices unless we ask for explanations. Sometimes a youth gave a technically incorrect answer to a closed-ended question, e.g., the lawyer won't try to defend a youth from being found guilty if the youth confesses to the lawyer, but their explanations showed they simply felt the lawyer would move on to arguing sentence. Our vignettes did not provide information about evidence of the youth's guilt but one could imagine the scenario playing out – if the youth admits guilt to the lawyer and the youth will presumably be found guilty (without necessarily the lawyer breaking confidentiality), the lawyer focuses on mitigation in sentencing. This scenario infers a youth's thought process but it is not an unreasonable explanation. Still, some youth explicitly said that the vignette character's lawyer couldn't say that her client is not guilty if the lawyer knows that the client is guilty.

Three troubling misperceptions about lawyers stand out. ***Some juveniles showed clear evidence of believing that attorneys must report their lawyer-client communications to the court.*** A defendant with this belief seems poorly prepared to decide whether to seek legal

counsel, because the attorney that the defendant waives is—in the defendant’s mind—not an advocate, but an ally of the state to assist in proving his guilt. ***Second, some juveniles believed that counsel protects only the innocent.*** Defendants with this belief clearly fail to grasp even the most general purpose of legal counsel, not appreciating that counsel can provide many kinds of assistance to individuals who have offended, especially with regard to assuring that the facts supporting the allegation are tested and assuring fairness at sentencing. ***Third, some youths believed that one must confess to the court***—that is, must plead guilty—if one has committed the offense charged, because to do otherwise would constitute perjury. Defendants with this belief clearly do not grasp the nature of the right against self-incrimination. Even so, these youth still report that obtaining counsel is a better option than going without a lawyer.

We should emphasize that did not design the study to examine whether or not youth would decide to waive counsel in their own situations and cases. The purpose of this study was to assess what they know, how they reason, and what misconceptions they have when they are **thinking about** whether to waive counsel. Their choice itself was not the object of the study. Moreover, there is no guarantee that what parents and youth choose in a research study is what they would choose in actual delinquency proceedings. But their knowledge, reasoning, and misconceptions likely are relevant to real waiver situations if and when they occur.

Youth had varying types of contact with the justice system. The heterogeneity of those experiences may contribute to varying perceptions and knowledge but we are unable to unpack those potential effects in these data. Although we recruited from an urban tri-state area, almost all of the youth came from one of the three jurisdictions. There are jurisdictional variations in waiver of counsel and plea agreements that may be known through direct or indirect experience that could help us better understand the data. Future research should consider sampling not only

on individual level characteristics (e.g., youth age, experience) but also on important dimensions of justice systems that may differentiate understanding and decision making. One dimension might be the degree of family engagement; systems that take parental involvement seriously, proactively inform and education parents about their child’s rights in the legal process, and have active parent-led advocacy and support groups. A second dimension might relate to the adversarial/collegial nature of the relationship between prosecutors, the defense bar, and the judiciary. The culture of the justice system could establish a context in which rehabilitation or punishment are emphasized or plea bargains are more generous or constrained. These are but some of the contextual factors upon which a sampling strategy could be based.

Targeted sampling should focus on families currently engaged with the justice system to generate more ecologically valid evaluations of waiver decisions. It is quite likely that situational and contextual influences may drive decisions about rights more so than understanding and beliefs. For example, a prosecutor or judge may indicate that a case can be resolved at the arraignment hearing itself if a youth takes a plea but if not, another court hearing will need to be scheduled. Parents and youth who may be balancing the time required (e.g., days off from work and school), the monetary costs (e.g., hiring a lawyer, paying for transportation, arranging child care for siblings), and the psychological stress of those options may quite rationally decide that waiving the right to counsel and accepting a plea, particularly for what appears to be a relatively minor charge, is the best option. That real-life decision-making process would likely be best captured by recruiting families during or after the court process, particularly youth who decided to waive those rights and represent themselves at the arraignment or adjudication hearing. In-depth research in a single or several jurisdictions could reduce variation in system-level factors (e.g., the “going rate” for particular offenses) and facilitate study of individual, family, and

situational factors that might predict decision process and outcome. Similarly, observational research of court proceedings at different stages of the court process could shed light on the interactions between youth, parents, judges, and prosecutors before and after counsel is appointed.

These results join other studies in underscoring the incomplete understanding of fundamental constitutional rights among some youth and parents. The deeper understanding afforded by the qualitative analysis reinforces the need for qualitative approaches to understanding the assertion and waiver of constitutional rights. In some instances, youth or parents answered a closed-ended question correctly but their open-ended explanations shed light on misconceptions that would otherwise go undetected. These findings imply that individuals may give the “correct” answers in a simple colloquy to justify a competent waiver of counsel or the right to trial while still suffering from important misunderstandings or misgivings about the functional implications of that waiver. Even in juvenile court, which has a mission that includes a focus on the rehabilitation and welfare of youth, face time and caseload pressures that functionally preclude judges from consulting with unrepresented youthful defendants to the degree that might be needed to uncover these problematic beliefs.

However, there may be ways in which courts can increase the resources available to families and judges can tweak their colloquies to correct some of the fundamental problems uncovered here. For example, judges could distinguish what a “lie” is and explain that counsel will protect a youth no matter the youth’s guilt or innocence. Implementing such interventions exposes the sometimes-contradictory due process and *parens patriae* mechanisms at work in juvenile court. Judges, and some youth, may feel that confession enables a more tailored intervention response. On the flip side, judges may also want youthful defendants to have the full

opportunity to exercise their constitutional rights, even if it means that the court may not have the chance to engage in what the state sees as rehabilitative intervention or accountability.

Effective support of youths' decision making will required greater time and attention to the nuances of how youths are processing information and making decisions. Great strides have been made in educating judges and attorneys about developmental science but scientists must continue to collaborate with justice system stakeholders about the implications for the details of process. All stakeholders are challenged to not only balance the competing goals of the juvenile justice system, but to balance the autonomy and constitutional rights of youth with recognition that youth may require extra consideration, such as additional time and explanation, to effectively assert or waive those rights (Woolard, Henning, and Fountain, 2016).

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