

Motions in Delinquency Cases

Zealous Defense and Motions Practice

- *In re Gault* 38 U.S. 1 (1967)
 - “Under Our Constitution, the condition of being a boy does not justify a kangaroo court.”



NJDC's Ten Core Principles

- Not just competent, but **diligent** and **zealous** representation
- Delinquency process is adversarial
- Juvenile defenders uphold the juvenile's constitutional rights throughout the process, including during pretrial motions and hearings
- Delinquency representation is a **specialized** area of law



National Juvenile Defense Standards

- Standard 4.7
 - Counsel must file motions in a timely manner,
 - After thorough investigation
 - And review of the applicable laws
 - Counsel has ongoing obligation to file motions as new information and evidence are obtained.
 - With limited exception, motions should be in writing
 - Counsel must be current on LEGAL AND SCIENTIFIC research informing motions practice
 - Counsel must preserve the record, orally if unable to do so in writing

Why do we
file motions?



Why file motions?

- Dismissal of the petition as sanction for some violation
- Exclusion of critical pieces of evidence
- Discovery
- Aid in defender's evaluation of a plea
- Create potential for impeachment with prior inconsistent statements
- Source of reversible error on appeal
- Persuade DA to drop charge/gain plea bargaining leverage
- Gain your client's trust!

What Motions Can We File?

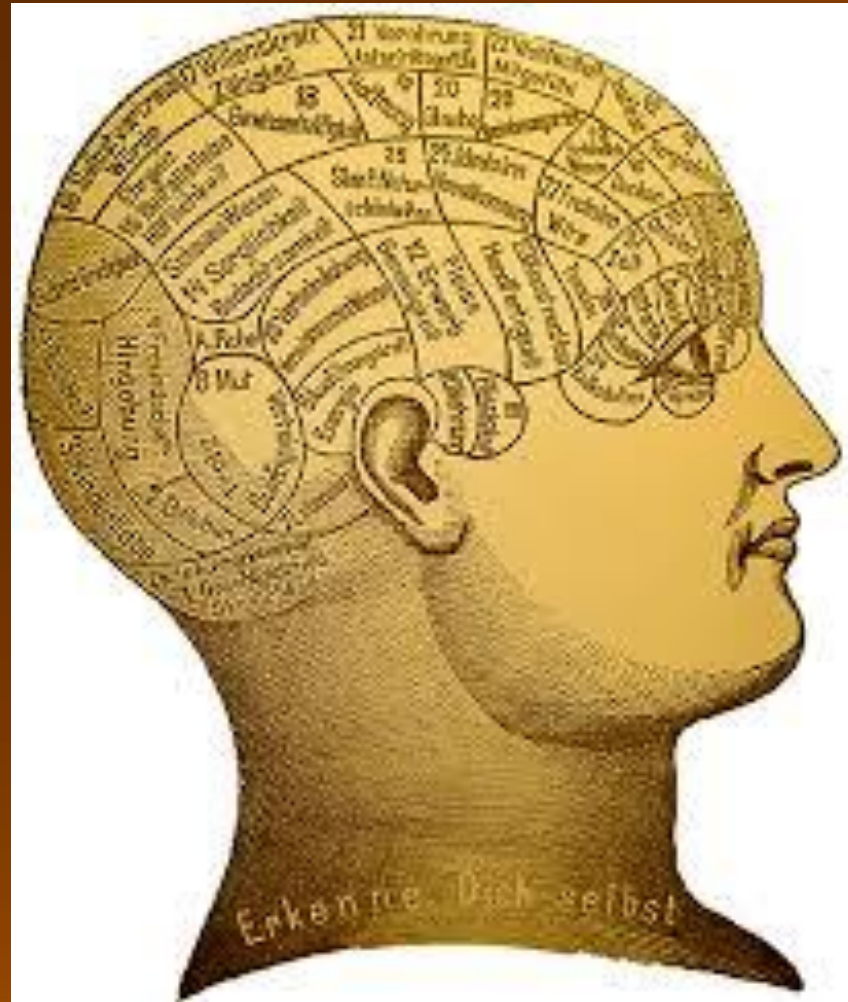
- You will have to file motions early in the case
- Always brainstorm a list of potential motions to file after opening your case
- Handout: possible motions checklist

Motions Must Be Individualized!

- No: “Relevant Facts”
- Yes: “The police violated Jerome’s constitutional rights by handcuffing him in the classroom, pulling him into an office, threatening him, and questioning him without providing a Miranda warning.”
- No: “Law and Analysis”
- Better: “The Constitution requires this Court to suppress Jerome’s Statement”
- Best: “Jerome’s Statement must be suppressed because he was unable to understand the Miranda warning read from a card written for adults, and therefore did not knowingly and intelligently waive his rights.”

Going Beyond the Basics

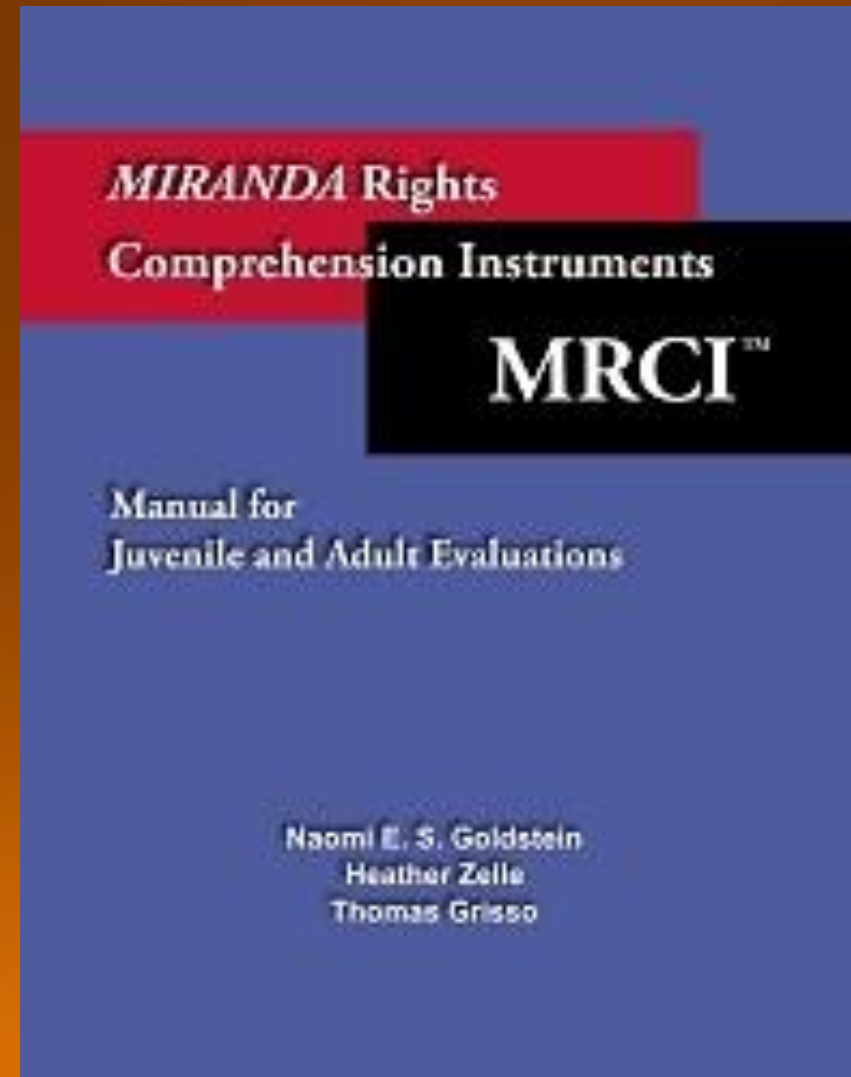
- Use science
 - Brain development, Comprehension (Grisso), Juvenile Recidivism, Evidence Based Treatment, Risk Assessments
- Use Stories
 - The facts in the police report are not your facts!
 - I have learned that people will forget what you said, people will forget what you did, but people will never forget how you made them feel.
 - Maya Angelou
- Be Persuasive
 - Structure; Primacy and Recency, compelling headings



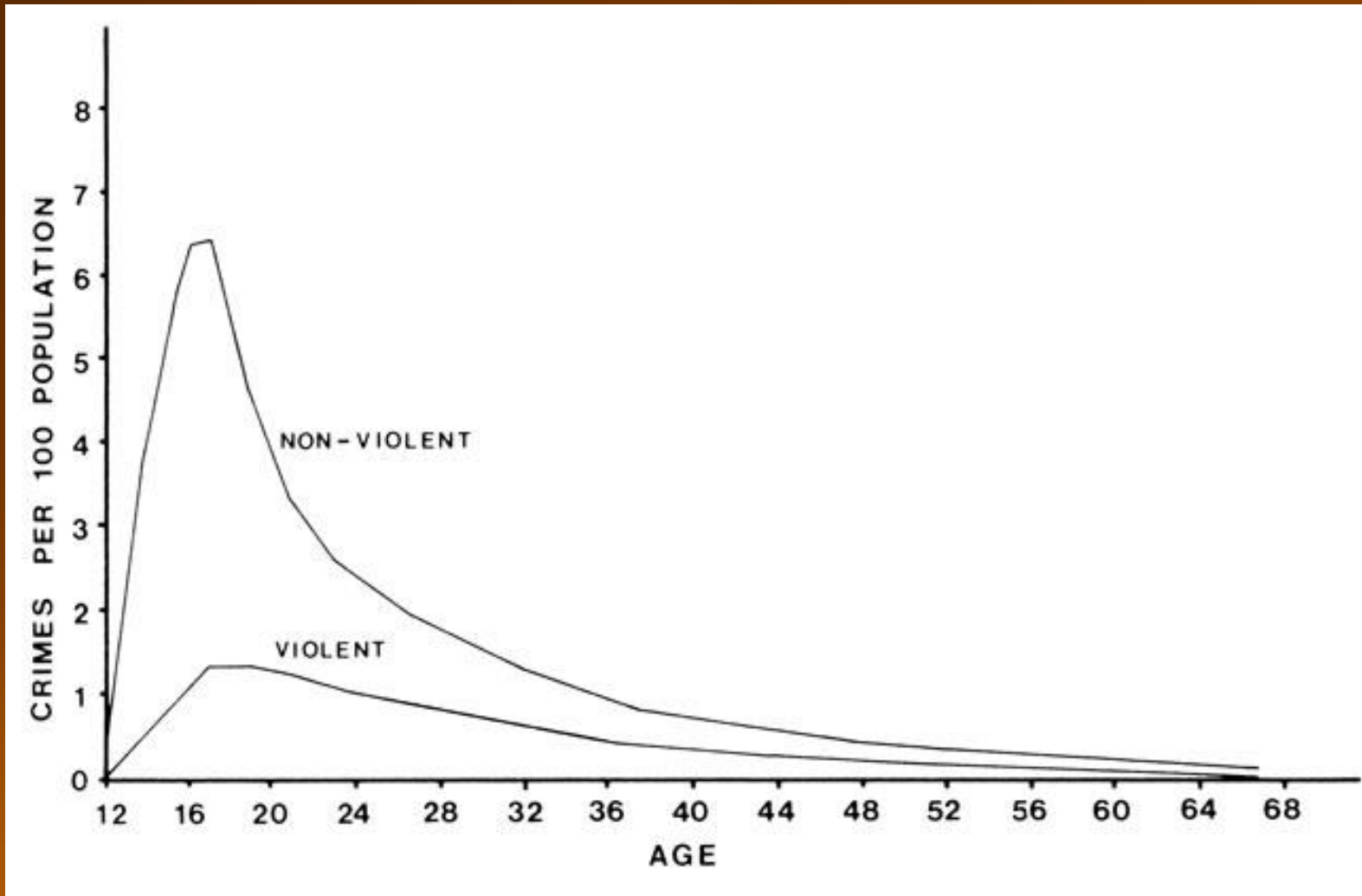
Incorporating Science

Cognitive Limitations and Miranda

- Ability to think and reason are still developing
- Cognitive capacities do not resemble those of adults until around age 16
- Ability to understand *Miranda* warnings may be impaired



Sentencing Memo



Collaboration on Defense Motions

1. Obtaining information
2. Sharing information!
3. Filing motions and memos that work together
4. Preparing the client for the hearing