

ROPER v. SIMMONS
AND WAYS TO INCORPORATE IT INTO YOUR PRACTICE

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1. On March 1, 2005 the United States Supreme court held that it is unconstitutional, under the Eighth and Fourteenth Amendments, to impose the death penalty on youth who are under the age of 18 at the time of the offense. Roper v. Simmons, 125 S. Ct. 1183 (2005). Prior to Roper, the Supreme Court held the death penalty unconstitutional for youth under the age of 16. Thompson v. Oklahoma, 487 U.S. 815 (1988)(standards of decency do not permit the execution of youth who are under the age of 16 at the time of the offense)
2. The Roper Court concluded that there was objective evidence to support a finding of a national and global consensus against the juvenile death penalty. The court found that society views juveniles as “categorically less culpable as the average criminal.” The Court also stated that “juveniles can not be classified among the worst offenders; they are susceptible to “immature and irresponsible behavior” and “have a greater claim than adults to be forgiven for failing to escape negative influences in their whole environment.”

The significance of this decision to our practice is the Court’s declaration that juveniles are developmentally different from adults and cannot be classified among those deserving of capital punishment. "The reality that juveniles still struggle to define their identity means it is less supportable to conclude that even a heinous crime committed by a juvenile is evidence of irretrievably depraved character." Because juveniles possess a “diminished culpability,” the rationales for the death penalty (retribution and deterrence) can not be justified when applied to youth under the age of 18.

In holding the death penalty a disproportionate punishment for youth under age 18, the Court also looked to international law for affirmation. “[T]he overwhelming weight of international opinion against the juvenile death penalty, rest[s] in large part on the understanding that the instability and emotional imbalance of young people may often be a factor in the crime.”

3. The Court cited to neurological and developmental research on **how juveniles, under age 18, are different from adults in three significant ways:**
 - o Juveniles possess a lack of maturity and an underdeveloped sense of responsibility; this often results in “impetuous and ill-considered actions and decisions.” In discussing this aspect of youth, the court cited to research that found “adolescents are overrepresented statistically in virtually every category of reckless behavior.” In fact, this is one reason

states prohibit youth under 18 to vote, to serve on juries, or marry without parental consent.

- Juveniles are more vulnerable and susceptible to negative influences and outside pressure, including peer pressure. The Court cites to research acknowledging that juveniles have “less control or less experience with control over their environment.” Juveniles lack the ability to separate themselves from a “criminogenic setting” (negative environment).
 - Juveniles “character... [are] not as well formed as that of an adult[s]. The personality traits of juveniles are more transitory, less fixed.”
4. In discussing these differences between adults and juveniles under age 18, the court enumerated reasons why juveniles cannot be amongst the worst offenders:
- Their vulnerability and lack of control over their environment means they have a greater claim to be forgiven for failing to escape negative influences.
 - Since they are more disposed than adults to immature and irresponsible behavior, such behavior is not as “morally reprehensible.”
 - Since their character and identity is not yet defined, “it is less supportable to conclude that even a heinous crime committed by a juvenile is evidence of irretrievably depraved character.”
 - “The relevance of youth as a mitigating factor derives from the fact that the signature qualities of youth are transient; as individuals mature the impetuous and recklessness that may dominate in younger years can subside.”
5. The Court rejected the argument that the severity of the crime should be considered in imposing the death penalty, especially with older youth. The court acknowledged that “it is difficult for expert psychologists to differentiate between the juvenile offender whose crime reflects unfortunate yet transient immaturity, and the rare juvenile offender whose crime reflects irreparable corruption.” The Court additionally recognized that trained psychiatrists, using clinical testing and observations, decline to label a youth under the age of 18 as having an antisocial personality disorder.
6. The Court drew the line at age 18, while recognizing that some of the characteristics differentiating adolescents from adults do not vanish at age 18. The Court also noted that there are youth under the age of 18 who are more

mature than adults. In reaching its decision, the Court pointed to the fact that society draws the line for many purposes at age 18.

7. The following briefs were filed in the Roper v. Simmons case:

Brief of the American Medical Association et. al. as *Amici Curiae* in Support of Respondent, <http://www.youthadvocacyproject.org/JDN%20hot%20topics.htm>,

The brief addresses, from a scientific perspective, the neurological, physiological, psychological, and emotional development of older adolescents. The brief discusses research that shows that there is more brain activity for adolescents in the regions related to aggression and less activity in the regions that relate to impulse control, risk assessment and moral reasoning (all factors related to criminal culpability). These differences were compared to the brain activity of adults.

Brief *Amicus Curiae* of the American Bar Association in Support of the Respondent, <http://www.youthadvocacyproject.org/JDN%20hot%20topics.htm>,

This brief contends that youth, under the age of 18, do not possess the degree of moral culpability required to justify the death penalty. The author's compare the developmental characteristics of youth under age 18 to those of the mentally retarded; both having "decreased abilities to regulate their actions, understand the correlation between their actions and the consequences of those actions, and to appreciate the impact of the resulting punishment for their actions." The brief also cites Atkins v. Virginia, 536 U.S. 304 (2002), the Supreme Court case that ruled the death penalty unconstitutional for the mentally retarded.

The following articles are cited in the majority opinion, <http://www.youthadvocacyproject.org/JDN%20hot%20topics.htm>:

Steinberg & Scott, Less Guilty by Reason of Adolescence: Developmental Immaturity, Diminished Capacity, and the Juvenile Death Penalty, 58 Am. Psychologist 1009 (2003)

Scott & Grisso, The Evolution of Adolescence: A Developmental Perspective on Juvenile Justice Reform, 88 J. Crim. L. & C. 137 (1997)

8. The reasoning in the decision and the various studies relied upon by the Court can be used in many aspects of juvenile delinquency and youthful offender practice. Here are a few suggestions:
- **Sentencing/Dispositional Advocacy, including YO adult sentences** – the “diminished capacity” of youth should be cited in every sentencing or dispositional argument. The fact that youth often make impetuous and ill-considered decisions can be used in advocating for fewer probation conditions. This argument would also apply to pre-trial conditions of release. It should be noted that the studies cited in Roper and the *amicus* briefs were of “normal” adolescents. Many of our clients have educational problems, live in poverty, and violent neighborhoods; these factors should be called to the court’s attention. In youthful offender cases where state prison is a sentencing option, the Court’s acknowledgment that trained psychiatrists decline to label youth under age 18 as having an antisocial personality disorder may assist in arguing against harsher, adult sentences. The Court cites to the American Psychiatric Association, Diagnostic and Statistical Manual of Mental Disorders (4th ed.) in defining the characteristics of antisocial personality disorder as callousness, cynicism and contempt for the feelings, rights, and suffering of others.
 - **Jury Instructions** – when dealing with intent or crimes with recklessness as an element (youth are more disposed to immature and irresponsible behavior); specific intent crimes (ask for an instruction a reasonable adolescent not reasonable person standard), joint venture (youth are more vulnerable and susceptible to negative influences and peer pressure), consider drafting a separate instruction on age, using language from the decision that youth under age 18 have a “diminished capacity.”
 - **Sex Offender Registry** – the registry is a long term punishment where the research shows youth have underdeveloped and transitory personality and lack maturity, the reasoning in Roper suggests that we can’t determine behavior before age 18.
 - **Miranda/ Police Interrogations** – along with the Massachusetts case law in this area, there is an argument to make that youth require more protections in this area since they are more vulnerable and have less control over their environment.
 - **Probation Violation Hearings** – many youth come before the court on technical violations. The fact that their personality traits are still transitory and they tend to act before thinking can be compelling arguments against violations for these violations, which usually amount to normal adolescent behavior.