Juvenile Offenders and the Death Penalty: How Far Have Standards of Decency Evolved?

Peter J. Benekos and Alida V. Merlo

Youth Violence and Juvenile Justice 2005; 3; 316
DOI: 10.1177/1541204005278678

JUVENILE OFFENDERS AND THE DEATH PENALTY

How Far Have Standards of Decency Evolved?

Peter J. Benekos
Mercyhurst College
Alida V. Merlo
Indiana University of Pennsylvania

*In 2002, the U.S. Supreme Court ruled that because they are less culpable and less able to deliberate about their behaviors, the execution of mentally retarded offenders exceeded the prevailing standards of decency (*Atkins v. Virginia*). Based on this rationale, and with increasing concerns over wrongful convictions and the execution of innocent defendants, some questioned whether the Court's decision could also apply to juvenile offenders. In March 2005, the majority of the justices determined that executing adolescent offenders violated the Eighth Amendment (*Roper v. Simmons*). This article reviews (a) recent court decisions on the death penalty, (b) citizen and student opinions on juvenile executions, and (c) comparative policies on juvenile executions. The authors also discuss the politics of the death penalty and the consequences of* Roper *on juvenile justice policy.*

Keywords: *juvenile death penalty; evolving standards of decency; Supreme Court; youth; juvenile violent offenders*

In December 2003 a Virginia jury decided that Lee Boyd Malvo was guilty of the murder of FBI analyst Linda Franklin. In determining the sentence, however, the jurors refused to impose the death penalty. Malvo was 17, within a few months of his 18th birthday, at the time of the murder. The jury's unwillingness to sentence Malvo to death illustrates some of the complexities and ambiguities of the juvenile death penalty debate in the United States. Specifically, is the execution of juvenile offenders cruel and unusual punishment? Are juveniles less mature and responsible than adults? Should juvenile offenders be less culpable? What are the evolving standards of decency (*Simmons v. Roper*, 2003)? In response to these questions, this article reviews recent court cases, public attitudes toward the death penalty, and the ways in which the United States compares with other countries in its use of the death penalty.

In January 2004, the justices of the U.S. Court agreed to review a Missouri Supreme Court decision regarding the use of the death penalty in cases of youth who are 16 and 17.

Authors' Note: An earlier draft of this article was presented at the Annual Meeting of the Academy of Criminal Justice Sciences in Las Vegas, Nevada, on March 12, 2004. Special thanks to Joshua Dickey and Briana Sullivan.

Youth Violence and Juvenile Justice, Vol. 3 No. 4, October 2005 316-333
DOI: 10.1177/1541204005278678

The case was viewed as a test to determine if there was a national consensus on the death penalty for juveniles (Feld, 2003; Greenhouse, 2004). The Court heard oral arguments in *Roper v. Simmons* (2005) in October 2004 and ruled in March 2005, by a vote of 5 to 4, that the Eighth and Fourteenth Amendments "forbid the imposition of the death penalty on offenders who were under the age of 18 when their crimes were committed" (p. 25).

Juvenile Justice Policy

To understand the argument for executing minors, it is useful to assess the current state of juvenile justice policy in the United States. There are indications of both a continuation of the "get tough" stance that characterized the 1990s and a softening in this approach to juvenile offenders. This ambivalence illustrates the difficulty in attempting to neatly categorize the system's response as either exclusively punitive or lenient.

There is plenty of evidence that get tough policies continue to prevail. For example, local school boards are more inclined to use the juvenile justice system to punish youth for behaviors that were once handled by the school system. In Toledo, Ohio, a safe school ordinance empowers police officers to handcuff youth and take them into custody for such behaviors as school dress code violations, shouting at classmates, and acting in a loud and disruptive manner (Rimer, 2004, p. 1). Similar actions are being employed in Florida and Virginia. These strategies are related to the zero tolerance policies that were enacted to deal with school violence in the 1990s (Lawrence, 1998).

Despite the fact that juvenile violent offending has continued to decrease (for the 7th consecutive year) and that the incidence of school violence continues to recede, there is a perception that schools are dangerous places and that unruly students have to be dealt with harshly. In Lucas County, which includes the city of Toledo, more than 1,700 juvenile cases under the Toledo safe school ordinance were referred to the juvenile court in 2002. The result is more student arrests for school misbehavior and more school suspensions and expulsions (Rimer, 2004, p. 15). The school shootings that occurred in the late 1990s heightened public sensitivity to violence and reinforced fears that school violence could occur anywhere and at any time. The March 2005 shooting of five students, a teacher, and a security officer in Red Lake High School, Minnesota, served as a reminder about the randomness and unpredictability of school violence. The student who did the killing, 16-year-old Jeff Weise, also killed his grandfather and the grandfather's girlfriend before going to school, where he committed suicide after the shooting episode (Davey & Wilgoren, 2005).

In his 2004 State of the Union message, President George W. Bush endorsed a get tough stance toward youth and advocated random drug testing of children in grades 8 through 12. Although the U.S. Supreme Court has already upheld the use of random drug testing for students who participate in extracurricular activities, the President's proposal includes all students. Despite the estimated $23 million it will cost to establish this program, some Congressional representatives embraced it (Jordan, 2004).

The move to adultify youthful offenders and waive them to adult criminal court symbolizes a willingness to treat juveniles like adults and to punish them accordingly. Between 1992 and 1999, 49 states and the District of Columbia either established or expanded their statutes regarding the waiver of juvenile cases to adult court. These legislative initiatives often mandate waiver or stipulate that certain youth by virtue of age and offense are to be excluded from juvenile court jurisdiction (Sickmund, 2003, p. 7). To date, there has been little discussion about revising or repealing these waiver provisions. In his analysis of 1999 juve-

nile court data, Puzzanchera (2003) found that of the 7,500 youth waived into adult court, the largest percentage of offenders had committed property rather than violent offenses (pp. 1-2). These data demonstrate that although some juveniles are being handled as adults, it is not necessarily for serious offenses.

In their study of juvenile and adult sentencing outcomes in Pennsylvania, Kurlychek and Johnson (2004) found that, contrary to expectations, juveniles transferred to criminal court "are sentenced more harshly than their adult counterparts" (p. 505). The researchers posit that transferred youth are presumed to be more dangerous and culpable, and judges respond by imposing more severe sanctions.

The nationwide adultification process has also resulted in more juveniles being incarcerated with adults and serving long prison sentences. Pennsylvania constructed a new 500-bed juvenile prison to incarcerate youth who are waived to adult court, convicted, and sentenced to adult prison. Many other states simply house youthful offenders with adult offenders in existing institutions. Comparing incarceration data from 1985 to 1997, Strom (2000) noted, "Relative to the number of arrests, the likelihood of incarceration in state prison increased for offenders under 18" (p. 1).

Conversely, there is evidence of a softening in the approach to juvenile offenders. Lionel Tate, who killed a 6-year-old girl when he was 12, had originally been sentenced to life in prison in Florida. In January 2004, just before his 17th birthday, Tate was released from custody after the Florida Court of Appeals determined that his competency to stand trial had not been properly established in 2001 (Feld, 2003; Goodnough, 2004). When Lionel Tate subsequently entered a guilty plea to second-degree murder, and after having served 3 years of incarceration in a juvenile prison in Florida, he was released to the custody of his mother and later sentenced to 1 year of house arrest and 10 years of probation. While living with another family, Tate was arrested in September 2004 for probation violation relating to curfew (Aguayo, 2004). A Broward County Circuit judge added another 5 years of probation to his sentence and released him to his mother to continue serving his sentence.

Feld (2003) argues that the Tate case "illustrates the hazards of disproportionality and adjudicative incompetence when states try young offenders as adults in criminal court" (p. 536). In other words, in this case the punishment was disproportionate to the competence and culpability of the offender, and therefore it violated the principle of penal proportionality.

This response to Tate illustrates Bernard's (1992) cyclic model of punishment. Bernard conceptualized juvenile justice as alternating between more punitive and harsh responses and more liberal and prevention-oriented policies. Considering the punitive and harsh penalties imposed on youth in the 1990s, it would appear that an emergent period of more lenient, treatment and prevention-oriented policies is indicated. (A change in the response to juveniles and juvenile offending, however, has not obviously occurred in all areas.) In the case of the harshest punishment, the death penalty, there is evidence of this cycle.

Juveniles and the Death Penalty

Prior to *Roper* (2005), the U.S. Supreme Court had addressed the issue of the use of the death penalty for juveniles on five occasions in the past 15 years. Two of these occasions involved cases that were actual decisions regarding the use of the death penalty, and three of the cases were habeas corpus petitions asking for reconsideration of a previous decision. First, in 1988, the Court, by a 5 to 3 vote in *Thompson v. Oklahoma* (1988), determined that

executing a juvenile who was under age 16 at the time of the crime was prohibited by the Eighth and Fourteenth Amendments to the Constitution. In *Thompson*, the defendant was a 15-year-old youth who had been convicted of murdering his former brother-in-law in retaliation for his abuse of the defendant's older sister (Weeks, 2003, p. 456). Essentially the Court determined that the execution of a 15-year-old violated the standards of decency because a youth at that age is "not capable of acting with the degree of culpability that can justify the ultimate penalty" (*Thompson v. Oklahoma*, 1998, pp. 822-823).

The following year in *Stanford v. Kentucky* (1989), two separate defendants, Kevin Stanford from Kentucky and Heath Wilkins from Missouri, argued that executing anyone under the age of 18 also violated the standards of decency and constituted cruel and unusual punishment. Both of these youths had been convicted of crimes when they were 16 and 17 and were sentenced to death. In this decision, a majority of the justices determined that executing a juvenile who was 16 or 17 at the time of the offense did not violate the cruel and unusual punishment clauses of the Eighth Amendment (Weeks, 2003, p. 461).

In reviewing *Stanford* (1989), the justices examined the evolving standards of decency in the United States characterized through legislative, judicial, and historical precedents, along with contemporary legislation, prosecutor and jury views, and public, international, and professional opinions. The fact that legislative bodies were authorizing the use of the death penalty for juveniles supported the majority's opinion that the death penalty for 16- and 17-year-olds was consistent with public sentiments and did not contradict society's standards of decency in 1989 (Cothern, 2000, p. 4). In his statement, Justice Scalia noted that what constitutes "current standards" is determined by "statutes passed by society's elected representatives" (*Stanford v. Kentucky*, 1989, p. 370).

It was 13 years later, in August 2002, when Toronto Patterson filed a habeas corpus petition with the U.S. Supreme Court, that juvenile death penalty appeals again occurred. Patterson was sentenced to death for the murders of his cousin and her two daughters, which he committed when he was 17 (*Patterson v. Texas*, 2002). Although his petition was denied by a majority of the court without comment and Patterson was subsequently executed, the three justices who disagreed with that decision crafted a dissent that incorporated quotes from Justice Brennan's dissenting opinion in *Stanford v. Kentucky* (1989). They argued that the death penalty had been the subject of further debate since that opinion was written and they contended that it was appropriate to reconsider *Stanford* (Liptak, 2002; Weeks, 2003, p. 476).

In the fall of 2002, Kevin Stanford filed a habeas corpus petition with the U.S. Supreme Court (*In re Stanford*, 2002). Ordinarily, it takes four justices to grant an appeal, and in Stanford's case four justices agreed. However, in a habeas corpus petition, it takes five justices to concur (Greenhouse, 2003, p. A19). Although the Court decided not to grant Stanford's petition in a 5 to 4 decision, the majority did not provide any reasons for their decision. The minority, Justices Stevens, Ginsburg, Breyer, and Souter, dissented, again quoting Justice Brennan's contentions in *Stanford* (1989). Justice Stevens wrote for the minority and argued that the issue of capital punishment for juveniles was ripe in part because of the Court's decision in June in *Atkins v. Virginia* (2002; Weeks, 2003, p. 476).

In the dissenting opinion, Justice Stevens argued that "in *Atkins*, we held that the Constitution prohibits the application of the death penalty to mentally retarded persons. The reasons supporting that holding, with one exception, apply with equal or greater force to the execution of juvenile offenders" (*In re Stanford*, 2002, p. 1). The exception was that 30 states prohibited the execution of the mentally retarded, whereas 28 states prohibited execution of juvenile offenders.

This reluctance to address the juvenile death penalty again surfaced in 2003 in the case of *Hain v. Mullin* (2002). Scott Allen Hain, a 17-year-old, was found guilty of two counts of first-degree murder in Oklahoma and was sentenced to death for killing two people while he and a 21-year-old friend were committing a carjacking and robbery. Without comment, the U.S. Supreme Court denied his petition for writ of certiorari. The *Hain* appeal (April 29, 2003) occurred just a few months after Kevin Stanford's request in October 2002. With the denial of the *Hain* petition, it appeared obvious that a fifth justice would not side with the minority and that the death penalty would not be considered in the foreseeable future (Weeks, 2003, p. 477).

Execution of the Mentally Retarded

In their dissent in the *Stanford* (*In re Stanford*, 2002) habeas corpus petition, the justices referred to the Court's recent decision in *Atkins* (2002) as a justification to review the constitutionality of juvenile executions. The U.S. Supreme Court revisited the issue of executing mentally retarded offenders in June 2002 in *Atkins v. Virginia*. In a 6 to 3 decision, the Court determined that execution of mentally retarded offenders violated the Eighth Amendment prohibition against cruel and unusual punishment. With *Atkins*, the Court reversed its 1989 decision in *Penry v. Lynaugh* (1989) that mentally retarded offenders were culpable and could face the death penalty. In 2002, after reviewing state statutes and the recommendations of various professional organizations, and after critiquing the proportionality of punishment issue, the justices concluded that there was "powerful evidence that today society views mentally retarded offenders as categorically less culpable than the average criminal" and therefore based on "the evolving standards of decency . . . such punishment is excessive" (*Atkins v. Virginia*, 2002, p. 17) and unconstitutional.

Based on their review of state statutes, the justices pointed out that 66% of all the states would not now execute mentally retarded offenders and that it was not only the number of states but also the direction of the change that reflected a national standard. They cited evidence of those state legislatures that thought about executing mentally retarded offenders but voted in support of the prohibition. Lastly, the justices reviewed the actual number of executions of defendants with an IQ of less than 70; there were five in the past 13 years. They concluded that there was a national consensus that it was wrong to execute mentally retarded offenders (*Atkins v. Virginia*, 2002).

The evolving standards of decency that the Court invoked in *Atkins* (2002) refer to society's disinclination to view the execution of mentally retarded offenders as an appropriate sanction based on the available legislative trends (i.e., whether states authorize the execution of mentally retarded). As Feld (2003) notes, when the Court decided *Penry* (1989), "only two states and the Federal government prohibited executing mentally retarded defendants" (Feld, 2003, p. 472). By the time of *Atkins* (2002), 16 additional states "prohibited the practice" (Feld, 2003, p. 472).

The majority also focused on proportionality. According to Steinberg and Scott (2003), "Proportionality holds that fair criminal punishment is measured not only by the amount of harm caused or threatened by the actor but also by his or her blameworthiness" (p. 1010). By utilizing evidence from professional organizations, religious organizations, opinion polls, other countries, and their own judgment, the justices attempted to determine if executing mentally retarded offenders achieves either the penological principle of deterrence or the penological principle of retribution. The Court found that "mentally retarded

defendants lacked the reasoning, judgment, and impulse control necessary to equate their moral culpability with that of ordinary adult criminal defendants" (Feld, 2003, p. 467).

In his dissenting statement, Chief Justice Rehnquist questioned the role of public opinion and professional organizations in informing the Court's decision. He argued that "the work product of legislatures and sentencing jury determinations ought to be the sole indicators by which courts ascertain the contemporary American conceptions of decency for purposes of the Eighth Amendment" (*Atkins v. Virginia*, 2002, p. 3). More forcefully, Justice Scalia's dissenting opinion criticized the assumption of a national consensus, and he discounted poll data and the conclusions of the majority justices.

Ultimately, however, the justices voted 6 to 3 and determined that executing mentally retarded offenders should be prohibited because their impairments reduce culpability for their behavior. Retribution cannot be supported when an offender has diminished culpability, and deterrence is unlikely to be an effective rationale when the mentally retarded offender, with his or her impaired functioning, is unable to fully comprehend the information on the threat of execution and then to conduct his or her behavior on that knowledge (*Atkins v. Virginia*, 2002). The question of who qualifies as retarded, however, has not been resolved, and the Court has not provided guidance for answering this question or specifying who should be charged with determining the criteria (Feld, 2003, p. 476; Liptak, 2004, p. A12). The Court's reasoning in *Atkins* (2002), however, was inconsistent with *Stanford* (1989) and suggested that developmental limitations of adolescents place them in the same category as mentally retarded offenders.

Juveniles and Capital Punishment

While the moral, constitutional, and jurisprudential debate over capital punishment continued, executions of juvenile offenders decreased from three in 2002 to one in 2003 (Streib, 2004). No juveniles were executed in 2004 (Death Penalty Information Center, 2005c). In addition, the number of juveniles sentenced to death also decreased: 14 in 1999, 7 in 2001, 4 in 2002, 2 in 2003, and 2 in 2004 (Death Penalty Information Center, 2005c). In the past 30 years (1973 to 2003), of the 885 total executions carried out in the United States, only 22 (2.5%) have been of juvenile offenders (Streib, 2004, p. 4). Between 1973 and 2003, 225 death sentences were imposed on offenders who were under the age of 18 at the time of the crime. According to Streib's (2004) analysis, "86% of these sentences have been reversed or commuted," and "14% have resulted in execution" (p. 3). Streib also reported that in 2004, "the annual death sentencing rate for juvenile offenders has been declining rapidly and now is at the lowest point in 15 years" (p. 3). As a result of these trends, at the end of 2004, 72 juvenile offenders were on death row, about 2% of the total death row population (3,455 as of March 1, 2005; Death Penalty Information Center, 2005b).

The Death Penalty Information Center (2005c) reports that at the beginning of 2005, 38 states and the federal government authorized the death penalty. However, of those 38 states, 19 (plus the federal government) did not allow executions when the defendants committed their crimes as juveniles. Of the 19 states that did permit the death penalty with juveniles, 5 had set the minimum age of eligibility at 17, and 14 had set the age at 16.

As evidence that views on the juvenile death penalty are changing, Streib (2004, p. 8) cites Kansas and New York as two states that specifically set 18 as the age of eligibility in their recently reenacted death penalty statutes. In addition, Montana (in 1999) and Indiana (in 2002) raised the minimum age of eligibility to 18.

Of the 19 states that authorized juvenile death sentences, some states used the sentence more frequently than others. Of 225 juvenile death sentences imposed since 1973, the leading states were Texas (57), Florida (32), Alabama (24), Louisiana (17), Mississippi (13), North Carolina (11), and Georgia (11; Streib, 2004, p. 11). As of December 31, 2004, of the 72 juvenile offenders on death row, the leading states housing death row juveniles were Texas (28), Alabama (13), Louisiana (6), Arizona (5), Mississippi (5), North Carolina (5), Florida (3), and South Carolina (3; Death Penalty Information Center, 2005c).

Similarly, some states were also more inclined to carry out executions of juvenile offenders. Of the 22 juvenile executions since 1973, three states accounted for 81% of the executions: Texas (59%), Virginia (14%), and Oklahoma (9%; Streib, 2004, p. 6). In the past 10 years, only Texas, Virginia, and Oklahoma executed juvenile offenders (Death Penalty Information Center, 2005c; Greenhouse, 2004).

In reviewing these data on the juvenile death penalty in the United States, it is noteworthy that the practice has been abandoned by nearly all other countries (Streib, 2004, p. 8). With the exception of "a few rogue executions of juvenile offenders" (Streib, 2004, p. 8), other countries prohibit executions of juvenile offenders. All nations except the United States have adopted the United Nations Convention on the Rights of the Child, which prohibits capital punishment of persons below the age of 18 (Streib, 2004, p. 8). Streib (2004, p. 8) contends that the failure of the United States to ratify this international agreement is based primarily on its desire to maintain the freedom to reserve the use of the death penalty as a sanction for juvenile offenders. Based on information from Amnesty International, Drew (2004) reports that the United States "joins the Democratic Republic of Congo, Iran, Nigeria, Pakistan, Saudi Arabia, and Yemen as countries known to have executed prisoners who committed a crime under the age of 18 since 1990" (p. 1). Since 2003, only China and Iran are known to have executed juvenile offenders (Death Penalty Information Center, 2005c).

Public Opinion and the Death Penalty

Surveys since the 1950s indicate that with few exceptions, the majority of citizens in the United States "favor the death penalty for a person convicted of murder" (*Sourcebook of Criminal Justice Statistics*, 2002, p. 146). According to Vogel and Vogel (2003), "Support for the death penalty was lowest in May 1966 (42 percent favored and 47 percent opposed), and highest in September 1994 (80 percent favored and 16 percent opposed)" (p. 170). They observe that there is a long history of support for the use of the death penalty for adults by the majority of Americans (p. 166). The Death Penalty Information Center (2004c) reports that in a Gallup poll conducted in May of 2002, 72% of the respondents supported capital punishment in general. However, in a subsequent Gallup poll conducted in October 2003, support had dropped to 64%, the lowest level in 25 years. And in May 2004, this trend of decreasing support for capital punishment was again reported by the Gallup Poll: "50% of respondents favored the death penalty while 46% favored life without parole" (cited in Death Penalty Information Center, 2005a, p. 3).

Several researchers have critiqued the use of surveys to assess public opinion on the death penalty and recognize that wording of the questions among other factors does affect results (Bohm, 1991; Lambert & Clarke, 2001; Sandys & McGarrell, 1995; Skovron, Scott, & Cullen, 1989; Vogel & Vogel, 2003). Notwithstanding these limitations, survey data on the death penalty are a useful gauge of public sentiment.

For example, surveys of college freshmen since 1969 demonstrate a decline in support for abolishing the death penalty (*Sourcebook of Criminal Justice Statistics*, 2002). In 1971, 60% of freshmen either strongly agreed or somewhat agreed that the death penalty should be abolished. By 1981, this view dropped to 31%; in 1991, it dropped to 22%. But by 2001, it increased to 32% (*Sourcebook of Criminal Justice Statistics*, 2002, p. 179). A survey of 1,192 college students at three institutions in 2001 found that 63% of respondents (freshmen to seniors) favored capital punishment (Benekos, Merlo, Cook, & Bagley, 2002).

When citizens are asked if they support the death penalty for juvenile offenders, the support declines (Skovron et al., 1989; Vogel & Vogel, 2003). For example, Moon, Wright, Cullen, and Pealer (2000) found that whereas 80% of their respondents supported the death penalty, only 53% did so for juvenile offenders. In a 1986 study of two Ohio cities, Cincinnati and Columbus, Skovron, Scott, and Cullen (1989) found that 25% and 30%, respectively, favored the juvenile death penalty. These findings were obtained when polls indicated that more than 70% of the public favored capital punishment (p. 552). In their 2000 survey of residents in Orange County, California, Vogel and Vogel (2003) found that 58% of the respondents strongly or somewhat strongly favored the use of the death penalty for adults (32% strongly favored). When asked about juveniles, only 33% of the respondents strongly or somewhat strongly favored the use of the death penalty for juveniles (14% strongly favored; p. 176). In a 2004 survey of college juniors and seniors ($N = 45$), 62% favored the death penalty in general, but only 31% favored it for juvenile offenders, and 29% were undecided (Benekos, 2004).

These data demonstrate that although a majority of respondents favor the death penalty, support recedes when the offenders are juveniles. According to Mears (2004), public opinion on the juvenile death penalty is one of the factors considered by the Supreme Court in *Roper* (2005).

Evolving Standards of Decency

As the Court considered *Roper* (2005), reexamined the minimum age for executions, and evaluated the prevailing standards of decency, several developments suggest that standards have changed since *Stanford v. Kentucky* (1989), in which the Court upheld the death penalty for offenders of ages 16 and 17.

As noted above, in January 2003, the Supreme Court declined to hear an appeal from Scott Allen Hain on whether the death penalty for those under the age of 18 was cruel and unusual punishment (*Hain v. Mullen*, 2003; Mears, 2003). A year later, in January 2004, the Court reversed its earlier position and agreed to consider the constitutionality of executing juvenile offenders (Mears, 2004; *Roper v. Simmons*, No. 03-633).

In addition to this reversal, juvenile crime, as with crime rates in general, has continued to decline since it peaked in 1994 (Snyder, 2003). Snyder (2003) reports that "the Juvenile Violent Index arrest rate in 2001 was the lowest since 1983" (p. 1). With decreases in crime, concerns with crime and violence that were salient in the 1990s have been replaced with issues such as terrorism, the economy, and health care. Perhaps in part because of decreasing crime, public support for the death penalty has also decreased. As reviewed above, opinions on capital punishment for juveniles demonstrate that a majority opposes this practice.

In the context of two recent decisions reviewed above, *Atkins v. Virginia* (2002) and *Simmons v. Roper* (2003), the issue of evolving views on the constitutionality of executing

juvenile offenders received new attention from the courts, the public, and legislators. During the 2004 legislative session, legislators in both Wyoming and South Dakota voted to ban the death penalty for offenders under the age of 18 (Death Penalty Information Center, 2004e, 2004f). The bills were signed on March 3, 2004, by the respective governors (Dave Freudenthal of Wyoming and Mike Rounds of South Dakota), making South Dakota the 18th state and Wyoming the 19th state to abandon the practice of juvenile death penalty (Amnesty International USA, 2004). Including 12 states that did not impose the death penalty, by the end of 2004 there were 31 states that did not use the death penalty with offenders under the age of 18.

The trend since *Stanford* (1989) is that "no death penalty state which previously allowed executing only eighteen-year-old offenders lowered its statutory minimum age," but rather "states consistently have moved only to raise the minimum age for death eligibility" (Feld, 2003, pp. 496-497). Although these issues reflect national developments, as noted above, in the court of world opinion, the United States with its stance on the rights of youth relative to the death penalty remains outside the world community (Streib, 2004, p. 8).

Finally, growing concerns about the possibility of executing innocent persons is a salient public dilemma that diminishes support for the death penalty (Vogel & Vogel, 2003). A Harris poll conducted in December 2003 found that only 37% of respondents "would continue to support capital punishment if they believed that a substantial number of innocent people are convicted of murder" (Death Penalty Information Center, 2004c). In 2003, 10 death row inmates were exonerated, and in 2004 (January to August), 3 were exonerated, bringing the total number of convicted offenders who have been exonerated since 1973 to 115 (Death Penalty Information Center, 2004a, 2004d). As Whitt, Clarke, and Lambert (2002) observed, "The issue of innocence has extraordinary persuasive power in eroding support for capital punishment" (p. 675).

This eroding effect has special relevance in the case of Ryan Matthews, who was the third death row inmate released in 2004 (Death Penalty Information Center, 2004d). Matthews was 17 when he was charged with the murder of a convenience store owner in Bridge City, Louisiana. In 1999, he was convicted and sentenced to death. After spending nearly 5 years on death row, he was exonerated based on DNA evidence. Matthews was the second juvenile exonerated in Louisiana in 5 years and the seventh death row inmate exonerated in Louisiana since 1981 (Death Penalty Information Center, 2004d).

These developments—a steady decline in juvenile crime, public opposition to the death penalty for juvenile offenders, decisions in *Atkins* (2002) and *Simmons* (2003), world opinion, state legislative bans on the juvenile death penalty, and the decreased use of death sentences and executions of juvenile offenders—indicate that the evolving standards of decency support the unconstitutionality of the death penalty for juvenile offenders.

Before the Court's oral arguments in 2004, it was known that justices John Paul Stevens, David Souter, Ruth Bader Ginsburg, and Stephen Breyer opposed the death penalty for juvenile offenders and called it a "shameful practice" and a "relic of the past . . . inconsistent with the evolving standards of decency in a civilized society" (*In re Stanford*, 2002, p. 6).

Death Penalty Trends: Moving Toward Consensus

Although the death penalty was authorized in 21 states for 16- and/or 17-year-olds, Scott Hain's attorneys argued in his habeas corpus brief (*Hain v. Mullin*, 2003) that support

for this sanction was receding. Hain's attorneys noted that 5 states no longer authorized the death penalty for juveniles since the Court's decision in *Stanford* (1989) and that the question was then under consideration in 10 other states. Clearly, there was an inchoate response regarding the death penalty for juveniles. Even those states that had statutes authorizing the death penalty rarely imposed it: Only 7 states have executed juveniles since 1976, and just three states have executed juveniles in the past 10 years (Greenhouse, 2003, p. A19). As previously discussed, in 2003 only two juveniles in the United States were sentenced to death (Death Penalty Information Center, 2004b).

In agreeing to review the case of *Roper v. Simmons* (2005), the Supreme Court justices suggested that they were prepared to assess the national consensus on the death penalty for juveniles in the same way they did for mentally retarded in 2002, in the *Atkins* (2002) case. The Missouri Supreme Court vacated the death sentence of Christopher Simmons who was 17 when convicted of murdering a woman during the commission of a burglary. In reaching their decision, the Missouri justices cited *Atkins* and concluded that executing offenders younger than 18 was now so rare that it was considered a violation of the Eighth Amendment's ban on cruel and unusual punishment (*Simmons v. Roper*, 2003). In the past 30 years, Missouri has executed one offender who was under 18 at the time of the crime (Greenhouse, 2004, p. A19).

It was not Simmons but the state of Missouri, which was represented by the Missouri Attorney General, Jeremiah Nixon, who requested this review. Nixon asked the justices to determine if the Missouri Supreme Court disregarded the precedent case, *Stanford v. Kentucky* (1989), upheld by the Supreme Court in 1989, in ruling that the death sentence must be vacated (*Roper v. Simmons*, No. 03-633). When the Missouri Supreme Court declared the death penalty for juveniles unconstitutional, it made its decision on a prediction of some future action that the U.S. Supreme Court would take. In short, the Missouri Supreme Court allegedly overruled the legal precedent established in *Stanford* (1989). Furthermore, Nixon asserted that the state court's decision to disregard the precedent established by *Stanford* threatened to "wreak havoc throughout the justice system" (*Roper v. Simmons*, No. 03-633, p. 8). Essentially, the Attorney General of Missouri was asking the Court to decide if "a lower court (can) reach a contrary decision based on its own analysis of evolving standards" (*Roper v. Simmons*, No. 03-633, p. i).

In its decision, however, the Missouri Supreme Court argued that "decisions as to standards of decency are to be decided by current standards, not ones of years ago" (*Simmons v. Roper*, 2003, p. 7). The Missouri judges essentially adopted the rationale used by the U.S. Supreme Court in *Atkins* (2002) to decide in *Simmons* (2003) that executing a 17-year-old in 2003 was unconstitutional.

In examining whether the death penalty constitutes cruel and unusual punishment for offenders under the age of 18, the justices considered whether the current state of knowledge on adolescent development, including cognitive, psychological, and neurobiological abilities, substantiated the argument that juveniles should not be held to the same standard of criminal responsibility as adults (Steinberg & Scott, 2003, p. 1110). In *Atkins* (2002), the Court reasoned that mental impairments in reasoning and judgment warranted reduced culpability for mentally retarded offenders, and as a result, they banned this category of defendants from capital punishment. Similarly, the diminished competency of adolescents would warrant that this group of defendants also be excluded from capital punishment.

In their evaluation of juvenile competency, Burnett, Noblin, and Prosser (2004, p. 457) found that juveniles (ages 10-16) scored lower on understanding and reasoning scales than did adults. Burnett et al. contend that their research findings concur with earlier

research suggesting that juvenile competency to participate in the trial is poorer than that of adults (p. 458). Feld (2003) also concludes that adolescents have reduced culpability because of "their poor judgment, psycho-social immaturity, and truncated self control" (p. 506).

The research literature on adolescent development, the infrequent and diminished number of juvenile executions, and the exclusion of 16- and 17-year-olds in more recent state statutes that authorize the death penalty combined to make a potentially powerful argument against capital punishment for juveniles.

The use of the death penalty for adults also seems to have waned in recent years. Although there are no official data to link it to the publicity surrounding death row inmates who were subsequently exonerated, a trend does appear to be emerging. For example, even when the death penalty was an option, prosecutors in New York state expressed unwillingness to seek the death penalty, citing various reasons including the falling crime rates and the concern over wrongful convictions in the United States (Glaberson, 2003, p. 32). In June 2004, New York's highest court ruled that the death penalty statute was unconstitutional, and in April 2005 the Codes Committee of the state Assembly voted 11 to 7 against reinstating the death penalty in New York (Death Penalty Information Center, 2005d).

This reluctance to ask the jury for a death sentence is apparent in other parts of the country. According to Richard Dieter, executive director of the Death Penalty Information Center, prosecutors do not have the same enthusiasm for the death penalty today that they had in the 1990s. He cites evidence in Ohio, California, and North Carolina that supports his contention (cited in Glaberson, 2003, p. 32).

Juries in federal court cases also appear to be apprehensive about imposing the death penalty. According to the Federal Death Penalty Resource Counsel Project, in the past 16 trials in which they asked for the death penalty, prosecutors were unsuccessful in 15 of those 16 attempts (Liptak, 2003, p. 12). During the period of the Bush administration that was examined (approximately 2 ½ years), the project reports that 34 capital trials were conducted. There were death sentences in 5 of those trials, or about 15% of the cases (Liptak, 2003, p. 12).

As previously noted, in their review of *Stanford* (1989), the justices also examined the use of the juvenile death penalty internationally. There have been executions of juveniles in other countries in recent years. The Democratic Republic of the Congo and Iran have both executed juveniles in the past 5 years (Streib, 2004, p. 8), and China and Iran have executed juvenile offenders since 2003 (Death Penalty Information Center, 2005c). However, the Democratic Republic of the Congo recently declared a moratorium on juvenile executions (Hughes, 2003). The past five executions of juveniles have occurred in the United States (Greenhouse, 2004, p. A19).

Discussion

Prior to oral arguments in October 2004, four justices (Breyer, Ginsburg, Souter, and Stevens) had publicly decried the use of the death penalty for juveniles. Two of the justices who had joined the majority in *Atkins* (2002), O'Connor and Kennedy, gave no indication of their intentions or interests in applying the *Atkins* decision to juvenile offenders. In addition, *Roper v. Simmons* (2005) was viewed as the wrong case for the Court to overturn *Stanford* (1989). When the Missouri Supreme Court overturned Kevin Simmons's death sentence, it was predicting what the U.S. Supreme Court would do in a future death penalty

case. If tradition were followed, it was speculated that the Supreme Court would not condone a lower court overruling the highest court's precedent case (Richey, 2003, p. 2). The imposition of the death penalty on juveniles was thought to be secondary to a larger issue (i.e., how the Court responds to the Missouri Supreme Court overturning a precedent).

The Court, however, agreed to review two questions: "Can a lower court reach a contrary decision based on its own analysis of evolving standards?" and "Is the imposition of the death penalty on a person who commits murder at age seventeen 'cruel and unusual' punishment and thus barred by the Eighth and Fourteenth Amendments?" (*Roper v. Simmons*, No. 03-633).

In *Roper v. Simmons* (2005), the Court determined that the death penalty for offenders under the age of 18 at the time of the crime was in violation of the Eighth Amendment, which is applicable to states through the Fourteenth Amendment. Justice Kennedy wrote the opinion for the majority and noted that the justices had examined the evolving standards of decency regarding the use of the death penalty in *Atkins v. Virginia* (2002). As previously discussed, in 2002, the justices determined that executing mentally retarded offenders was prohibited under these Amendments.

In *Atkins* (2002), the justices found that the standards of decency had evolved since their earlier decision in *Penry v. Lynaugh* (1989). The justices examined objective criteria illustrative of society's viewpoint regarding the execution of the mentally retarded. These indicators included state statutes authorizing the death penalty for mentally retarded offenders and the actual practice of executing mentally retarded offenders. In *Roper* (2005), they also reviewed existing state statutes and the practice of executing juveniles. The majority concurred that although the number of states that had abandoned the death penalty for juveniles was smaller than the number in *Atkins* (2002), the direction of the change was consistent (i.e., states were not enacting new laws authorizing the death penalty for juveniles, and some states were rescinding earlier laws that permitted the execution of juveniles). The justices also found that a majority of the states do not utilize capital punishment for juveniles under the age of 18. In addition, the number of juveniles executed had been declining, and the imposition of the death penalty, even when authorized, was infrequent (*Roper v. Simmons*, 2005).

Citing language from *Atkins v. Virginia* (2002), the justices determined that when compared to other offenders, juveniles are perceived as less culpable. In particular, the justices posited that there are three general differences between juvenile offenders (under the age of 18) and adult offenders that render them less blameworthy than adults. First, the justices asserted that juveniles are more immature and less responsible than adults. They not only cited the scientific literature but also the fact that persons under the age of 18 cannot vote, cannot get married without parental authorization, and cannot serve on juries. Second, the justices asserted that juveniles are more susceptible to external influence and pressures, which include peer pressure. In particular, they are vulnerable and have less control over their environment. The third difference is in juveniles' character. According to the justices, "The personality traits of the juveniles are more transitory, less fixed" (*Roper v. Simmons*, 2005, p. 16).

In short, the justices detailed the differences between juveniles and adults. Drawing on the uniqueness of childhood and adolescence, the justices argued that juveniles' behaviors or delinquency cannot be equated with that of adults and that there is a much greater likelihood that juveniles are more susceptible to change and are more likely to be rehabilitated. They concluded, "From a moral standpoint it would be misguided to equate the failings of a minor with those of an adult, for a greater possibility exists that a minor's character

deficiencies will be reformed" (*Roper v. Simmons*, 2005, p. 16). In his assessment of this question, Feld (2003) anticipated the Court's position: "*Stanford* is inconsistent with the Court's more enlightened appraisal of culpability in *Atkins* and logical consistency should preclude states from executing youths for crimes they committed when sixteen or seventeen years of age" (p. 468).

Having established that juveniles have less culpability than adults, the justices determined that the penological justifications to utilize the death penalty are not applicable to them in the same way as they are to adults. In their previous decisions (most recently in *Atkins v. Virginia*, 2002), the justices reasoned that the death penalty serves two distinct social purposes: retribution and deterrence. Given juveniles' reduced culpability, the justices determined that the argument for retribution is not as powerful with minors as it is with adults. With respect to deterrence, the justices could find no substantive empirical evidence to indicate that the death penalty is a deterrent for juvenile offenders. They concluded that the same objective criteria that find juveniles to be less blameworthy than adults appear to advocate that juveniles will be less likely to be affected by deterrence. Recognizing that the death penalty for juveniles might have a "residual deterrent effect," the justices noted that life in prison without the possibility of parole is a harsh sanction for a young offender (*Roper v. Simmons*, 2005, p. 18).

Although not a controlling factor, the use of the death penalty for minors internationally was also focused on by the majority in its interpretation of the Eighth Amendment ban on cruel and unusual punishment. The Court noted that other countries in the world do not utilize the death penalty. In particular, they cited that Article 37 of the United Nations Convention on the Rights of the Child, "which every country in the world has ratified save for the United States and Somalia, contains an express prohibition on capital punishment for crimes committed by juveniles under 18" (*Roper v. Simmons*, 2005, p. 22). From the available evidence, the justices found that since 1990, only seven countries emulated the United States and executed children. However, with the exception of the United States, each of these seven countries has either discontinued the practice or disavowed it. The Court concluded, "The opinion of the world community, while not controlling our outcome, does provide respected and significant information for our own conclusions" (*Roper v. Simmons*, 2005, p. 24).

This decision was important for four reasons. First, it firmly established the notion that juvenile offenders are different from adults and should be viewed as less culpable. With the trends toward adultification and punitive sanctions for youth in the past 10 years, this decision is a stark reminder that juveniles are distinct and should not be subject to all the same sanctions as are adults. Second, it is important because the Supreme Court retreated from its previous stance in *Stanford v. Kentucky* (1989). Third, it offers some support, albeit indirect, to the importance of retaining a separate system for juvenile offenders. In their opinion, the justices appear to be alluding to the necessity of retaining a separate system for juveniles because of their unique characteristics. Fourth, it illustrates how more closely divided the justices were in this decision than they were in *Atkins v. Virginia* (2002), which involved some of the same issues, in particular the reduced culpability of mentally retarded offenders.

The Court's decision in *Roper v. Simmons* (2005) was controversial, and the 5 to 4 vote reveals the lack of consensus among the justices on the issue of executing juveniles. In two separate dissenting opinions, Justice O'Connor and Justice Scalia (joined by Rhenquist and Thomas) addressed some of the contentious aspects of the case. One of the more extraordinary issues involves the lower court overriding a Supreme Court decision. Justice

O'Connor expressed concern about the Missouri Supreme Court's determination that the Court's holding in *Stanford* (1989) was not binding because the justices of the Missouri Supreme Court thought it was an "obsolete assessment of contemporary values" (*Roper v. Simmons*, 2005, O'Connor dissent, p. 7). Justice O'Connor further objected to the majority's decision not to allude to or admonish the Missouri Court for its "unabashed refusal to follow our controlling decision in *Stanford*" (*Roper v. Simmons*, 2005, O'Connor dissent, p. 7). She contended, "By affirming the lower court's judgment without so much as a slap on the hand, today's decision threatens to invite frequent and disruptive assessments of our Eighth Amendment precedents" (*Roper v. Simmons*, 2005, O'Connor dissent, p. 8).

In his dissenting opinion, Justice Scalia criticized the majority opinion on a number of issues. However, he too expressed regret that the justices failed to admonish the Missouri Supreme Court for its willingness to override a precedent case. The majority, in Justice Scalia's opinion, has authorized lower courts to "update" the Eighth Amendment "as needed" (*Roper v. Simmons*, 2005, Scalia dissent, p. 24). Furthermore, he contends that such action significantly reduces the power and effect of the Supreme Court's decisions. Justice Scalia argued that such an unfettered action by the lower courts without any reaction from the Supreme Court disrupts stability and renders case law unreliable for establishing laws and for appropriate action by officials (*Roper v. Simmons*, 2005, Scalia dissent, p. 24).

Even though the Court's decision in *Roper* (2005) answers the constitutional question regarding juveniles and the death penalty, it does not end the debate or the exchange of views on the issue. In addition to the criticisms noted above, Justice Scalia condemned the majority opinion as reflecting "personal preferences" rather than interpretation of the Constitution (Yen, 2005). Scalia denounced the role of world opinion in interpreting U.S. law and questioned the Court's usurping of state powers. Furthermore, he used this as an opportunity to invoke the controversies surrounding judicial nominations to the Court and expressed concern about the role of ideology in shaping Court decisions (Yen, 2005).

Although Scalia was responding to the politics and jurisprudence of the Court, others have taken issue with the implications of the decision. The *Bowling Green Daily News* characterized the Court's decision as misguided and unfortunate and presented circumstances of some egregious juvenile cases (e.g., Christopher Simmons, Lee Malvo) to underscore the violent nature of the offenses and brutality to victims ("Juvenile death penalty ruling," 2005). The editors opined that the decision lets juveniles "get away with murder by removing the option of the death penalty."

Reactions also focused on the categorical exemption of the ruling and have raised concerns that in the future the Court could expand restrictions to other classes of offenders and eventually jeopardize the use of capital punishment (Elmasry, 2005). Not surprising, George Will (2005) not only criticized the decision but also characterized Justice Kennedy (author of the majority opinion) as legislating from the bench and playing sociologist.

In a different reaction, some groups applauded the decision (e.g., Amnesty International, United States Conference of Catholic Bishops) and recognized the broad base of support for ending the execution of juvenile offenders (Salt of the Earth, 2005). The Juvenile Law Center (2005), which filed amicus briefs to ban the juvenile death penalty, released a statement in support of the Court's decision:

> Today the U.S. Supreme Court affirmed what many states, the scientific community and virtually all other countries believe: the execution of juvenile offenders is cruel and unusual punishment and cannot be tolerated in civilized society.

Coincidental to the Court's decision, the U.S. Conference of Catholic Bishops announced a renewed campaign against the death penalty (Cooperman, 2005). Citing public opinion against capital punishment and recent decisions outlawing execution of juveniles and the mentally retarded, the conference launched "a campaign to end the use of the death penalty in the United States" (Cooperman, 2005). "The impetus for the Campaign was the anniversary of the first comprehensive U.S. Catholic bishops' statement on the topic issued in 1980" (United States Conference of Catholic Bishops, 2005).

The *Roper* (2005) decision, however, does raise the question about consequences for juveniles convicted of murder or other serious, violent crimes. The sentence which is increasingly being imposed is life without parole (LWOP), and the issue is gaining attention as more juveniles are sentenced to spend their lives incarcerated. The ACLU of Michigan (2004) recently studied "juvenile lifers" in Michigan and identified 307 individuals serving life without the possibility of parole. Of this group, 146 were under age 16 when they committed their offenses, 43 were 15, and 2 were 14 (p. 4). The report notes that "forty-one states now allow a sentence of life without possibility of parole to be imposed on juveniles" (p. 3). Estimates suggest that thousands of juveniles are serving LWOP, and "this sentencing structure will likely continue to produce high rates of LWOP even as juvenile crime declines" (p. 11). The ACLU recommends that LWOP sentences should be reduced to a maximum sentence of 25 years, with parole eligibility after 15 years (p. 24).

The LWOP issue may become more salient in part because of the Court's reference to world opinion in deciding *Roper* (2005):

> It is proper that we acknowledge the overwhelming weight of international opinion against the juvenile death penalty, resting in large in part on the understanding that the instability and emotional imbalance of young people may often be a factor in the crime. (p. 24)

If this is a consideration, Article 37 of the Convention on the Rights of the Child may be used as a rationale to argue against LWOP for juvenile offenders. The Article declares: "No child shall be subjected to torture or other cruel, inhuman or degrading treatment or punishment. Neither capital punishment nor life imprisonment without possibility of release shall be imposed for offences committed by persons below eighteen years of age" (Office of the High Commissioner for Human Rights, 1989, Article 37, section a).

In this context, and in light of *Roper* (2005), how far have standards of decency evolved? According to Banner (2005), "The meaning of 'cruel and unusual' has changed considerably over time," and it was "only 16 years ago" (i.e., *Stanford v. Kentucky*, 1989) that the Court held that executing juveniles did not violate this standard (p. 4). Based on his assessment, in the 1940s, "execution of juveniles was routine: nearly once every two months" (p. 4). In 2005, the Court declared that the "death penalty is disproportionate punishment for offenders under 18" (*Roper v. Simmons*, 2005, p. 21). Having answered the question of capital punishment for juveniles, is the decency of life imprisonment the next policy issue to be confronted by the Court?

REFERENCES

ACLU of Michigan. (2004). *Second chances: Juveniles serving life without parole in Michigan prisons*. Retrieved January 6, 2005, from http://www.aclumich.org/pubs/juvenilelifers.pdf

Aguayo, T. (2004). Teenager can serve probation at home. *New York Times*. Retrieved January 7, 2005, from http://www.nytimes.com

Amnesty International USA. (2004). *More positive news*. Retrieved July 27, 2004, from http://www.amnestyusa.org/abolish/juveniles/updates.html

Atkins v. Virginia, 536 U.S. 304 (2002).

Banner, S. (2005, March 6). *When killing a juvenile was routine*. *The New York Times*, p. 4.

Benekos, P. J. (2004). [Student attitudes on criminal justice issues]. Unpublished raw data.

Benekos, P. J., Merlo, A. V., Cook, W. J., & Bagley, K. (2002). A preliminary study of student attitudes on juvenile justice policy. *Journal of Criminal Justice Education*, *13*, 273-296.

Bernard, T. (1992). *The cycles of juvenile justice*. New York: Oxford University Press.

Bohm, R. M. (1991). American death penalty opinion, 1936-1986: A critical examination of the Gallup polls. In R. M. Bohm (Ed.), *The death penalty in America: Current research* (pp. 113-145). Highland Heights, KY: Academy of Criminal Justice Sciences/Anderson Publishing.

Burnett, D. M. R., Noblin, C. D., & Prosser, V. (2004). Adjudicative competency in a juvenile population. *Criminal Justice and Behavior*, *31*, 438-462.

Cooperman, A. (2005, March 21). Catholic bishops plan drive against death penalty. *Washington Post*. Retrieved April 3, 2005, from http://www.washingtonpost.com

Cothern, L. (2000). *Juveniles and the death penalty*. *Coordinating Council on Juvenile Justice and Delinquency Prevention*. Washington, DC: U.S. Department of Justice.

Davey, M., & Wilgoren, J. (2005, March 24). Signs of danger were missed in a troubled teenager's life. *The New York Times*. Retrieved April 14, 2005, from http://www.nytimes.com

Death Penalty Information Center. (2004a). *Innocence*. Retrieved February 25, 2004, from http://www.deathpenaltyinfo.org

Death Penalty Information Center. (2004b). *Juvenile offenders currently on death row, or executed, by state*. Retrieved February 25, 2004, from http://www.deathpenaltyinfo.org

Death Penalty Information Center. (2004c). *National polls*. Retrieved February 25, 2004, from http://www.deathpenaltyinfo.org

Death Penalty Information Center. (2004d). *Ryan Matthews is 115th death row inmate freed*. Retrieved August 11, 2004, from http://www.deathpenaltyinfo.org

Death Penalty Information Center. (2004e). *South Dakota legislators vote to ban death penalty for juveniles*. Retrieved March 1, 2004, from http://www.deathpenaltyinfo.org

Death Penalty Information Center. (2004f). *Wyoming legislators vote to ban juvenile death penalty*. Retrieved March 1, 2004, from http://www.deathpenaltyinfo.org

Death Penalty Information Center. (2005a). *The death penalty in 2004: Year end report*. Retrieved January 6, 2005, from http://www.deathpenaltyinfo.org

Death Penalty Information Center. (2005b). *Death row inmates by state and size of death row by year*. Retrieved March 24, 2005, from http://www.deathpenaltyinfo.org

Death Penalty Information Center. (2005c). *Juveniles and the death penalty*. Retrieved January 6, 2005, from http://www.deathpenaltyinfo.org

Death Penalty Information Center. (2005d). *New York takes historic step towards ending the death penalty*. Retrieved April 14, 2005, from http://www.deathpenaltyinfo.org

Drew, K. (2004, January 26). U.S. one of a few nations with juvenile death laws. *CNN.com*. Retrieved February 18, 2004, from http://www.cnn.com

Elmasry, F. (2005, March 8). *Americans react to Supreme Court ban on juvenile death penalty*. Retrieved March 26, 2005, from http://www.voanews.com

Feld, B. C. (2003). Competency, culpability, and punishment: Implications of *Atkins* for executing and sentencing adolescents. *Hofstra Law Review*, *32*, 463-552.

Glaberson, W. (2003, September 21). Fewer executions sought, signaling new wariness. *The New York Times*, p. 32.

Goodnough, A. (2004, January 27). Florida youth who got life terms for killing is freed at 16. *The New York Times*, p. A12.

Greenhouse, L. (2003, January 28). Justices deny inmate appeal in execution of juveniles. *The New York Times*, p. A19.

Greenhouse, L. (2004, January 27). Court to review using execution in juvenile cases. *The New York Times*, pp. A1, A19.

Hain v. Mullin, 123 S. Ct. 993 (2003).

Hughes, J. (2003). For mice or men or children? Will the expansion of the Eighth Amendment in *Atkins v. Virginia* force the Supreme Court to re-examine the minimum age for the death penalty? *Journal of Criminal Law & Criminology*, *93*, 973-1008.

In re Stanford, 537 U.S. 968 (2002).

Jordan, L. J. (2004, January 23). Lawmaker aims to test high school students for drugs. *Pittsburgh Post-Gazette*. Retrieved June 18, 2004, from http://www.post-gazette.com

Juvenile death penalty ruling is unfortunate. (2005, March 3). *Bowling Green Daily News*. Retrieved March 30, 2005, from http://www.bgdailynews.com

Juvenile Law Center. (2005). *Child advocates pleased with U.S. Supreme Court's decision to end juvenile death penalty*. Retrieved April 5, 2005, from http://www.jlc.org

Kurlychek, M. C., & Johnson, B. D. (2004). The juvenile penalty: A comparison of juvenile and young adult sentencing outcomes in criminal court. *Criminology*, *42*, 485-517.

Lambert, E., & Clarke, A. (2001). The impact of information on an individual's support of the death penalty: A partial test of the Marshall hypothesis among college students. *Criminal Justice Policy Review*, *12*, 215-234.

Lawrence, R. (1998). *School crime and juvenile justice*. New York: Oxford University Press.

Liptak, A. (2002, August 30). 3 justices call for reviewing death sentences for juveniles. *The New York Times*, pp. A1, A10.

Liptak, A. (2003, June 15). Juries reject death penalty in nearly all federal trials. *The New York Times*, p. A12.

Liptak, A. (2004, March 14). New challenge for courts: How to define retardation. *The New York Times*, p. A12.

Mears, B. (2003, January 29). Supreme court not ready to debate execution of juveniles. *CNN.com*. Retrieved February 18, 2004, from http://www.cnn.com

Mears, B. (2004, January 26). Supreme court will revisit execution of teenage killers. *CNN.com*. Retrieved February 18, 2004, from http://www.cnn.com

Moon, M. M., Wright, J. P., Cullen, F. T., & Pealer, J. A. (2000). Putting kids to death: Specifying public support for juvenile capital punishment. *Justice Quarterly*, *17*, 663-684.

Office of the Commissioner for Human Rights. (1989). *Convention on the rights of the child*. Retrieved April 11, 2005, from http://www.unhchr.ch/html/menu3/b/k2crc.htm

Patterson v. Texas, 123 S.Ct. 24 (2002).

Penry v. Lynaugh, 492 U.S. 302 (1989).

Puzzanchera, C. M. (2003). *Delinquency cases waived to criminal court, 1990-1999*. *OJJDP Fact Sheet*. Washington, DC: U.S. Department of Justice.

Richey, W. (2003, November 21). Sniper case revisits juvenile death penalty. *Christian Science Monitor*, p. 2.

Rimer, S. (2004, January 4). Unruly students facing arrest, not detention. *The New York Times*, pp. 1, 15.

Roper v. Simmons, No. 03-633.

Roper v. Simmons, 125 S.Ct. 1183 (2005).
Salt of the Earth. (2005). *USCCB/Amnesty International applaud new court restriction on death penalty for juvenile offenders*. Retrieved April 4, 2005, from http://www.salt.claretianpubs.org
Sandys, M., & McGarrell, E. F. (1995). Attitudes toward capital punishment: Preference for the penalty or mere acceptance? *Journal of Research in Crime and Delinquency*, *32*, 191-213.
Sickmund, M. (2003). *Juveniles in court. National report series*. Washington, DC: U.S. Department of Justice.
Simmons v. Roper, 112 S.W. 3d 397 (Mo., Aug. 26, 2003).
Skovron, S. E., Scott, J. E., & Cullen, F. T. (1989). The death penalty for juveniles: An assessment of public support. *Crime & Delinquency*, *35*, 546-561.
Snyder, H. N. (2003). *Juvenile arrests 2001*. Washington, DC: Office of Juvenile Justice and Delinquency Prevention.
Sourcebook of criminal justice statistics. (2002). Retrieved February 24, 2004, from http://www.albany.edu/sourcebook
Stanford v. Kentucky, 492 U.S. 361 (1989).
Steinberg, L., & Scott, E. S. (2003). Less guilty by reason of adolescence. *America Psychologist*, *38*, 1009-1018.
Streib, V. L. (2004). *The juvenile death penalty today: Death sentences and executions for juvenile crimes, January 1, 1973-December 31, 2003*. Retrieved February 4, 2004, from http://www.law.onu.edu/faculty/streib
Strom, K. J. (2000). *Profile of state prisoners under age 18, 1985-97*. Washington, DC: Bureau of Justice Statistics.
Thompson v. Oklahoma, 487 U.S. 815 (1988).
United States Conference of Catholic Bishops. (2005). *The Catholic campaign to end the use of the death penalty*. Retrieved April 4, 2005, from http://www.usccb.org
Vogel, B. L., & Vogel, R. E. (2003). The age of death: Appraising public opinion of juvenile capital punishment. *Journal of Criminal Justice*, *31*, 169-183.
Weeks, R. A. (2003). Comparing children to the mentally retarded: How the decision in *Atkins v. Virginia* will affect the execution of juvenile offenders. *Brigham Young University Journal of Public Law*, *17*, 451-485.
Whitt, L. A., Clarke, A. W., & Lambert, E. (2002). Innocence matters: How innocence recasts the death penalty debate. *Criminal Law Bulletin*, *38*, 670-735.
Will, G. (2005, March 6). Justice Kennedy begins legislating again. *Erie Times News*, p. 3B.
Yen, H. (2005, March 14). Scalia slams juvenile death penalty ruling. *Seattle Post-Intelligencer*. Retrieved March 26, 2005, from http://www.seattlepi.nwsource.com

Peter J. Benekos *is a professor of criminal justice and sociology at Mercyhurst College. His research interests are juvenile justice, public policy, and corrections.*

Alida V. Merlo *is a professor of criminology at Indiana University of Pennsylvania. Her research interests are juvenile justice, women and the law, and criminal justice policy.*