

COURSE MATERIALS & RESOURCES

What the Miller/Graham line of Cases Tell Us About the Mitigating Effect of Comparative Youth (maturity, brain development, and the like)

Amanda Powell
Supervising Attorney – Juvenile Division
amanda.powell@opd.ohio.gov

Lisa Lagos
Assistant State Public Defender – Death Penalty Division
lisa.lagos@opd.ohio.gov

Kelly Heiby
Investigation & Mitigation Specialist
kelly.heiby@opd.ohio.gov

OFFICE OF THE OHIO PUBLIC DEFENDER
250 East Broad Street, Suite 1400
Columbus, Ohio 43215
614.466.5394

CASE LAW

Capital Sentencing

➤ Intellectual Disability

- *Penry v. Lynaugh*, 492 U.S. 302 (1989)
- *Atkins v. Virginia*, 536 U.S. 304 (2002)
- *Hall v. Florida*, 572 U.S. ___, 134 S. Ct. 1986 (2014)

➤ Age of Offender

- *Eddings v. Oklahoma*, 455 U.S. 104 (1982)
- *Thompson v. Oklahoma*, 487 U.S. 815 (1988) (plurality)
- *Stanford v. Kentucky*, 492 U.S. 361 (1989)
- *Johnson v. Texas*, 509 U.S. 350 (1993)
- *In re Stanford*, 537 U.S. 968 (2002) (4 justices dissenting from the denial of application to hear a petition an original writ of habeas corpus)
- *Roper v. Simmons*, 543 U.S. 551 (2005) (5-4)

Juvenile Sentencing

➤ “The Quadriology”

- *Roper v. Simmons*, 543 U.S. 551 (2005)
- *Graham v. Florida*, 560 U.S. 48 (2010)
- *J.D.B. v. North Carolina*, 564 U.S. ___, 131 S. Ct. 2394 (2011)
- *Miller v. Alabama*, 567 U.S. ___, 132 S. Ct. 2455 (2012)

➤ Ohio

- *State v. Long*, 2014-Ohio-849 (Mar. 12, 2014)

Reference Materials – Basics of Adolescence/Emerging Adulthood Science and Issues Relevant to Litigation

Understanding the Science Behind *Roper*

➤ **COMMENT: POSTADOLESCENT BRAIN DEVELOPMENT: A DISCONNECT BETWEEN NEUROSCIENCE, EMERGING ADULTS, AND THE CORRECTIONS SYSTEM**

Melissa S. Caulum, 2007 WIS. L. REV. 729 (*see attached*)

When do people really grow up? Although individuals reach the age of adulthood at eighteen, many continue to exhibit immature, juvenile behavior. In 2005, a quarter of the adults sentenced to prison were between eighteen and twenty-five, many of whom were nonviolent, first-time offenders.

- Brief of the **American Medical Association, American Psychiatric Association, American Society for Adolescent Psychiatry, American Academy of Child & Adolescent Psychiatry, American Academy of Psychiatry and the Law, National Association of Social Workers, Missouri Chapter of the National Association of Social Workers, and National Mental Health Association** as amicus curiae in support of Respondent

<http://fairsentencingofyouth.org/wp-content/uploads/2014/04/Roper-v.-Simmons-Amicus-Brief-American-Medical-Association-et.-al..pdf>

Argument: SCIENCE CONFIRMS THAT ADOLESCENT OFFENDERS AT THE AGES OF 16 AND 17 EXHIBIT DEFICIENCIES THIS COURT HAS IDENTIFIED AS WARRANTING EXCLUSION FROM THE DEATH PENALTY.

A. Older Adolescents Behave Differently Than Adults Because Their Minds Operate Differently, Their Emotions Are More Volatile, and Their Brains Are Anatomically Immature

1. Adolescents are inherently more prone to risk-taking behavior and less capable of resisting impulses because of cognitive and other deficiencies
2. Brain studies establish an anatomical basis for adolescent behavior
 - a. Research shows that adolescent brains are more active in regions related to aggression, anger, and fear, and less active in regions related to impulse control, risk assessment, and moral reasoning than adult brains
 - b. Adolescent brains are not fully developed in regions related to reasoning, risk taking, and impulse control

B. To the Extent That Adolescents Who Commit Capital Offenses Suffer From Serious Psychological Disturbances That Substantially Exacerbate the Already Existing Vulnerabilities of Youth, They Can Be Expected to Function at SubStandard Levels

C. Executing Adolescents Does Not Serve the Recognized Purposes of the Death Penalty

Academic Articles

➤ **EMERGING ADULTHOOD: A THEORY OF DEVELOPMENT FROM THE LATE TEENS THROUGH THE TWENTIES**

Jeffery Jensen Arnett (May 2000)

http://jeffreymarrett.com/articles/ARNETT_Emerging_Adulthood_theory.pdf

Abstract: *Emerging adulthood is proposed as a new conception of development for the period from the late teens through the twenties, with a focus on ages 18-25. A theoretical background is presented. Then evidence is provided to support the idea that emerging adulthood is a distinct period demographically, subjectively, and in terms of identity explorations. How emerging adulthood differs from adolescence and young adulthood is explained. Finally, a cultural context for the idea of emerging adulthood is outlined, and it is specified that emerging adulthood exists only in cultures that allow young people a prolonged period of independent role exploration during the late teens and twenties.*

➤ **DECISION-MAKING IN THE ADOLESCENT BRAIN**

Sarah-Jayne Blakemore & Trevor W Robbins (Sept. 2012) (*see attached*)

Abstract: *Adolescence is characterized by making risky decisions. Early lesion and neuroimaging studies in adults pointed to the ventromedial prefrontal cortex and related structures as having a key role in decision-making. More recent studies have fractionated decision-making processes into its various components, including the representation of value, response selection (including inter-temporal choice and cognitive control), associative learning, and affective and social aspects. These different aspects of decision-making have been the focus of investigation in recent studies of the adolescent brain. Evidence points to a dissociation between the relatively slow, linear development of impulse control and response inhibition during adolescence versus the nonlinear development of the reward system, which is often hyper-responsive to rewards in adolescence. This suggests that decision-making in adolescence may be particularly modulated by emotion and social factors, for example, when adolescents are with peers or in other affective ('hot') contexts.*

➤ **THE TEENAGE BRAIN: COGNITIVE CONTROL AND MOTIVATION**

Beatriz Luna, David J. Paulsen, Aarthi Padmanabhan, and Charles Geier (2013) (*see attached*)

Abstract: *Adolescence is associated with heightened mortality rates due in large measure to negative consequences from risky behaviors. Theories of adolescent risk taking posit that it is driven by immature cognitive control coupled with heightened reward reactivity, yet surprisingly few empirical studies have examined these neurobiological systems together. In this article, we describe a series of studies from our laboratory aimed at further delineating the maturation of cognitive control through adolescence, as well as how rewards influence a key*

*aspect of cognitive control: response inhibition. Our findings indicate that adolescents can exert adult-like control over their behavior but that they have limitations regarding the consistency with which they can generate optimal responses compared with adults. Moreover, we demonstrate that the brain circuitry supporting mature cognitive (inhibitory) control is still undergoing development. Our work using the rewarded antisaccade task, a paradigm that enables concurrent assessment of rewards and inhibitory control, indicates that adolescents show delayed but heightened responses in key reward regions along with concurrent activation in brain systems that support behaviors leading to reward acquisition. Considered together, **our results highlight adolescent-specific differences in the integration of basic brain processes that may underlie decision making and more complex risk taking in adolescence.***

Practice Guidelines

➤ **TRIAL DEFENSE GUIDELINES: REPRESENTING A CHILD CLIENT FACING A POSSIBLE LIFE SENTENCE**

Campaign for the Fair Sentencing of Youth (March 2015)

<http://fairsentencingofyouth.org/wp-content/uploads/2015/03/Trial-Defense-Guidelines-Representing-a-Child-Client-Facing-a-Possible-Life-Sentence.pdf>

“The objective of these guidelines is to set forth a national standard of practice to ensure zealous, constitutionally effective representation for all juveniles facing a possible life sentence (“juvenile life”) consistent with the United States Supreme Court’s holding in *Miller v. Alabama*, 132 S.Ct. 2455, 2469 (2012) that trial proceedings “take into account how children are different, and how those differences counsel against irrevocably sentencing [children] to a lifetime in prison.”

➤ **GUIDELINES FOR THE APPOINTMENT AND PERFORMANCE OF DEFENSE COUNSEL IN DEATH PENALTY CASES**

American Bar Association (2003)

http://www.americanbar.org/groups/committees/death_penalty_representation/resources/guidelines.html

“The objective of these Guidelines is to set forth a national standard of practice for the defense of capital cases in order to ensure high quality legal representation for all persons facing the possible imposition or execution of a death sentence by any jurisdiction.”