

Considering *Roper v. Simmons* in Waiver/Bindover Proceedings

John Matthew Fabian, Psy. D., J.D. &

Jeffrey B. Lazarus, Esq.



Dr. John M.
Fabian



Jeffrey
Lazarus

The United States Supreme Court recently held in *Roper v. Simmons*, 543 U.S. 551 (2005), that the Eighth and Fourteenth Amendments forbid the imposition of the death penalty on offenders who were younger than eighteen years of age at the time the crime(s) were committed. The Court reasoned that since juveniles are more immature and irresponsible, they are less morally culpable for their conduct as compared to adults.

This article cites a trend of legal arguments questioning whether trying juveniles in adult court (waiver/bindover proceedings) is constitutional under the holding in *Roper*.¹ The authors discuss the case and apply its core arguments to waiver/bindover proceedings that primarily consider the psychological/developmental perspective of juvenile offenders in light of the pressing concerns of dangerousness, sophistication/maturity and amenability to rehabilitation requirements outlined in *Kent v. United States*, 383 U.S. 541 (1966).

ROPER v. SIMMONS

The U.S. Supreme Court recently held that executing a juvenile is a violation of the Eighth and Fourteenth Amendments of the United States Constitution. In *Roper*, the seventeen-year-old defendant was convicted of murder and sentenced to death.

The youth displayed significant evidence of premeditation in the crime. Despite the heinousness of the crime and the jury's recommendation of the death penalty, the United States Supreme Court held that the differences between a juvenile and an adult were such that the seventeen-year-old was less morally culpable than an adult. The Court found three general differences between juveniles under 18 and adults, focusing on developmental differences between the two groups and clarifying that juveniles cannot be considered the worst offenders. These general differences are:

- 1) Youth are more likely to display a lack of maturity and an underdeveloped sense of responsibility.***
- 2) Juveniles' susceptibility to immature and irresponsible behavior means "their irresponsible conduct is not as morally reprehensible as that of an adult." Juveniles are more vulnerable to peer pressure and lack control over their immediate environment. They are more susceptible to influence and psychological damage than adults.***²
- 3) The character of the juvenile is not as well formed as that of an adult. The personality traits of juveniles are more malleable and less fixed. 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.***

The Court's finding was supported by reports from psychologists who had evaluated the defendant. The psychologists determined that the defendant was "very immature," "very impulsive," and "very susceptible to being manipulated or influenced." The Court also reasoned that forensic psychologists and psychiatrists refrain from diagnosing juveniles with criminal personalities such as antisocial personality disorder and psychopathy (severe criminal personality) due to the need to differentiate the two groups from a developmental perspective.

When appreciating the differences between the developmental contours of adults and juveniles, the Court determined that juveniles have "diminished culpability," or in other words, they cannot be held fully responsible for their actions. The Court reasoned that when considering a juvenile's diminished culpability, "the penological justifications for the death penalty, retribution and deterrence of capital crimes by prospective offenders...do not provide adequate justification for imposing that penalty on juveniles." The goal of retribution cannot be achieved when one's deathworthiness and blameworthiness is diminished by youth and immaturity. Further, due to juveniles' impaired abilities in weighing cost-benefits relevant to their behaviors, the goal of deterrence is unlikely met through capital punishment.

NOTE ~ THE BELIEFS EXPRESSED HEREIN ARE NOT NECESSARILY REFLECTIVE OF THE AUTHORS' PERSONAL OPINIONS.

Continued on next page...

The dissent argued that the majority failed to assert evidence disputing that some 17-year-old murderers are sufficiently mature, culpable, and responsible to deserve the death penalty. The dissenting opinions claimed that the majority relied on select studies and empirical data supporting their viewpoint that adolescents under age 18 lack the ability to take moral responsibility for their actions. They also disagreed with the majority's perception that juries cannot be trusted with the task of weighing a defendant's youth with other mitigating and aggravating factors of the crime.

APPLYING *ROPER* IN WAIVER PROCEEDINGS

In *Roper*, the United States Supreme Court established a principle that goes beyond the prohibition of the death penalty for juveniles. The U.S. Supreme Court found that a juvenile's culpability in general is mitigated by the characteristics of his or her age. The Court, in a sense, considered immaturity as mitigation in the determination of just punishment for juveniles.³ The Court recognized that youth may lack adult cognitive abilities, understanding, and logical reasoning when applying legal and moral rules to social situations. Youths may have deficits in their temperance (limiting impulsive behavior and evaluating cause/effect relationships and consequences before acting).⁴ While they have a weaker future orientation and focus on the immediate, youths are also more susceptible to peer pressure as measured by frequent group crime.



Given these developmental differences from adults, some argue that it becomes necessary to reevaluate our justice system's treatment of juveniles in order to make sure the remedy is consistent with the holding in *Roper*. The breakdown of the rehabilitative model of juvenile justice includes a focus on retributive and punitive justice and a surge of statutory schemes designed to incorporate youth accountability and protection of society. While these objectives are indeed important, they obscure the progressive/rehabilitative goal of juvenile court and neglect the developmental framework of youth offending.

When considering waiver/bindover proceedings in juvenile law, trying a youth as an adult may conflict with the holding in *Roper*. To try an adolescent as an adult implies that the child has the same culpability as an adult. Most state legislatures have passed laws in which, with certain serious crimes or under certain serious crime scenarios, adolescents may be tried as adults (assigning full culpability that society assigns to adults who commit the same crimes).⁵

In fact, the Ohio Revised Code endorses such a notion under O.R.C. §2152.12 (youth bindover). Specifically, subsection (B)(3) says that a juvenile's case may be transferred to the adult division if: "The child is not amenable to care or rehabilitation within the juvenile system, and the safety of the community may require that the child be subject to adult sanctions." This notion, however, is somewhat inconsistent with the holding in *Roper*.

In furtherance of this interest to protect those with diminished culpability, the stated purposes of the Ohio Juvenile Courts, as to delinquents, are "to provide for the care, protection, and mental and physical development of children subject to this chapter, protect the public interest and safety, hold the offender accountable for the offender's actions, restore the victim, and rehabilitate the offender."⁶ Furthermore, disposition under the juvenile courts chapter "shall be reasonably calculated to achieve the overriding purposes set forth in this section" for all children.

Transferring a child to the adult system supports none of the juvenile's court's stated purposes. As to the goal of protecting children, studies have shown that juveniles who enter the adult system are subjected to conditions much harsher than what would be found in the juvenile system.⁷ According to this report, juveniles in adult facilities were eight times more likely to commit suicide than other adolescents in juvenile detention facilities. Additionally, juveniles in adult facilities were more likely to be violently victimized, beaten by the staff, attacked with weapons, and sexually assaulted than were youth in juvenile facilities. As to the goals of rehabilitation and mental and physical development of children, the majority of adult facilities that house juveniles do not have rehabilitation programs specifically tailored to juveniles. The focus of the adult correctional facility is retribution and incarceration, not rehabilitation, and as a result, juveniles are not taught skills that will allow them to be successful in society once released. Instead, their mentors become the adult prisoners in the system.



Importantly, empirical evidence informs us that youth who are transferred to the adult system are more likely to commit future criminal and violent acts once they are released into the community as adults.⁸ This is an example of the exact fears that the United States Supreme Court expressed in *Roper*.

The harsh conditions and lack of meaningful rehabilitation for juveniles has a detrimental effect on society because the majority of juveniles who are released from the adult system are more likely to recidivate. Instead of giving juveniles the best chance at living a successful life, where they can become contributing members of society, the current scheme works to foreclose such a possibility.

Furthermore, adult punishments are an ineffective deterrent for juveniles. The *Roper* Court noted that "the same characteristics that render juveniles less culpable than adults suggest as well that juveniles will be less susceptible to deterrence."⁹ The Supreme Court essentially recognized that a child lacks the maturity and understanding to fully appreciate the consequences of his or her actions. While *Roper* was a death penalty case, the Court's observation may logically hold

Continued on next page...

application to any case where a child is being treated as an adult, such as a bindover proceeding. If juveniles do not fully appreciate the consequences of their actions, then it logically follows that a harsher penalty will not be a greater deterrent to delinquent behavior.

CONCLUSION

Consequently, similar to the holding in *Roper*, attorneys should consider that some juveniles are not similarly situated to adults and therefore, treating them as adults may be unconstitutional and against public policy. The United States Supreme Court recognized that the fundamental difference between a juvenile and an adult mitigates a juvenile's culpability for purposes of the death penalty. It may appear illogical to then ignore these differences in other legal contexts. The manifest weight of evidence from scientific, legal, and psychological communities urges that children be treated as children in every context.

Sources Include:

¹This article is in part based on a legal brief prepared by author Jeffrey Lazarus, assistant Public Defender, Cuyahoga County Public Defenders Office (Juvenile Division).

²L. Steinberg & E. Scott (2003). Less Guilty by Reason of Adolescence: Developmental Immaturity, Diminished Responsibility, and the Juvenile Death Penalty, 58. *Am. Psychologist* 1009.

³F. Zimring. Penal Proportionality for the Young Offender: Notes on Immaturity, Capacity, and Diminished Responsibility. In T. Grisso & R. Schwartz. (2003) *Youth on Trial. A Developmental Perspective on Juvenile Justice*.

⁴E. Cauffman & L. Steinberg. (2000). (Im)maturity of Judgment in Adolescence: Why Adolescents May Be Less Culpable Than Adults. *Behavioral Sciences and the Law*, 18.

⁵T. Grisso & R. Schwartz. (2003) Youth on Trial. A Developmental Perspective on Juvenile Justice.

⁶O.R.C. § 2152.01.

⁷J. Austin, et al. Juveniles in Adult Prisons and Jails: A National Assessment. Bureau of Justice Assistance. (October 2000).

⁸J. Fagan. (2001). The Comparative Advantage of Juvenile Versus Criminal Court Sanctions on Recidivism Among Adolescent Felony Offenders. *Law & Policy*, 18.

⁹543 U.S. 551 at 571.

...Publish or Perish...

Congratulations Jennifer M. Monty

Employee Relations Law Journal, "Designing a Dress Code," Vol. 32, No. 2, Autumn 2006
pp. 50 - 60.

Designing a dress code is essential for creating and maintaining your company's image and fostering a positive work environment. Dress codes, however, are often subject to legal challenges. Discrimination lawsuits based on gender, racial, or religious discrimination can lead to lengthy litigation. Other challenges arising from an employee's right to free speech or issues surrounding casual day attire can also spark debate over a company's dress code. Carefully designing, implementing, explaining and enforcing the dress code can help avoid litigation.

