

## **TEEN DEATH PENALTY DEBATE:**

### ***Roper, Superintendent, Potosi Correctional Center, v. Christopher Simmons***

- Grade Levels: 9-12
- Academic Standards: Academic Standards for Civics and Government 5.1E, 5.1L, 5.2C, 5.2F and 5.3G.
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### **Learning Objectives**

- To introduce students to the law concerning the death penalty in the United States.
- To familiarize students with a high-profile case that has been argued before the U.S. Supreme Court (Argued: October 4, 2004)
- To acquaint students with the legal issues concerning the imposition of the death penalty for crimes committed by defendants under 18 years of age
- To provide students with a forum to express their opinions on these issues.

**Activity Directions:** For this activity, you may use as much or as little of the background material and facts of the case as needed. When ready for the debate, divide the students into small groups representing the two sides of this case — those supporting the administration of the death penalty in this case (Roper) and those opposed (Simmons). Give each group a set amount of time to review the arguments below and prepare its case. Afterward, allow up to three groups to put forth arguments on behalf of Roper and three on behalf of Simmons. Each group can be limited to one argument. Students are encouraged to create their own arguments, but some suggested issues and arguments are provided below. Afterward, have the remaining groups vote for the side that they considered to have the stronger arguments. There are two main issues in the case outlined below. This lesson is designed to focus on the second issue, but possible arguments for both issues are provided at the end of the lesson if the instructor wishes to expand the lesson.

### **Background**

The Eighth Amendment to the U.S. Constitution states in pertinent part that “cruel and unusual punishments” shall not be inflicted. In the 1972 case of *Furman v. Georgia*, the U.S. Supreme Court put a temporary halt to executions in the United States, reasoning that the arbitrary manner in which death sentences were being imposed violated the cruel and unusual punishments clause of the U.S. Constitution. When a majority of the states revised their death penalty statutes to remedy the defects pointed out in *Furman*, the Supreme Court found the new statutes constitutional and permitted executions to resume in the case of *Greg v. Georgia* (1976).

Although *Greg* held that the death penalty is not unconstitutional per se, the Supreme Court has frequently been asked to rule on the constitutionality of executing different classes of individuals (the legally insane, mentally retarded and juveniles) and the constitutionality of certain methods of execution (i.e. the electric chair). For instance, in *Woodson v. North Carolina* (1976), the court ruled that mandatory death sentences are unconstitutional. Perhaps one of the most controversial areas in death penalty jurisprudence concerns the issue of who can be executed. Some of the Supreme Court’s rulings in this area are mentioned in the following cases:

- *Ford v. Wainwright* (1986) — executing individuals who became legally insane after sentencing, but before their execution, violates the Eighth Amendment.
- *Thompson v. Oklahoma* (1988) — executing an individual for a crime that was committed when the individual was 15 years old violates the Eighth Amendment.
- *Stanford v. Kentucky* (1989) — executing individuals for crimes that were committed while the individuals were 16 and 17 years old does not violate the Eighth Amendment.
- *Trop v. Dulles* (1958) and *Atkins v. Virginia* (2002) — *Trop v. Dulles*, the court held that the Eighth Amendment does not simply prohibit punishments that were cruel and unusual at the time of its adoption in 1789 (i.e. burning at the stake), but also punishments that have become “cruel and unusual” due to a change in the times and/or social attitudes.
- In *Atkins v. Virginia* (2002), the court declared that executing individuals who are mentally retarded, and who were so at the time they committed the crime, violates the Eighth Amendment. This case is significant because it expressly overrules a prior precedent of the court in *Penry v. Lynaugh* (1989). In *Penry*, the court addressed this same issue and held that executing such individuals did not violate the Constitution. Relying on *Trop*, the court in *Atkins* reasoned that “evolving standards of decency” (as supported by the numerous state legislatures that changed their death penalty laws to expressly prohibit the execution of the mentally retarded in the wake of *Penry*) now prohibit the action.

In the wake of *Atkins*, a death row inmate, Christopher Simmons, petitioned to have his death sentence set aside. Simmons, who was sentenced to death for a murder that he committed at age 17, argued that a consensus in the U.S. now exists to show that “evolving standards of decency” prohibit the execution of individuals for crimes that they committed when they were 16 and 17 years old — in essence, for individuals under 18 years of age. His case is known as *Roper v. Simmons*.

### **A Note on Habeas Corpus Cases**

This is a habeas corpus case. When persons are convicted of crimes, they have the right to appeal their cases to a higher court to ensure that the trial courts did not commit errors of law. If individuals are not satisfied with the results of these direct appeals, they may challenge the legality of their confinement in a habeas corpus suit.

In such a case, the court mandates the individual having custody of a prisoner (in this case, Roper, the warden of Simmons’ prison) to demonstrate that the prisoner is in custody lawfully. Traditionally, the custodian had to physically bring the prisoner into court to prove to the court that the prisoner was alive and well. In essence, petitioners in habeas corpus suits are suing the government for false imprisonment, alleging that their sentence is illegal for some reason, and they should consequently be released.

Having lost in his direct appeals, Simmons filed this habeas corpus petition. He is not arguing, however, that his conviction for murder is illegal, but only his sentence of death. If the courts agree with him, he will not be released, but only resentenced. As long as the proper procedures are followed, state capital defendants may file habeas corpus proceedings in federal court if their state court claims are rejected.

### **Facts of the Case**

In 1993, Christopher Simmons and two of his friends, broke into the house of a Mrs. Crook with the intention of burglarizing it. He was 17 years old. When Mrs. Crook awoke, Simmons recognized that she was an individual with whom he had been involved in an auto accident. Fearing that she would recognize him, Simmons and his friends bound Mrs. Crook with duct tape, forced her into a vehicle and then drove to a bridge.

By the time the vehicle arrived at the bridge, Mrs. Crook managed to partially free herself. When Simmons and his friends saw this, they once again tied her up in duct tape and pushed her into the river. She drowned shortly after hitting the water. Simmons and his friends then returned home. Mrs. Crook's body was later discovered downstream.

Simmons was apprehended by the police within a short period of time. He confessed to the crime. Despite evidence that he had abused drugs and alcohol and, in general, had an abusive childhood, he was sentenced to death. Until 2002, the courts that reviewed his case refused to overturn his death sentence. In August 2002, however, the Missouri Supreme Court held that, given the U.S. Supreme Court's recent decision in *Atkins v. Virginia* (2002), the Supreme Court would likely conclude that "evolving standards of decency" now prevent the execution of persons for crimes they committed under 18 years of age. Therefore, the Missouri Supreme Court overruled *Stanford v. Kentucky* (1989) and held that the Eighth Amendment now prevents the execution of persons for crimes they committed before 18 years of age. The State of Missouri, in the person of Roper, the warden of the correctional institution in which Simmons is imprisoned, petitioned the U.S. Supreme Court to hear this case — challenging both the Missouri Supreme Court's ability to overturn U.S. Supreme Court precedent and Simmons' main argument that his execution for a crime that he committed at age 17 violates the cruel and unusual punishments clause of the Eighth Amendment.

**ROPER V. SIMMONS — WINNING THE ARGUMENTS  
STUDENT HANDOUT**

**The U.S. Supreme Court agreed to hear the case in order to consider the following two issues:**

**Issue #1:** May a lower court overrule a precedent established by the U.S. Supreme Court (before the U.S. Supreme Court does so) when it appears that the U.S. Supreme Court would likely overrule the precedent itself if given the opportunity to do so?

**Issue #2:** Whether the execution of an individual for murder who was 17 years old at the time of committing the crime violates the cruel and unusual punishments clause of the Eighth Amendment to the U.S. Constitution?

*Review each argument below and decide whether it supports Roper, the warden of the prison that houses Missouri's death row in whose name the state brought its case, or Simmons, the juvenile murderer. Some arguments might support both sides. These points are based upon briefs submitted in the case and the reasoning of the Supreme Court justices in the actual decision that was 5-4 in favor of Simmons in an opinion announced March 1, 2005.*

- 1) The Eighth Amendment to the U.S. Constitution provides that “cruel and unusual punishments” shall not be inflicted. The provision is applicable to the states through the Fourteenth Amendment.
- 2) Missouri law allows for the execution of a 17-year-old murderer.
- 3) Thirty states prohibit the death penalty for juveniles (18 states have the death penalty for 18 year olds and older and 12 have no death penalty).
- 4) In the past 10 years, only Oklahoma, Texas and Virginia have executed prisoners for crimes committed as juveniles.
- 5) The U.S. Supreme Court, in its 1988 decision in *Thompson v. Oklahoma*, ruled that a death sentence for an individual who was 15 when he committed a murder violates the Eighth Amendment.
- 6) By a 5-4 decision, the U.S. Supreme Court stated in *Stanford v. Kentucky* (1989) that a death sentence for persons 16 and 17 at the time when they committed the crime of murder does not violate the Eighth Amendment.
- 7) The evolving standards of decency that mark the progress of a maturing society determine which punishments are so disproportionate as to be cruel and unusual. Youth and immaturity diminish blameworthiness and make our most severe penalty, death, unconstitutional.
- 8) A 17-year-old who plots out and executes a brutal murder, showing no remorse and instead displaying a horrible pride in his actions, is so morally culpable as to deserve society's most

severe penalty.

9) The execution of juveniles violates numerous international treaties and the overwhelming weight of international opinion is against the execution of juveniles.

10) The law changes. When the U.S. Constitution was written, children as young as seven faced the death penalty. Today the U.S. Supreme Court has limited the death penalty in many ways, most notably the ban in 2002 on executing mentally retarded individuals in *Atkins v. Virginia*.

11) The death penalty is morally wrong and should not be allowed under any circumstances. Life without parole is a far more suitable punishment.

12) Lee Malvo, the juvenile murderer in the sniper case that terrorized the nation, would escape the death penalty if juveniles were deemed protected from the death penalty under the Eighth Amendment.

13) At least eight states had considered and adopted legislation permitting the execution of 16- and 17-year olds.

14) The difference in maturity between juveniles and adults is neither universal nor significant enough to consider a blanket rule banning all juvenile executions.

15) Brain theory research suggests that adolescent brains operate differently from adult brains and that those differences are significant enough to have an impact on decision making to justify the different treatment of juveniles and adults.

16) The Missouri Supreme Court failed to follow the controlling precedent of the 1989 *Stanford* decision and ruled improperly in siding with Simmons. The court should have upheld the death penalty decision of the jury.

## SUGGESTED TALKING POINTS FOR STUDENTS

Roper	Simmons
<p><b>Issue #1: May a lower court overrule a precedent established by the Supreme Court (before the Supreme Court acts to do so) when it appears that the Supreme Court would likely overrule the precedent itself if given the opportunity?</b></p>	
<p><i>Prior Supreme Court Precedents:</i> A lower court may not overrule a precedent of the Supreme Court, even if it appears that the Supreme Court will eventually overrule the precedent itself. The lower court must apply the existing law until the Supreme Court overrules its prior precedent, if it chooses to do so.</p>	<p><i>Prior Supreme Court Precedents:</i> If the Supreme Court agrees with the Missouri Supreme Court on the merits of this case and holds that the execution of a 17-year-old violates the Eighth Amendment’s ban on cruel and unusual punishment, the issue of whether or not the lower court had the power to overrule <i>Stanford v. Kentucky</i> would be moot. Therefore, the court need not address this issue at present.</p>
<p><i>Supreme Court Rejected Similar Cases:</i> It is not apparent that the Supreme Court is about to overrule the precedent it established in <i>Stanford v. Kentucky</i>. Recently, the court has refused to grant stays of execution (or has vacated stays of execution granted by lower courts) to individuals asking the Court to re-examine its decision in <i>Stanford</i> and to declare that the execution of individuals for murders they committed under the age of 18 violates the Eighth Amendment.</p>	<p><i>Supreme Court Rejected Similar Cases:</i> If the Supreme Court agrees with the Missouri Supreme Court on the merits of this case and holds that the execution of a 17-year-old violates the Eighth Amendment’s ban on cruel and unusual punishment, the issue of whether or not the lower court had the power to overrule <i>Stanford v. Kentucky</i> would be moot. Therefore, the court need not address this issue at present.</p>
<p><b>Issue #2: Does executing an individual for murder who was 17 years old at the time of the crime violate the cruel and unusual punishments clause of the Eighth Amendment to the U.S. Constitution?</b></p>	
<p><i>Issue Previously Addressed:</i> In <i>Stanford v. Kentucky</i> (1989), the Supreme Court addressed this very issue and held that executing individuals for murders they committed at either age 16 or 17 does not violate the Eighth Amendment.</p>	<p><i>Issue Previously Addressed:</i> The fact that the Supreme Court has previously addressed an issue is not an absolute bar to the court’s re-examining the issue if the prior holding is no longer applicable or appropriate. (For instance: <i>Brown v. Board of Education</i> [1954] struck down school segregation as unconstitutional though the court had upheld “separate by equal” segregation in <i>Plessy v. Ferguson</i> [1896]).</p>
<p><i>Overruling Precedent:</i> This precedent has been relied on by several states, including Missouri, to draft their capital punishment statutes (execution permitted for individuals that committed first-degree murder at ages 16 and older).</p>	<p><i>Overruling Precedent:</i> In <i>Trop v. Dulles</i>, the court held that the Eighth Amendment encompasses “evolving standards of decency that mark the progress of a maturing society.” Since <i>Stanford</i> was decided in 1989, society has evolved to where it no longer permits the execution of individuals for crimes that they committed under the age of 18. The court needs to re-examine this issue.</p>
<p><i>National Consensus:</i> <i>Trop v. Dulles</i> established the precedent that the Eighth Amendment encompasses “evolving standards of decency that mark the progress of a maturing society.” Although Simmons argues that society had evolved to this</p>	<p><i>National Consensus:</i> A national consensus has evolved prohibiting the execution of individuals for crimes that they committed before 18 years of age. Only three executions of individuals for crimes they committed under 18 have been carried out</p>

<p>point, there has been no rush on the part of legislatures in the wake of <i>Stanford</i> to raise the minimum age for execution to 18. (There had been a rush to prevent mentally retarded individuals from being executed in the wake of <i>Penry v. Lynaugh</i>). Moreover, the federal government historically set the minimum age for execution at 16, and the results of several polls demonstrate that the public supports the execution of juveniles under certain circumstances. Thus, the severity of the crime, and not the age of the perpetrator, should determine the sentence.</p>	<p>since <i>Stanford</i>, and only a handful of death sentences for such individuals have been handed down during this time. Since the <i>Stanford</i> decision, several states have raised the minimum age for execution to 18.</p>
<p><u><i>International Law and Executing Juveniles:</i></u> The U.S., as a sovereign nation, retains the authority to establish its own laws. The U.S. has refused to agree to the U.N. Convention on the Rights of the Child in large part because that convention would prohibit the execution of 16- and 17-year olds. Even if a practice is prohibited in most of the world, this does not dictate that it must be prohibited here. Furthermore, under the court’s current death penalty jurisprudence, the criterion for determining “evolving standards of decency” is confined to the United States, not the world at large. Looking solely at the U.S., no national consensus has yet arisen condemning this sort of behavior.</p>	<p><u><i>International Law and Executing Juveniles:</i></u> The vast majority of countries prohibit the execution for juveniles (persons under the age of 18). Perhaps only the U.S. and Iran continue this practice. The U.N. Convention on the Rights of the Child, which President Clinton signed (with a reservation to the prohibition of the juvenile death penalty) but the Senate has yet to approve, also prohibits the execution of juveniles for crimes they committed under the age of 18. Since so many other nations have already approved this convention, it is arguable that the prohibition of executing persons for crimes committed under the age of 18 is now a binding element of international law.</p>
<p><u><i>Competency of Juveniles to Understand the Consequences of Their Actions:</i></u> All adults have gone through adolescence, but how many adults have killed someone during this stage of their lives? True, 16- and 17-year olds may be impulsive and fail to think about the consequences of their actions, but even such individuals must know that murder is a very grave wrong — especially when it consists of duct-taping a woman, driving her to a bridge and pushing her into a river to drown. Simmons knew exactly what he was doing. Indeed, he had made comments on several occasions that he “wanted to kill someone” and found two other individuals willing to help him perpetrate this crime.</p>	<p><u><i>Competency of Juveniles to Understand the Consequences of their Actions:</i></u> Scientific evidence shows that 16- and 17-year olds are impulsive and do not think about the consequences of their actions. Moreover, their brains are not developed to the point of full adults (adult usually defined as age 20 and higher), and they are still trying to “find themselves.” Moreover, the backgrounds of such individuals may also influence their actions. For instance, persons who have grown up in abusive households are more prone to violence (in this case, Simmons’ father was an alcoholic who sometimes beat him). Though these factors do not mitigate the heinousness of the crime, they do show that death is not the appropriate punishment.</p>
<p><u><i>Eighteen as a Minimum Age for Execution:</i></u> Eighteen is an arbitrary age that the government has selected for a variety of reasons (age to hold property, vote, etc.). However, the government is free to raise it or lower it for appropriate reasons in certain circumstances.</p>	<p><u><i>Eighteen as a Minimum Age for Execution:</i></u> The government has set 18 as a minimum age for many activities (serving on a jury, gambling in many states, being considered a legal adult, etc.). It stands to reason that 18 should also be the minimum age for executing criminals.</p>