Roper v. Simmons

On August 26, 2003, in *Simmons v. Roper*, the Missouri Supreme Court held that the execution of juvenile offenders in the state of Missouri violates evolving standards of decency and is prohibited by the Eighth Amendment ban on "cruel and unusual punishment" of the US Constitution. The state appealed to the US Supreme Court. On January 26, 2004 the US Supreme Court granted certiorari in the case of *Simmons v. Roper* and agreed to consider the constitutionality of the death penalty as applied to juvenile offenders.

On March 1, 2005 the US Supreme Court, held in a 5-4 vote that the death penalty, as applied to those under eighteen years of age at the time of the crime, violates evolving standards of decency and is prohibited by the Eighth Amendment ban on "cruel and unusual punishment" of the US Constitution.

US Supreme Court: Background

In 1988, the US Supreme Court in *Thompson v Oklahoma* held that it constituted "cruel and unusual punishment" to execute persons who were under 16 years of age at the time of the offense and thus was prohibited by the Eight Amendment of the US Constitution. Thompson was 15 years old when he actively participated in a brutal murder, but the District Attorney filed a petition to have him tried as an adult, which the trial court granted. Thompson was then convicted and sentenced to death, a decision the Court of Criminal appeals of Oklahoma confirmed. The case was accepted by the US Supreme Court, which then determined that the execution of offenders younger than 16 years of age at the time of the crime was unconstitutional because it violated the Eight Amendment of the US Constitution.

One year later, in *Stanford v Kentucky*, the US Supreme Court found that there was not a national consensus against the execution of those aged 16 or 17 at the time of the offense and that such executions were thus constitutional.

In 2002, the US Supreme Court was again faced with the opportunity to revisit the issue in the cases of Kevin Stanford and Toronto Patterson, but declined to do so. Nonetheless, unprecedented dissents in both cases indicated that the juvenile death penalty should be re-examined at the earliest opportunity. Yet, when the occasion once more arose to review the matter, the US Supreme Court denied *certiorari* in the case of Scott Hain, without comment. Scott Hain was then executed on 3 April, 2003, becoming the twenty-second juvenile in the US to be executed since reinstatement of the death penalty.

Of significance, the US Supreme Court also considered a case challenging the constitutionality of the death penalty as applied to those with mental retardation at the same time as *Stanford*: In *Penry v. Lynaugh* in 1989 (492 US 584), the US Supreme

Court held that the execution of persons with mental retardation was not in violation of the Eight Amendment, instead mental retardation would be seen as a mitigating factor. In 2002, the Supreme Court again visited the issue of capital punishment and mental retardation, this time the Court held in *Atkins v. Virginia* 536 US 304 (2002) that the execution of persons with mental retardation was in fact unconstitutional.

The Court in Simmons refers to both *Atkins* and *Penry* in their deliberations, therefore, in order to explain their rationale it is necessary to also refer to these two cases.

***Roper v. Simmons* - Overview**

Questions Before the US Supreme Court

1. Once the Supreme Court holds that a particular punishment is not "cruel and unusual" and thus barred by the Eighth and Fourteenth Amendments, can a lower court reach a contrary decision based on its own analysis of evolving standards?

2. Is the imposition of the death penalty on a person who commits a murder at age seventeen "cruel and unusual," and thus barred by the Eighth and Fourteenth Amendments?

In reaching its decision in *Simmons,* the US Supreme Court followed its earlier approach in *Atkins v Virginia*, in which it held that a national consensus had evolved against the execution of those with mental retardation and thus such executions violated the US Constitution's Eighth Amendment prohibition on "cruel and unusual punishment". Similarly, in adopting this approach the US Supreme Court held that a national consensus had developed against the execution of juveniles.

Justice Kennedy wrote the Court's opinion on behalf of the majority: Justices Kennedy, Ginsburg, Souter, Breyer and Stevens. Justice Stevens also wrote a concurring opinion, in which Justice Ginsburg joined. Chief Justice Rehnquist and Justices Thomas, Scalia and O'Connor dissented. Scalia authored a dissenting opinion, in which Justices Thomas and Scalia joined. Justice O'Connor issued a separate dissenting opinion.

In following the approach in *Atkins,* the US Supreme Court examined: legislative action; the frequency of imposition of capital punishment on juveniles and the frequency with which the sentence is actually carried out; national and international opinion; and conducted an independent examination of whether the death penalty as applied to juveniles violates evolving standards of decency and hence is barred by the Eighth and Fourteenth Amendments.

Objective Indicia of Consensus

The Court concluded that, as in *Atkins*, the objective indicia of consensus, as expressed in particular by the enactments of state legislatures; the infrequency of the use of capital punishment in cases concerning those under eighteen years of age; and the consistency in the trend towards abolition of the juvenile death penalty are sufficient to indicate that society now views the death penalty as a disproportionate punishment for juvenile offenders.

In examining state practice, the Court found a similar consensus to that found in *Atkins.* When *Atkins* was decided, 30 states prohibited the death penalty for those with mental retardation: 12 did not have the death penalty as a punishment for any crime, and a further 18 that, despite maintaining the death penalty, had expressly (through legislature or judicial interpretation) excluded those persons with mental retardation from receiving such a punishment. Similarly, 30 states prohibit the death penalty for juveniles: the previously mentioned 12 which do not have the death penalty as a punishment for any crime and a further 18 that, despite maintaining the death penalty, expressly (through legislature or judicial interpretation) excluded those under eighteen.

Of further significance to the Court was that actual practice was infrequent within the 20 states without a formal prohibition on executing juveniles. Since *Stanford*, only six states had executed prisoners convicted for crimes they committed when they were under 18 years of age, and in the past decade only three states had done so. Additionally, the Governor of Kentucky granted Kevin Stanford clemency on the basis of his youth.

In contrast to *Atkins* however, the rate of change in reducing the frequency of the juvenile death penalty, or in taking steps to abolish it has been slower than that in *Atkins*. In *Atkins*, 16 states that allowed the execution of those with mental retardation when *Penry* was heard in 1989 had subsequently abolished the practice in the intervening years before *Atkins.* However, only five states that had allowed the execution of juveniles when *Stanford* was decided had since abolished the practice. The Court found this to be counterbalanced by the consistency of the direction of change towards abolition, particularly in light of the popularity of anti-crime measures and toughening of other sanctions. Additionally, they noted that the slower pace may simply be explained by the fact that the impropriety of executing juvenile offenders had gained widespread recognition earlier than the impropriety of executing those with mental retardation. When Penry was first heard, only two states had legislated to prohibit the execution of those with mental retardation, conversely in Stanford, 12 states which retained the death penalty had prohibited the execution of those under eighteen years of age.

The Court subsequently concluded that objective indicia of consensus provided sufficient evidence that society views juveniles as "categorically less culpable than the average criminal".

Culpability, Retribution and Deterrence

The Courts determination in regard to the objective indicia was inextricably linked to the second part of their enquiry. The Court re-affirmed that the death penalty is the most severe punishment and that the eighth amendment demands that it is limited to those offenders who commit "a narrow category of the most serious crimes" and whose extreme culpability makes them the "most deserving of execution". The Court found that juvenile offenders cannot with any reliability be classified among the worst offenders. The Court found three primary differences between juveniles and adults to substantiate their conclusion. First, their comparative immaturity and corresponding susceptibility to reckless and irresponsible behaviour, as evidenced by the numerous state statutes limiting their behaviour and decision making capabilities such as age limits for marriage and voting. Second, they found that juveniles are more vulnerable to negative influences and outside pressures. Third, the Court asserted that as juveniles are in a state of flux and their character is not as well formed as that of an adult, instead being transitory in nature, their character cannot be defined as irretrievably depraved.

The Court then turned to the two penological justifications for capital punishment: retribution and deterrence. Once the above are recognized and juveniles' diminished culpability accepted, the Court asserted that it is evident that neither of these two penological goals are sufficient to justify such a severe punishment. Further, retribution is not proportional when the death penalty is imposed upon an individual whose culpability is diminished by reason of youth and immaturity. The Court also questioned the death penalty's effect as a deterrent, stating that it is unclear as to whether it has such an effect, a point conceded by the State in oral argument.

The Court then continued to reject the State's (and supporting amici's) argument regarding the brutality of the crimes some juveniles commit and their assertion that individual culpability is assessed by juries on a case by case basis therefore allowing those with the requisite culpability to receive the ultimate punishment. The Court instead held that an unacceptable likelihood exists that the brutality of such murders would overpower mitigating arguments based on youth even when objectively the juvenile offender should receive a lesser punishment. Finally, with regard to drawing the line at 18 years of age, the Court recognized that such an age was not a definitive measure of immaturity, however such a line was necessary. Correspondingly, the Court held that *Stanford* is no longer to be deemed controlling on this issue.

International Consensus and Opinion

Finally, the Court turned to international consensus for confirmation and support with regard to its findings, noting that the "United States now stands alone in a world that has turned its face against the juvenile death penalty." The Court acknowledged "the overwhelming weight of international opinion against the juvenile death penalty,"

detailing the various treaties and international context. The Court also looked specifically at the abolition of the juvenile death penalty in the United Kingdom, finding it of particular importance owing to the origins of the Eighth Amendment and the historical ties between the two countries. **It then continued to expound upon the role of such opinion in their decision making processes, stating: "The opinion of the world community, while not controlling our outcome, does provide respected and significant confirmation for our own conclusions".**

Concurring Opinion: Justice Stevens, Joined by Justice Ginsburg

Justice Stevens issued a separate concurring opinion, which was joined by Justice Ginsburg. The opinion specifically addressed constitutional interpretation. He asserted that the decision reaffirmed that the Constitution was a living document and correspondingly, that the meaning of the Eighth Amendment was to be determined in light of evolving standards of decency.

Dissenting Opinions

Scalia authored a dissenting opinion, in which Chief Justice Rehnquist and Justice Thomas joined. Justice O'Connor issued a separate dissenting opinion.

Justice Sandra Day O'Connor - Dissent

In summary, O'Connor argued that the majority was stretching its conclusion of a "genuine national consensus" against executing juveniles. Though she agreed with the majority that the 8th Amendment is evolving, in that the Court's interpretation of the 8th Amendment's ban on "cruel and unusual punishment" is not a "static command," she concluded that "little has changed" since the Court allowed executions of 17-year-olds in Stanford.

As a "preliminary matter" Justice O'Connor, strongly rebuked the Court's failure to "reprove or even to acknowledge the Supreme Court of Missouri's unabashed refusal to follow [the] controlling decision in *Stanford*'. Accepting that the Eighth Amendment may require a re-evaluation of an earlier decision in light of "evolving standards of decency", she asserted that it was the U.S. Supreme Court's "prerogative alone to overrule one of its precedents" and that the Eighth Amendment provides "no exception to this rule". The failure of the Court to affirm the lower court judgement without "so much as a slap on the hand," in her opinion, threatened to invite other "disruptive" reassessments of Eighth Amendment precedents.

Turning to the merits of the case, O'Connor agreed that objective evidence presented in Simmons was similar to that presented in *Atkins*. The overall number of states prohibiting the death penalty for juveniles was identical to those prohibiting the death penalty for those with mental retardation in *Atkins* and, as in *Atkins,* only a small number of those that retained it had actually carried out such executions. However, in her opinion there was a significant distinction to be made: in *Atkins* there was both significant evidence of opposition to the practice of executing those with mental retardation *and* "virtually no countervailing evidence of affirmative legislative support". In contrast, at least eight states had expressly set 16 or 17 as the minimum age for the imposition of the death penalty, with six States (if including Simmons, thus Missouri) having juveniles on death row and four of them had carried out executions of at least one juvenile under the age of eighteen over the last 15 years. This, she concluded, suggested at least some continuing public support. Moreover, as emphasised in *Atkins*, it was the consistency of the direction of change that was significant, not so much the number of states forbidding the practice. In contrast, a uniform consistent trend could not be seen in Simmons: since the decision in Stanford, two States had expressly reaffirmed their support for the practice by enacting statutes setting 16 as the minimum age. Furthermore, the pace of legislative action was considerably slower than that seen in *Atkins*. Whilst she partially accepted the Court's argument that this attributable to the fact that a greater number of states had prohibited the practice at the time of the Stanford decision, she found that the "halting pace of change" raised some concern.

O'Connor then turned to the role of the objective evidence in Eighth Amendment jurisprudence, asserting that it was not dispositive and that the Court's "own judgement" must be brought to bear. Referring to *Atkins*, she asserted that it was the "compelling moral proportionality argument" that played a "*decisive* role" in the Court's decision and supported the conclusion of a national consensus. In contrast, she found the proportionality argument against the execution of juvenile offenders to be flawed and too weak to resolve the ambiguities surrounding the evidence of legislative consensus or the Court's categorical rule.

Although accepting that juveniles as a class are generally less mature, less responsible and less mentally formed as adults, and that this fact has an impact on juvenile's comparative moral culpability, she found juvenile's relative maturity to adults to be neither universal nor significant enough to justify a rule excluding juveniles from the death penalty. She asserted that a juvenile offender can be as culpable as an adult. Turning to the deterrence argument, she also found that although arguably the death penalty may be less likely to deter a juvenile from committing a crime, it does not follow that the threat of the death penalty cannot effectively deter some juveniles. Further O'Connor asserted that the Court's proportionality argument failed to establish that the differences in maturity between a 17 year old and a young adult justified a bright-line rule and that the Court's decision exempted a too broad and diverse class of offenders, making the line drawn "indefensibly arbitrary".

O'Connor also found that 17 year olds as a class are qualitatively and materially different from those with mental retardation. "Mentally retarded" offenders are by definition those whose "cognitive and behavioral capacities have been proven to fall below a certain minimum," and thus highly unlikely to be deterred by the prospect f the death penalty and intrinsically less culpable. 17 year olds' lesser maturity, O'Connor asserts "simply cannot be equated with the major, lifelong impairments suffered by the mentally retarded".

Correspondingly, O'Connor asserted that "individualized sentencing" through juries would also properly address concerns as to maturity and culpability, rejecting the Court's argument that juries "cannot accurately evaluate a youthful offender's maturity or give appropriate weight to" mitigating characteristics of youth.

O'Connor was more inclined to be persuaded by the Court's appreciation for international influences. "Without question," she wrote, "there has been a global trend in recent years towards abolishing capital punishment for under-18 offenders". However owing to her belief that the Court's moral proportionality argument did not justify a categorical rule, she could not assign a "confirmatory role to the international consensus". Of note, O'Connor continued however to address and expressly reject Justice Scalia's contention that international law has no place in evaluating Eighth Amendment claims arguing that "[a]t least, the existence of an international consensus of this nature can serve to confirm the reasonableness of a consonant and genuine American consensus".

In conclusion, O'Connor found the objective evidence to be "inconclusive"; the moral proportionality arguments to be flawed and correspondingly fail to support the imposition of a bright-line rule; that it was reasonable for a legislature to conclude that some 17 year olds possess sufficient maturity and culpability to warrant the imposition of a death sentence and that evidence presented to the court on the issue of jury sentencing did not suggest that they were unable to take the corresponding factors of youth into account. Correspondingly she could not find a genuine national consensus forbidding the execution of such offenders and dissented from the decision. asserting that "The rule decreed by the court rests, ultimately, on its independent moral judgment that death is a disproportionately severe punishment for any 17-year-old offender". Continuing, O'Connor stated, "I do not subscribe to this judgment. Adolescents as a class are undoubtedly less mature, and therefore less culpable for their misconduct, than adults… But the court has adduced no evidence impeaching the seemingly reasonable conclusion reached by many state legislatures: that at least some 17-year-old murderers are sufficiently mature to deserve the death penalty".

Justice Scalia's Dissent, joined by Justice Thomas and Chief Justice Rehnquist

Scalia began his dissent by rebuking the Court for its reliance on the "evolving standards of decency" test and its failure to decide the issue on the original meaning of the Eighth Amendment. In doing so, Scalia lambasted the Court in stating "[W]hat a mockery

today's opinion makes of Hamilton's expectation (of a traditional judiciary), announcing the Court's conclusion that the meaning of our Constitution has changed over the past 15 years – not, mind you, that this Court's decision 15 years ago was wrong, but that the Constitution has changed". He further criticized the decision, stating that the Court had "proclaimed itself sole arbiter of our nation's moral standards" and asserted that the meaning of the Eighth Amendment had been determined by the "subjective views of five members of the Court and like-minded foreigners".

Turning to the Court's calculations of the objective idicia, (state legislation) Scalia asserted that "[w]ords have no meaning if the views of less than 50% of death penalty states can constitute a national consensus." Referring to earlier Eighth Amendment jurisprudence, Scalia emphasised the prior need for overwhelming opposition to a challenged practice. Scalia also took issue with the Court's method of counting States, in including those States which explicitly prohibit the death penalty. Again referring to previous jurisprudence, Scalia argued that the method enumerated by the Court flies against the long established principle of excluding those States that prohibit the death penalty from being included in such calculations. Rejecting the Court's argument for their relevance, Scalia asserts that the prohibition of the death penalty as a whole in these States, whilst providing support for a consensus against the death penalty, provides no such insight into whether those under the age of 18 should receive "special immunity from such a penalty". Scalia continues to assert that the Court's attempt to show a majority consensus in this manner "is an act of nomological desperation".

Relying on four States that have prohibited the juvenile death penalty since the decision in Stanford, to show an evolving consensus and to create a constitutional prohibition was inappropriate in Scalia's opinion. Continuing on this theme, Scalia, like O'Connor, also refers to State legislation enacting a minimum age of 16 for imposition of the death penalty, seeing it as evidence that some state legislatures favour the possibility of capital punishment in such circumstances.

Scalia also criticises the Court's conclusions drawn from the infrequency of executions of those under 18 years of age, stating that the infrequency of these can be explained by juries taking into account mitigating factors associated with youth and the lesser percentage of capital offenses committed by this age group as compared to the general adult population. Looking at sentencing and execution statistics, Scalia further concluded that, in a percentage analysis, the numbers of those sentenced to death for crimes committed under the age of eighteen, and/or been executed, had "held steady or slightly increased since *Stanford*".

Turning to the use of the Court's "own judgment", Scalia again turns to earlier Eighth Amendment jurisprudence to reject the Courts assertion of its role in judicial interpretation, arguing that it has "no foundation in law or logic". Alternatively, accepting the notion of "evolving standards of decency" Scalia asserts, requires the Justices to discern these standards from the practice of the people and not for them to

prescribe them. He concludes "[B]y what conceivable warrant can nine lawyers presume to be the authoritative conscience of the Nation?"

Scalia also criticised what he considers the selective use of sociological and scientific studies by the Court to support its position, asserting that the Court was effectively looking "over the heads of the crowd to pick out its friends"

In agreement with O'Connor, Scalia asserted that consideration of such decisions was an issue for State legislatures and juries. The Court's conclusion that "juries cannot be trusted with … weighing a defendant's youth along with the other mitigating and aggravating factors of his crime", Scalia asserts, undermines the foundations of the U.S. capital sentencing system. Scalia continues to question whether, following this line of reasoning, juries should be considered incapable of weighing up other mitigating factors. Similarly, Scalia rejects the Court's assertion that the dual penological goals of retribution and deterrence are not served by the imposition of capital punishment on those under 18 at the time of the offence.

Scalia then turned to the Court's use of international law to confirm its finding of a national consensus asserting that "[t]hough the views of our own citizens are essentially irrelevant to the Court's decision today, the views of other countries and the so-called international community take center stage". Scalia continues to state that "Acknowledgement' of foreign approval has no place in the legal opinion of this Court...". Scalia concludes by arguing against what he considers to be the selective use of international law and consensus by the Court, drawing on jurisprudence involving abortion, trial by jury and separation of state and religion in support of his assertions. Scalia continues to state that "[t]o invoke alien law when it agrees with one's own thinking, and ignore it otherwise, is not reasoned decision making, but sophistry".

Like Justice O'Connor, Scalia also criticized the Court for failing to admonish the Missouri Supreme Court for its "flagrant disregard" of the Court's ruling in *Stanford* stating that "[a]llowing lower Courts to reinterpret the Eighth Amendment whenever they decide enough time has passed for a new snapshot leaves this Court's decisions without any force". However, Scalia found the actions of the lower court to be understandable in that they could be attributed to the Court's use of the evolving consensus doctrine, in that the lower court will not be construing fixed text but a "a different scene" to that which the Court's earlier decision was premised on.

In conclusion, Scalia asserted that "this is no way to run a legal system" and criticized the the Court for creating a system of Constitutional jurisprudence that is "nothing more than a snapshot of American public opinion at a particular point in time (with the timeframe now shortened to a mere 15 years)." Scalia concludes"[t]he result will be to crown arbitrariness with chaos."

Possible Ramifications

The US Supreme Court is the final venue of appeal in the United States. The decision can not therefore be appealed at a higher level and correspondingly must be implemented in lower courts. The decision may only be overturned by a subsequent US Supreme Court ruling in the future, such an occurrence is not impossible, but is improbable.

The decision has quashed the death sentences of over 70 juveniles who were on death row across the United States. Of particular significance, Texas had 29 juveniles on death row, almost half of those across the United States. It will also mean that the death penalty will not be a sentencing option in pending or future cases involving juvenile offenders or those facing re-sentencing.

Those juveniles whose sentences have been quashed will now face lesser sentences. The mechanisms for implementing the decision will vary in each State. For example, in Texas, it may be by legislation which the Governor has indicated he will sign or alternatively a recommendation from the Board of Pardons and Paroles which would then pass to the Governor. At this point, States are in the process of trying to reconcile the decision in Simmons with their state statutes and working out how to actually commute the death sentences.

The specific sentence the juvenile offenders are subject to will vary by State, and will also be impacted by when the crime was committed. For example, currently in Texas there is no life without the possibility of parole option in sentencing, therefore the 29 juveniles on death row in Texas will most probably have their sentences commuted to life and may be eligible for parole. Their eligibility for parole will also depend upon when they committed the crime and how many years they have served in prison. For example, the period of time an offender must serve before being considered eligible for parole has increased over the years from 15 years to 25, 35 and 40 respectively.

Chances of obtaining parole are however slim. Using Texas as an example again, to obtain parole an offender must apply to the Board of Pardons and Paroles and receive a favourable recommendation which then passes to the Governor. The likelihood of this taking place is negligible. The Board are highly unlikely to recommend such a course of action in light of the earlier death sentence.

The decision has also had ramifications beyond the immediate juvenile cases. For example, it has spurred on a Life Without the Possibility of Parole bill in Texas. Previously the bill has been blocked by the Republican faction of the legislature.

Sen. Rodney Ellis, D-Houston stated that the ruling will have a "major impact" on the criminal justice system in Texas. At a press conference Ellis and several other members of the State Legislature lauded the decision. Sen. Eddie Lucio, D-Brownsville, stated the ruling "brings to light one of the major defects" in the state's criminal justice system, the

lack of a jury's opportunity to hand down a sentence of life without parole. Lucio argued that the Legislature now faces the task of protecting the people of the state from such offenders. His SB 60 adds life without parole as an option for sentencing by Texas juries. "Now is the time more than ever before to pass this piece of legislation," he stated.

Rep. Garnet Coleman, D-Houston asserted that The Supreme Court ruling now makes it "very clear" that a moratorium on the death penalty in Texas is in order. He noted that the Supreme Court has ruled 2 classes of individuals should not be executed - juveniles and those with mental retardation. That and other issues such as recent revelations of problems in the Houston Crime Lab have necessitated review of some death row cases.

Rep. Ruth Jones McClendon, D-San Antonio, explained that if the state is going to have a death penalty, the appropriate cut-off age should be 18, because someone under that age is not fully developed emotionally. The ruling was called a "great day for the juveniles in the state of Texas" by Rep. Alma Allen, D-Houston.

State Responses to the Decision

Statement of Gov. Rick Perry on U.S. Supreme Court Ruling on Death Penalty

AUSTIN – Gov. Rick Perry today released the following statement after the U.S. Supreme Court ruled 5-4 that states can no longer execute capital murderers who were 17 or younger at the time they committed their crimes.

“Today’s ruling by the U.S. Supreme Court gives further guidance to the states on imposition of the death penalty. Several bills are pending in the legislature that would bar execution of those under age 18. If a bill that brings Texas law in line with the court’s ruling reaches my desk I will sign it. Regardless of what the Legislature does, however, Texas will abide by the court’s ruling.

“I will ask the Texas Board of Pardons and Paroles to begin reviewing the cases of the 28 Texas murderers affected by today’s ruling, so they can recommend appropriate action after considering reviewing the cases.

“Since the U.S. Supreme Court announced in recent months that it would reconsider its previous policy of allowing the execution of juveniles, Texas has not executed anyone who was under18 when they committed their crime. Prior to that, the state upheld the law as it was written and interpreted to ensure justice for the victims of some horrible crimes.”[1]

[1] March 1, 2005

Important U.S. Supreme Court Death Penalty Rulings

-1972, *Furman v. Georgia*. The court rules the death penalty does not violate the Constitution, but the manner of its application in many states does. The court noted capital punishment was likely to be imposed in a discriminatory way and that blacks were far more likely to be executed than whites. The decision essentially ends the practice of executions.

-1976, *Gregg vs. Georgia*. A Georgia death penalty statute is held constitutional, a ruling that sets the stage for resumption of executions.

-1987, *McCleskey vs. Georgia*. Justices rule state death penalty laws are constitutional even when statistics indicate they have been applied in racially biased ways.
-1988, Thompson vs. Oklahoma. The court decides people younger than 16 when they committed a crime may not be executed.

-1989, *Stanford v. Kentucky*. Justices uphold the constitutionality of executions for juveniles older than 15.

-2002, *Atkins v. Virginia*. Justices rule that executing mentally retarded criminals violates the Constitution's ban on cruel and unusual punishment. Writing for the majority, Justice John Paul Stevens cites a "national consensus" against executing an offender who may lack the intelligence to fully understand his crime.

-2005, *Roper v. Simmons*. The court rules the Constitution forbids the execution of killers who were under 18 when they committed their crimes, ending a practice used in 19 states. Justice Anthony Kennedy cites a "national consensus" against the practice.