Too Young to Die: The Juvenile Death Penalty After Atkins v. Virginia

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I. Introduction

The State of Texas executed Toronto Markey Patterson ("Patterson") on Wednesday, August 28, 2002.¹ Patterson grew up in a troubled environment, whipped by his teenaged mother and surrounded by gangs, drugs and alcohol.² He sold drugs to provide for basic necessities but he never joined a gang or used drugs.³ In fact, prior to being sentenced to death in 1995 for killing his cousin Kimberly Stiff Brewer and her two daughters, he had never been convicted and had no history of violence.⁴ Patterson was just seventeen years old when the crime was committed.⁵ Patterson appealed to the United States Supreme Court to stay his execution but the Court denied the application because precedent did not make the execution of seventeen-year-old offenders unconstitutional.⁶ Texas is one of twenty-two states that permit such executions.⁷ In an unusual step, three justices dissented from the denial.⁸ In his dissent, Justice Stevens noted "the apparent consensus that exists among the States and in the international community against the execution of a capital sentence imposed on a juvenile

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³ Id.
⁴ Id.
⁶ Id. at 24.
⁸ Patterson, 123 S. Ct. at 24. Five justices must vote to grant a stay whereas four justices must vote to grant certiorari for the Supreme Court to hear a case. See *Herrera v. Collins*, 502 U.S. 1085 (1992) (denying stay of execution despite four justices voting to grant writ of certiorari).
offender” and that he remained convinced that “the Eighth Amendment prohibits the taking of the life of a person as punishment for a crime committed when below the age of 18.” Justice Ginsburg and Justice Breyer agreed and stated that the Court’s decision in *Atkins v. Virginia* 10 makes possible the reconsideration of the constitutionality of executing a juvenile offender.11 Most recently, four justices dissented from the denial of an application for an original writ of habeas corpus seeking to declare the juvenile death penalty unconstitutional.12 Justice Stevens, joined by Justices Souter, Ginsburg, and Breyer, found that the rationale of *Atkins* applies “with equal or greater force to the execution of juvenile offenders” and that “[w]e should put an end to this shameful practice.”13

In *Atkins*, the Supreme Court held “that the Constitution ‘places a substantive restriction on the State’s power to take the life’ of a mentally retarded offender.”14 The Court found that the execution of mentally retarded offenders contradicted evolving standards of decency, did not effectuate the punitive purposes of capital punishment, and posed a strong risk of wrongful execution. This Article demonstrates that similar facts plague the juvenile death penalty and proposes that that penalty, in light of the Court’s decision in *Atkins*, violates the Eighth Amendment. In Part II, this Article discusses the development of Eighth Amendment jurisprudence and the standard to determine what constitutes “cruel and unusual punishment.” Part III of this Article examines United States Supreme Court precedent and current state practices regarding the juvenile death penalty. Part IV discusses the rationale of *Atkins*. Part V applies that rationale to the juvenile death penalty and demonstrates that *Atkins* requires the determination that executing juvenile offenders is unconstitutional.

### II. The Eighth Amendment

The full text of the Eighth Amendment provides, “[e]xcessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.”15 Early last century in *Weems v. United States*,16 the United States Supreme Court expounded on the meaning of the Eighth Amendment when it stated that it is “a precept of justice that punishment for crime should be gradu-

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12. *In re Stanford*, No. 01-10009, 2002 WL 984217 (U.S. Oct. 21, 2002) (denying petition for original writ of habeas corpus). Five justices must vote to grant an original writ. The author uses the term juvenile death penalty to refer to death sentences imposed on defendants who were under the age of eighteen when they committed a capital offense.
13. Id. at *1 (Stevens, J., dissenting).
15. U.S. CONST. amend. VIII.
ated and proportioned to the offense." In reaching this conclusion, the Court noted that the cruel and unusual punishments clause is "progressive, and is not fastened to the obsolete but may acquire meaning as public opinion becomes enlightened by a humane justice." Chief Justice Warren rephrased this principle when he wrote that the "basic concept underlying the Eighth Amendment is nothing less than the dignity of man. . . . The Amendment must draw its meaning from the evolving standards of decency that mark the progress of a maturing society." Thus, the determination of whether a punishment is cruel and unusual must investigate whether that punishment is excessive and disproportionate to the crime as judged by the current societal standards of decency.

The Court has used societal standards of decency to find that the Eighth Amendment imposes substantive limitations on excessive punishments. Frequently, the Court has held that the Eighth Amendment imposes substantive limitations against the imposition of capital punishment for certain crimes or on certain classes of defendants. For example, the Court has held that death is an impermissibly excessive punishment for rape of an adult woman and also for a defendant who neither took life, attempted to take life, nor was deliberately indifferent to the taking of life. In Thompson v. Oklahoma, the Court found that the execution of fifteen-year-old murderers violated the Eighth Amendment. Most recently in Atkins, the Court found that the Eighth Amendment bars the execution of a mentally retarded defendant convicted of capital murder. Thus, there are various ways in which the death penalty can violate the Eighth Amendment. One of those ways, as in Thompson and Atkins, is determined by the characteristics of a class of defendants rather than the actus reus or mens rea of an individual defendant. Therefore, the methodology of using age as a substantive limitation on capital punishment is proper.

17. Weems v. United States, 217 U.S. 349, 367 (1910) (holding that a sentence of twelve years jailed in irons and at hard labor for the crime of falsifying records constituted cruel and unusual punishment).

18. Id. at 378 (citations omitted).


23. Thompson v. Oklahoma, 487 U.S. 815, 838 (1988) (plurality opinion) (holding that execution of defendant who was fifteen years old at commission of offense violates Eighth Amendment).

III. The Juvenile Death Penalty Before Atkins: Thompson, Stanford and Today

Of the approximately 20,000 known legal executions in American history, at least 365 of them have been for crimes committed by persons under the age of eighteen.\(^{25}\) The first such execution took place in 1642; the last occurred when Texas executed Patterson in 2002.\(^{26}\) Twenty-one of the 365 juvenile executions have occurred in the modern period of capital punishment—since the Supreme Court's decision in \textit{Furman v. Georgia}.\(^{27}\) The United States Supreme Court has directly addressed the constitutionality of the juvenile death penalty in two cases: \textit{Thompson v. Oklahoma} and \textit{Stanford v. Kentucky}.\(^{28}\)

During the early morning of January 23, 1983 fifteen-year-old William Wayne Thompson ("Thompson") and three others killed Thompson's former brother-in-law Charles Keene ("Keene"), apparently in retaliation for physical abuse Keene had inflicted on Thompson's sister.\(^{29}\) Thompson shot Keene, kicked him in the head, slit his throat, chained the body to a concrete block and then disposed of it in the Washita River.\(^{30}\) The State of Oklahoma tried Thompson as an adult and a jury convicted him and sentenced him to death.\(^{31}\) The United States Supreme Court granted certiorari to determine whether a death sentence for a fifteen-year-old offender violates the Eighth Amendment.\(^{32}\) A plurality of four justices found that such an execution contravened evolving standards of decency as indicated by the prohibition of the practice by legislatures and the reluctance of juries to impose such sentences.\(^{33}\) The plurality also noted that the negative opinions of the international community, professional and religious organizations, and the American public indicated that the execution of fifteen-year-old offenders was contrary to the current standard of decency.\(^{34}\) Accordingly, the plurality found that the execution of a defendant who was

\(^{25}\) Streib, supra note 7, at 2.

\(^{26}\) Id.; see also Liptak, supra note 1.

\(^{27}\) \textit{Furman v. Georgia}, 408 U.S. 238 (1972) (per curium) (holding that Georgia's death penalty statute violated the Eighth and Fourteenth Amendments and implying that all other death penalty statutes were unconstitutional).

\(^{28}\) \textit{Stanford v. Kentucky}, 492 U.S. 361, 372-73 (1989) (holding that the Eighth Amendment does not prohibit the execution of offenders sixteen-years-old or older). Ironically, the defendant in this case is the same individual whose appeal for an original writ of habeas corpus was denied by the Supreme Court in October, 2002, thirteen years after it first affirmed his death sentence. See \textit{Stanford}, 2002 WL 984217, at *1.

\(^{29}\) \textit{Thompson}, 487 U.S. at 819.

\(^{30}\) Id.

\(^{31}\) Id.

\(^{32}\) Id. at 818-19.

\(^{33}\) Id. at 822-23.

\(^{34}\) Id. at 830.
fifteen at the time of his offense violated the Eighth Amendment. Concurring in the judgment, Justice O'Connor found Thompson's execution improper on the narrower grounds that Oklahoma's capital sentencing statute did not express any minimum age at which capital punishment would be improper. This absence indicated that the Oklahoma Legislature permitted the execution of fifteen-year-olds "without the earmarks of careful consideration that [the Court has] required for other kinds of decisions leading to the death penalty." Thus, Thompson holds that a state constitutionally may not sentence to death an offender below the age of sixteen unless the state specifies some minimum age below which that penalty cannot be imposed. No state permits executions of those below the age of sixteen and Thompson is generally understood to mean that the death penalty is unconstitutional for those younger than sixteen.

One year after Thompson, the Court considered whether death sentences for sixteen and seventeen-year-old offenders violated the Eighth Amendment in Stanford, a consolidated appeal of two cases. In the first case, seventeen-year-old Kevin Stanford ("Stanford") and an accomplice robbed a gas station, raped and sodomized the attendant, and shot her twice in the head. Kentucky tried Stanford as an adult and sentenced him to death. The second case involved sixteen-year-old Heath Wilkins, sentenced to death in Missouri for killing a cashier in the course of robbing a convenience store. The United States Supreme Court upheld both sentences and found that the Eighth Amendment does not prohibit the death penalty for crimes committed by those sixteen years old or older. The Court noted that the defendants must show, "not that 17 or 18 is the age at which most persons, or even almost all persons, achieve sufficient maturity to be held fully responsible for murder, but that 17 or 18 is the age before which no one can reasonably be held fully responsible." As in Thompson, the Court examined whether the actions of legislatures and juries indicated a national consensus and an evolving standard of decency against such executions. The Court found no national consensus because a majority of the states that permitted capital punishment also permitted the juvenile death penalty.

35. Thompson, 487 U.S. at 838.
36. Id. at 857 (O'Connor, J., concurring).
37. Id. (O'Connor, J., concurring).
39. Id. at 365.
40. Id. at 365-66.
41. Id. at 366.
42. Id. at 380.
43. Id. at 376.
44. Stanford, 492 U.S. at 369. The Court stated, "first among the objective indicia that reflect the public attitude toward a given sanction are statutes passed by society's elected representatives." Id. at 370 (internal citations and brackets omitted).
45. Id. at 370-71.
plurality of four justices also refused to examine the opinions of the international community or public opinion for indications of an evolving standard of decency and stated that socioscientific evidence could not "conclusively establish the entire lack of deterrent effect [on] and moral responsibility" of juvenile offenders. Justice O'Connor again issued a concurring opinion in which she stressed the Court's constitutional obligation "to judge whether the nexus between the punishment imposed and the defendant's blameworthiness is proportional."7

Thus, after Thompson and Stanford, the Eighth Amendment does not forbid the execution of sixteen and seventeen-year-old offenders. However, the justices clearly appear to agree on two principles: (1) "there is some age below which a juvenile's crimes can never be constitutionally punished by death;" and (2) this age should be located "in light of the evolving standards of decency that mark the progress of a maturing society." The standard of decency that permitted the execution of juvenile offenders has evolved from what it was thirteen years ago when Stanford was decided. This standard has evolved and must be re-examined. An analysis of the national consensus against the juvenile death penalty in light of the Court's decision in Atkins compels the determination that Stanford should be overruled, the juvenile death penalty is unconstitutional, and the sentences of these eighty-two offenders must be vacated.

IV. Atkins v. Virginia

At midnight on August 16, 1996, Daryl Reynard Atkins ("Atkins") and William Jones ("Jones") abducted and robbed Eric Nesbitt, took him to an isolated location and shot him eight times. Atkins and Jones both testified during Atkins's trial but each blamed the other for the killing. Atkins has an IQ of fifty-nine and, not surprisingly, the jury found Jones's testimony more coherent and credible, convicted Atkins, and sentenced him to death. The Supreme Court of Virginia affirmed the death sentence because it was "not willing to commute Atkins' sentence of death to life imprisonment merely because of his IQ score." The United States Supreme Court reversed, finding

46. _Id._ at 369 n.1, 378.
47. _Id._ at 382 (O'Connor, J., concurring) (internal quotations and citations omitted).
48. _Thompson_, 487 U.S. at 848 (O'Connor, J., concurring) (internal quotations and citations omitted).
49. Streib, supra note 7, at 7. Five states set the minimum age for the imposition of the death penalty at seventeen while seventeen states set that age at sixteen. _Id._
50. _Id._ at 11.
51. _Atkins_, 122 S. Ct. at 2244-45. The defense psychologist testified that Atkins had a full scale IQ of 59. _Id._ at 2245.
52. _Id._ at 2246 (quoting Commonwealth v. Atkins, 534 S.E.2d 312, 321 (Va. 2000)).
“that the Constitution ‘places a substantive restriction on the State’s power to take the life’ of a mentally retarded offender.”\(^\text{53}\) In reaching this conclusion, the Court relied on three lines of reasoning: (1) prevailing standards of decency forbid the execution of mentally retarded defendants; (2) mentally retarded defendants “do not act with the level of moral culpability that characterizes the most serious adult criminal conduct” and therefore do not warrant a death sentence; and (3) mentally retarded defendants are less capable of assisting in and securing the type of defense required in capital cases and therefore present an increased chance of death sentences being imposed on defendants who did not actually commit a capital offense.\(^\text{54}\)

V. Arguments from Atkins

Facts regarding juvenile offenders are directly analogous to the facts regarding mentally retarded offenders that supported the three lines of reasoning in Atkins. These facts compel the conclusion that executing juvenile offenders is cruel and unusual punishment. First, facts similar to those that demonstrated an evolving standard of decency against the execution of the mentally retarded also demonstrate such a standard against the execution of juvenile offenders. Second, juvenile offenders, like the mentally retarded, are less capable and less culpable than adult offenders and therefore do not warrant the most severe punishment of death. Third, juveniles possess characteristics similar to those of the mentally retarded that undermine the procedural safeguards that the Constitution requires for the imposition of the death penalty.

A. Evolving Standards of Decency

1. Legislative and Judicial Precedents on the Juvenile Death Penalty

The “clearest and most reliable objective evidence of contemporary values is the legislation enacted by the country’s legislatures.”\(^\text{55}\) Accordingly, the Atkins Court looked at legislative action as the main factor that determines whether a punishment is cruel and unusual.\(^\text{56}\)

[The large number of States prohibiting the execution of mentally retarded persons (and the complete absence of States passing legislation reinstating the power to conduct such executions) provides powerful evidence that today our society views mentally retarded offenders as categorically less culpable than the average criminal.\(^\text{56}\)]

53. Id. at 2252 (quoting Ford, 477 U.S. at 405).
54. Id. at 2244.
55. Penry v. Lynaugh, 492 U.S. 302, 331 (1989) (holding that the Eighth Amendment does not preclude the execution of the mentally retarded by virtue of their mental retardation alone).
56. Atkins, 122 S. Ct. at 2249.
Thus, if a large number of states proscribe the execution of juvenile offenders, that fact is an indication that society views such defendants as less culpable and that their executions would be cruel and unusual. In

_Atkins_, the Court found a national consensus indicated by the fact that thirty-one jurisdictions (thirty states and the federal government) banned the execution of the mentally retarded.

The number of states that ban the execution of juvenile offenders parallels the number of states that banned the execution of the mentally retarded. Additionally, the Supreme Court of the State of Washington judicially banned such executions. The federal government also sets the minimum age for the imposition of the death penalty at eighteen. Thus, twenty-eight states and the federal government forbid the execution of juvenile offenders. This number, although two short of the number of states in _Akins_, indicates a national consensus and a standard of decency against the juvenile death penalty.

The Court in _Akins_ noted that, in determining the national consensus, "[i]t is not so much the number of these States that is significant, but the consistency of the direction of change." Developments since _Stanford_ in 1989 have been

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57. _Id_. at 2248. _Stanford_ did not include non-death states in the calculation of states that did not permit the execution of the juvenile offenders because it found that these states had not considered what was the appropriate minimum age for the imposition of capital punishment. _Stanford_, 492 U.S. at 370 n.2. This reasoning is mistaken because a state that determines all forms of capital punishment are inappropriate necessarily determines that the juvenile death penalty is inappropriate. _Akins_ differed from _Stanford_ by including non-death states in the calculation of states that did not permit the execution of the mentally retarded. Therefore, in determining the existence of a national consensus, the _Akins_ rationale should apply and computations of states that ban the juvenile death penalty should include states that ban all forms of the death penalty.

58. The following states statutorily preclude death sentences for offenders under eighteen:
- California (CAL. PENAL CODE ANN. § 190.5(a) (West 1999));
- Colorado (COLO. REV. STAT. § 16-11-103 (Supp. 1996));
- Connecticut (CONN. GEN. STAT. § 53a-46a(b)(1) (2001));
- Illinois (720 ILL. COMP. STAT. ANN. § 5/9-9-1(b) (West Supp. 2002));
- Indiana (IND. CODE ANN. § 35-50-2-3(2) (Michie 2002));
- Kansas (KAN. STAT. ANN. § 21-4622 (1995));
- Maryland (MD. CODE ANN., CRIM. LAW § 2-202(b)(2)(b) (2002));
- Montana (MONT. CODE ANN. § 45-5-102(2) (2001));
- Nebraska (NEB. REV. STAT. § 28-105.01(1) (2000));
- New Mexico (N.M. STAT. ANN. §§ 28-6-1(A) (Michie Supp. 2000), 31-18-14(A) (Michie Supp. 2000));
- New York (N.Y. PENAL § 125.27(1)(b) (McKinney Supp. 2002));
- Ohio (OHIO REV. CODE ANN. §§ 2929.023 (West 1997), 2929.03 (West 1997));
- Oregon (ORE. REV. STAT. § 137.707 (2001));

59. State v. Furman, 858 P.2d 1092, 1103 (Wash. 1993) (en banc) (holding that juvenile court statute and death penalty statute allowed for possibility of executing offender under the age of sixteen in violation of _Thompson_ and that death sentence could not be imposed pursuant to the two statutes on offender under the age of eighteen.)


61. _Akins_, 122 S. Ct. at 2249.
uniformly against executing juvenile offenders. Montana raised its minimum death-eligible age to eighteen in 1999 and Indiana followed suit in 2002.\textsuperscript{62} When New York reinstated its death penalty in 1995, it set the minimum age at eighteen.\textsuperscript{63} Kansas’s 1994 enactment of the death penalty also set the minimum age for a death-eligible offender at eighteen.\textsuperscript{64} The Supreme Court of Washington effectively abolished the juvenile death penalty in 1993.\textsuperscript{65} In addition to the states that have forbidden juvenile executions since \textit{Stanford}, legislation to ban such executions has been introduced in ten other states.\textsuperscript{66} No state has sought or instituted legislation to lower the minimum age for capital offenders below eighteen.\textsuperscript{67} These facts indicate that the standard of decency has evolved consistently in a direction away from the execution of juvenile offenders.

In \textit{Atkins}, the Court attempted to distinguish the level of the national consensus against executing the mentally retarded from that of executing juvenile offenders by noting that, since 1988, eighteen states passed statutes proscribing the execution of the mentally retarded whereas only two states had raised the threshold age for the imposition of death.\textsuperscript{68} This analysis is mistaken for two reasons. First, it ignores both the decision of the Supreme Court of Washington and the fact that New York and Kansas forbade the practice when they instituted capital punishment statutes. Second, before 1988, no state banned the execution of the mentally retarded whereas twelve states had laws forbidding the execution of defendants who committed their crimes before the age of eighteen.\textsuperscript{69} That is, in 1988, the country was closer to a national consensus against the juvenile death penalty than it was to one against the execution of the mentally retarded. The new decisions of just a few states to ban juvenile executions raise the total of such states to parallel that of \textit{Atkins} and are enough to demonstrate a shift to a national consensus against that practice.

As further evidence of an evolving standard of decency, legislation prohibiting the juvenile death penalty “carries even greater force when it is noted that the legislatures that have addressed the issue have voted overwhelmingly in favor of the prohibition.”\textsuperscript{67} Legislatures that recently have addressed the proper age for a death eligible offender have voted overwhelmingly to set that age at eighteen. The vote against the juvenile death penalty in Indiana was 44-3 in the Senate and

\begin{itemize}
\item \textsuperscript{62} MONT. CODE ANN. § 45-5-102(2) (2001); IND. CODE ANN. § 35-50-2-3(2) (Michie 2002).
\item \textsuperscript{63} N.Y. PENAL LAW § 125.27(1)(b) (McKinney Supp. 2002).
\item \textsuperscript{64} KAN. STAT. ANN. § 21-4622 (1995).
\item \textsuperscript{65} \textit{Fieman}, 858 P.2d at 1103.
\item \textsuperscript{66} Streib, supra note 7, at 5. In the last two years, bills were proposed in the following states to raise the minimum age for capital offenders to eighteen: Arizona; Arkansas; Florida; Kentucky; Mississippi; Missouri; Nevada; Pennsylvania; South Dakota; and Texas. \textit{Id} at 6.
\item \textsuperscript{67} \textit{Id} at 6.
\item \textsuperscript{68} \textit{Atkins}, 122 S. Ct. at 2249 n.18.
\item \textsuperscript{69} \textit{Stanford}, 492 U.S. at 370 n.2.
\item \textsuperscript{70} \textit{Atkins}, 122 S. Ct. at 2249.
\end{itemize}
83-10 in the Assembly.\textsuperscript{71} The Montana prohibition passed 44-5 in the Senate and 85-15 in the Assembly.\textsuperscript{72} In 2002, the Florida Senate voted 34-0 to ban the juvenile death penalty but the House of Representatives did not vote on the measure before the end of the session; the Florida House of Representatives had approved the measure in 2001.\textsuperscript{73} The Texas House passed its bill 72-42 before the legislation stalled in the Senate.\textsuperscript{74} Similarly, the Supreme Court of Washington was unanimous in its decision that abolished the juvenile death penalty.\textsuperscript{75}

2. Scarcity of the Impression of the Juvenile Death Penalty

In \textit{Atkins}, the scarcity of executions of the mentally retarded was another factor that indicated the national consensus against the practice.

[It appears that even among those States that regularly execute offenders and that have no prohibition with regard to the mentally retarded, only five have executed offenders possessing a known IQ less than 70 since [1989]. The practice, therefore, has become truly unusual, and it is fair to say that a national consensus has developed against it.\textsuperscript{76}]

The small number of states that have executed juvenile offenders parallels that of states that have executed the mentally retarded. Only seven states have executed a juvenile since 1972 and only six states have done so since 1989.\textsuperscript{77} Furthermore, in states that have executed juvenile offenders, such executions are extremely rare. Georgia, Louisiana, Missouri, Oklahoma, and South Carolina each have executed only one juvenile offender.\textsuperscript{78} Only Texas and Virginia have executed more than one juvenile offender with Texas responsible for thirteen such executions and Virginia responsible for three.\textsuperscript{79} In other words, if Texas and Virginia are removed from the calculation, just five juvenile offenders have been executed in the United States since 1972.

\textsuperscript{71} Appellant's Suggestions as to the Applicability of \textit{Atkins} v \textit{Virginia} to the Issues in Mr. Simmons' Case, \textit{at} http://www.abanet.org/crimjust/juvjust/simmonsatkins.pdf (July 20, 2002), at 34 [hereinafter Appellant's Suggestions in Mr. Simmons' Case].

\textsuperscript{72} Id.

\textsuperscript{73} American Bar Association, \textit{The Juvenile Death Penalty in the United States}, \textit{at} http://www.abanet.org/crimjust/juvjust/jdpfactsheet02.pdf (July 2002) [hereinafter ABA Juvenile Death Penalty].

\textsuperscript{74} Appellant's Suggestions in Mr. Simmons' Case, supra note 71, at 34.

\textsuperscript{75} \textit{Furman}, 858 P.2d at 1093.

\textsuperscript{76} \textit{Atkins}, 122 S. Ct. at 2249 (footnote omitted).

\textsuperscript{77} Streib, supra note 7, at 3-4. Georgia, Louisiana, Missouri, Oklahoma, Texas, and Virginia have executed juvenile offenders since 1989. South Carolina executed seventeen-year-old J. Terry Roach in 1986.

\textsuperscript{78} Id. at 3-4. The single executions in these states were the first since 1957 for Georgia, 1948 for Louisiana, 1921 for Missouri, and 1948 for South Carolina. Before 1999, Oklahoma never had executed a juvenile offender. Id.

\textsuperscript{79} Id.
Additionally, death sentences by juries for juvenile offenders are scarce and this scarcity indicates a national consensus against the practice. Historically, death sentences have been rare for juvenile offenders. Delaware, Idaho, New Hampshire, South Dakota, Utah, and Wyoming have never sentenced to death, let alone executed, a juvenile offender despite permitting the imposition of such sentences. Three states are responsible for roughly half of the 219 juvenile death sentences since 1972. Juvenile death sentences comprised 2.7 percent of all death sentences in 2001 and 1.2 percent of all death sentences thus far in 2002. Presently there are eighty-two juvenile offenders on death row in only fourteen of the twenty-two states that permit the juvenile death penalty. Texas has the largest number of juvenile offenders on death row with twenty-eight, or one third of the total in the nation. Thus, death sentences for juvenile offenders are rare or unusual and occur only in a few, isolated states. The practice of these states does not indicate national acceptance of the juvenile death penalty, but rather directly contradicts the national consensus against it as is indicated by the practice of the many states that do not permit or do not impose such sentences.

Even in Virginia, the only state other than Texas to execute more than one juvenile offender, it is uncommon for a jury to sentence a juvenile to death. Virginia has sentenced only five juvenile offenders to death. Justice Hassell of the Supreme Court of Virginia dissented from the opinion upholding the sentence of Chauncey Jackson, the only sixteen-year-old offender among these five, because the sentence was "excessive and disproportionate" for killers of the defendant's age. Justice Hassell noted that nine other sixteen-year-old offenders had pleaded to or been convicted of capital murder but the death sentence

80. In Thompson, Justice Stevens noted that the scarcity of jury verdicts imposing death sentences on fifteen-year-old defendants indicated that the practice "is now generally abhorrent to the conscience of the community." Thompson, 487 U.S. at 832. Chief Justice Rehnquist also has noted that "data concerning the actions of sentencing juries . . . is a significant and reliable index of contemporary values . . . because of the jury's intimate involvement in the case and its function of 'maintaining a link between contemporary community values and the penal system.'" Atkins, 122 S. Ct. at 2253 (Rehnquist, C.J., dissenting) (internal quotations, citations and brackets omitted).

81. Streib, supra note 7, at 14-19.

82. Id. at 9. Fifty-six juveniles have been sentenced to death in Texas, thirty-one in Florida, and twenty-two in Alabama. Id.

83. Id. at 9.

84. Id. at 11.

85. Id. at 26.

86. Id. at 10. Virginia juries have sentenced the following five juveniles to death: Doug Chris Thomas (executed 2000), Dwayne A. Wright (executed 1998), Steve E. Roach (executed 2000), Chauncey Jackson (reversed 2000), Shermaine Johnson (reversed 2001, re-sentenced 2002, pending final sentencing October 2002). Id. at 18-20.

was imposed only in Jackson’s case. In addition to the cases noted by Justice Hassell, Virginia juries have imposed life sentences on at least three additional juvenile offenders after convicting them of capital murder. The life sentences of these twelve juveniles indicate that, even in the state with the second highest number of executions of juvenile offenders, juries predominantly choose to sentence juveniles to life imprisonment rather than death.

3. Additional Factors Indicating that the Juvenile Death Penalty Contradicts the Standard of Decency
   a. International Norms

The United States Supreme Court has found that the opinion of the international community is relevant to the determination of evolving standards of decency. International opinion is relevant to a national consensus because the consistency of that opinion “with the legislative evidence lends further support to the conclusion that there is a consensus among those who have addressed the issue.” The Atkins Court considered this factor and noted that “within the world community, the imposition of the death penalty for crimes committed by mentally retarded offenders is overwhelmingly disapproved.” World opinion indicates the same overwhelming disapproval of the juvenile death penalty. Presently, the United States is one of just three nations that support the juvenile death penalty. The other two are Iran and the Democratic Republic of Congo.

In the last ten years, China, Pakistan and Yemen have joined the vast majority of

88. Id. at 555-57.
90. Atkins, 487 U.S. at 830.
91. Id. Other United States Supreme Court cases have recognized the relevance of international opinion to determining whether a punishment is cruel and unusual. See Edwards, 458 U.S. at 796-97 n.22; Coker, 433 U.S. at 596 n.10; Trop, 356 U.S. at 103.
92. Id. The relevance of these factors indicates a return to the Thompson rationale and a move away from the Stanford rationale that found these factors inapposite.
nations prohibiting the execution of juvenile offenders.94 Furthermore, the United States is the world’s leading executioner of juvenile offenders and has executed more juvenile offenders than all other nations combined.95 The European Union, United Nations, Mexico, France and other countries have condemned the use of the juvenile death penalty in the United States.96 Multilateral treaties also manifest the international community’s revulsion to the juvenile death penalty by expressly forbidding the practice.97 The United States has been almost alone in not supporting treaties that prohibit the execution of juvenile offenders. The United States and Somalia are the only countries that have not ratified the United Nations Convention on the Rights of the Child which prohibits the execution of juvenile offenders.98 Furthermore, the United States Senate ratified the International Covenant on Civil and Political Rights (“ICCPR”) but reserved the right to impose capital punishment for crimes committed by persons below eighteen years of age, contrary to Article six, paragraph five of the Covenant.99 Courts have refused to find that the ICCPR bars the execution of juvenile offenders, but the vast international support for the treaty indicates the near universal opposition to the juvenile death penalty.100 Indeed, the extent of the international opposition may indicate that a prohibition

94. ABA Juvenile Death Penalty, supra note 73. It is ironic that many of the nations that find the juvenile death penalty abhorrent are nations that the United States cites for civil rights abuses.
95. Id.
96. Id.
100. In Beazley, the Fifth Circuit rejected the defendant’s claims that the ICCPR prohibited the execution of juvenile offenders. Beazley, 242 F.3d at 267. The defendant contended that: (1) article 6(5) of the ICCPR voided the Texas statute that permitted death sentences for seventeen-year-old defendants; and (2) the Senate’s reservation to the ICCPR was void. Id. The court found these arguments were barred procedurally but concluded that the Senate’s reservation was valid. Id. Additionally, two state supreme courts held that the Senate’s reservation is valid and that the ICCPR does not supersede state law to prevent the execution of juvenile offenders. See Ex parte Pressley, 770 So.2d 143, 148 (Ala. 2000); Domingues v. State, 961 P.2d 1279, 1280 (Nev. 1998), cert. denied, 528 U.S. 963 (1999).
against the execution of those under eighteen has achieved jus cogens status as a peremptory, nonderogable norm of general international law from which the United States cannot exempt itself.101 Most importantly, the strength of the international opinion indicates that, among those who have addressed the issue, there is a consensus that eighteen is the proper minimum age for a capital offender.

b. Opinion of Professional and Religious Organizations and Polling Data

Atkins also considered the opinions of religious, social and professional organizations with germane expertise as indicative of a national consensus.102 Numerous organizations oppose the juvenile death penalty. The American Bar Association has adopted a resolution opposing the juvenile death penalty.103 Similarly, the American Law Institute in § 210.6 of the Model Penal Code proposed excluding juvenile offenders from the death penalty; the commentary notes that “civilized societies will not tolerate the spectacle of the execution of children.”104 In June of 2001, the Constitution Project, a group that includes advocates and opponents of capital punishment, released a report that included a recommendation to end the juvenile death penalty.105 Other professional organizations opposing the juvenile death penalty include: the American Psychiatric Association, the American Academy of Child and Adolescent Psychiatry, the American Society for Adolescent Psychiatry, the National Mental Health Association, the Children’s Defense Fund, the Center on Juvenile Criminal Justice, the Child Welfare League of America, the Juvenile Law Center and the Urban League.106 Numerous religious organizations also oppose the juvenile death penalty.

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101. Jus cogens is defined as a "mandatory norm of general international law from which no two or more nations may exempt themselves or release one another." BLACK'S LAW DICTIONARY 864 (7th ed. 1999). See, e.g., Siderman de Blake v. Republic of Argentina, 965 F.2d 699, 717 (9th Cir. 1992) (holding that the prohibition against torture had achieved jus cogens status). See Christian A. Levesque, Note, The International Covenant on Civil and Political Rights: A Primer for Raising a Defense Against the Juvenile Death Penalty in Federal Courts, 50 AM. U.L. REV. 755, 765-66 (2001) (describing the applicability of the jus cogens doctrine for raising a defense to the juvenile death penalty).

102. Atkins, 122 S. Ct. at 2249 n.21.

103. American Bar Association, Summary of Action of the House of Delegates 17 (1983 Annual Meeting). "Be it resolved that the American Bar Association opposes, in principle, the imposition of capital punishment upon any person for any offense committed while under the age of eighteen (18).” Id.

104. MODEL PENAL CODE § 210.6, Commentary, 133 (1980).


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penalty including: the American Baptist Churches, American Friends Service Committee, American Jewish Committee, American Jewish Congress, Disciples of Christ, Mennonite Central Committee, General Assembly of the Presbyterian Church and the United States Catholic Conference. Moreover, opinion polling data indicate that the vast majority of Americans oppose the juvenile death penalty. A Gallup poll from May 2002 indicates that, despite seventy-two percent in favor of the death penalty overall, sixty-nine percent of Americans oppose the juvenile death penalty while only twenty-six percent support it. A poll by the Houston Chronicle reported similar results. Thus, legislative action, the scarcity of juvenile death sentences and executions, and the opinion of the international community, professional and religious organizations, and the American public demonstrate a resounding national consensus and a standard of decency that has evolved against the imposition of the juvenile death penalty.

B. The Juvenile Death Penalty Does Not Serve the Purposes of Capital Punishment

1. Juvenile Offenders Are Less Culpable Than Adult Offenders

"[T]he severity of the appropriate punishment necessarily depends on the culpability of the offender," and the United States Supreme Court will "set aside a death sentence because the petitioner's crimes [do] not reflect a consciousness materially more depraved than that of any person guilty of murder." Indeed, the Court followed this rationale in Atkins when it found that the reduced capabilities of the mentally retarded made them less culpable and therefore undeserving of death sentences.

Mentally retarded persons frequently know the difference between right and wrong and are competent to stand trial. Because of their impairments, however, by definition they have diminished capacities to understand and process information, to communicate, to abstract from mistakes and learn from experience, to engage in logical reasoning, to control impulses, and to understand the reactions of others.

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108. Atkins found that "polling data shows a widespread consensus among Americans... that executing the mentally retarded is wrong." Atkins, 122 S. Ct. at 2250 n.21.


110. Steve Brewer, Juvenile Cases: Just 1 in 4 in County Thinks Death Appropriate, HOUS. CHRON., Feb. 6, 2001, at 13, available at http://www.chron.com/cs/CD A/printstory.htm/metropolitan/816391 (last visited Nov. 14, 2002). "Among people who otherwise believe in capital punishment, just 26 percent said they would support executing someone who was a juvenile at the time of offense." Id.

111. Atkins, 122 S. Ct. at 2251 (internal citations and quotations omitted).
Their deficiencies do not warrant an exemption from criminal sanctions, but they do diminish their personal culpability.\textsuperscript{112} The national consensus against the juvenile death penalty likely indicates a recognition that juveniles, like the mentally retarded, do not possess the same level of knowledge, experience and self control as adults possess. The United States Supreme Court recognized these diminished capabilities of fifteen-year-olds in \textit{Thompson} when it noted that, "[i]nexperience, less education, and less intelligence make the teenager less able to evaluate the consequences of his or her conduct while at the same time he or she is much more apt to be motivated by mere emotion or peer pressure than is an adult."\textsuperscript{113} The Court has also stated that, "youth is more than a chronological fact. It is a time of life when a person may be the most susceptible to influence and psychological damage."\textsuperscript{114}

Recent physiological, social and psychological research supports the conclusion that these statements apply equally to sixteen and seventeen-year-old offenders. For example, one recent study indicated that juveniles engage in increased risk-taking behavior due to the developmental changes that take place in the brain during adolescence.\textsuperscript{115} In this study, researchers compared Magnetic Resonance Imaging scans of youths from the ages of eleven through seventeen to adults.\textsuperscript{116} The scans demonstrated that youths process emotional information in the amygdala, a region that guides impulse related behavior, whereas adults process the information in the frontal lobe, a region that conducts thought, planning and goal-directed behavior.\textsuperscript{117} Accordingly, the functional capabilities of the brains of juveniles may make them less able to control impulses and more prone to act on instinct. Additional factors negatively impact the decision-making ability of juveniles, making them less able to make reasoned decisions. Juveniles are more susceptible to peer influence than adults.\textsuperscript{118} Research indicates that juveniles take more health and safety risks than adults do by engaging in

\begin{itemize}
\item \textsuperscript{112} Id. at 2250-51 (footnote omitted).
\item \textsuperscript{113} \textit{Thompson}, 487 U.S. at 835.
\item \textsuperscript{114} \textit{Eddings v. Oklahoma}, 455 U.S. 104, 115-17 (1982) (vacating death sentence imposed without the individualized consideration of mitigating factors as required by the Eighth and Fourteenth Amendments). Eddings was sixteen years old at the time of his offense. The Supreme Court did not consider whether the death sentence was cruel and unusual because of Eddings's age but rather addressed the sentence's failure to consider the mitigating circumstances of the defendant's history of a difficult family and emotional disturbance. \textit{Id.} at 113 n.9.
\item \textsuperscript{115} \textit{Frontline, Inside the Teenage Brain, Interview With Deborah Youngian Todd} (PhD, Director of Neuropsychology and Cognitive Neuroimaging at Mclean Brain Imaging Center) \text{available at http://www.pbs.org/wgbh/pages/frontline/shows/teenbrain/interviews/todd.html} (last visited Nov. 11, 2002).
\item \textsuperscript{116} \textit{Id}
\item \textsuperscript{117} \textit{Id}
\item \textsuperscript{118} Elizabeth S. Scott & Thomas Grisso, \textit{The Evolution of Adolescence: A Developmental Perspective on Juvenile Justice Reform}, 88 J. CRIM. L. \\ & CRIMINOLOGY 137, 162 (1997).
\end{itemize}
behavior such as unprotected sex, drunk driving and criminal conduct. Furthermore, juvenile decision-making is overly focused on short-term rather than long-term consequences of the considered actions. Also, "the fact that delinquent behavior desists for most adolescents as they approach adulthood strongly suggests that criminal conduct, for most youths, is associated with factors peculiar to adolescence." Thus, these diminished capabilities are functions of age rather than characteristics of individual juveniles, and these limitations should make juveniles less culpable, as a class, than adults. These diminished capabilities of juveniles are directly analogous to the diminished capabilities of the mentally retarded that served to decrease their level of culpability as found by the Court in *Atkins*. Therefore, juveniles should be similarly less culpable and ineligible for the death penalty.

"[P]unishment should be directly related to the personal culpability of the criminal defendant" and if juveniles are less culpable than adults, they should face a less severe punishment. Various jurisdictions recognize that the diminished capabilities of juveniles lower their culpability and ability to act responsibly in many non-criminal contexts. "The reasons why juveniles are not trusted with the privileges and responsibilities of an adult also explain why their irresponsible conduct is not as morally reprehensible as that of an adult." Criminal laws also account for these reduced capabilities and hold juveniles less culpable. This fact is illustrated in the holdings of *Lockett v Ohio* and *Eddings v Oklahoma* and the capital sentencing statutes of many states that require juries to consider youth as a factor that mitigates a defendant's culpability.

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119. *Id.* at 163.
120. *Id.* at 164.
121. *Id.* at 172.
123. *Id.* at 823. For example, laws restrict a juvenile's ability to enter binding contracts, be found liable for torts, and to vote, hold office and serve on a jury. The Twenty Sixth Amendment requires states to permit eighteen-year-olds to vote. U.S. CONST. amend. XXVI. No state has lowered its voting age below eighteen. In no state may anyone below the age of eighteen serve on a jury. *Thompson*, 487 U.S. at 840-42.
124. *Id.* at 835.
126. 455 U.S. 104 (1982).
127. *Lockett v Ohio*, 438 U.S. 586 (1978) (holding that all aspects of the offender's character and record must be considered before imposing the death penalty); *Eddings*, 455 U.S. at 115-16; see VA. CODE ANN. § 19.2-264.4(B) (Michie 2000). Lockett's death sentence was improper in part because, under the Ohio capital sentencing statute, "consideration of defendant's . . . age, would generally not be permitted, as such, to affect the sentencing decision." *Lockett*, 438 U.S. at 608.
2. Deterrence and Retribution

The decreased culpability and capabilities of juveniles significantly impact the punitive purposes of capital punishment. The Atkins Court identified deterrence and retribution as the punitive purposes of capital punishment.\(^\text{128}\) The Court noted that, unless the imposition of the death penalty "measurably contributes to one or both of these goals, it is nothing more than the purposeless and needless imposition of pain and suffering, and hence an unconstitutional punishment."\(^\text{129}\) The Court struck down the execution of mentally retarded offenders in part because there was a "serious question" whether the social purposes of the death penalty were advanced by such executions.\(^\text{130}\)

"The theory of deterrence in capital sentencing is predicated upon the notion that the increased severity of the punishment will inhibit criminal actors from carrying out murderous conduct."\(^\text{131}\) In Atkins, the Court noted that the "cognitive and behavioral impairments" of the mentally retarded, including a "diminished ability to understand and process information, to learn from experience, to engage in logical reasoning, or to control impulses," made it less likely that a mentally retarded defendant would realize the possibility of the death penalty and be deterred by that possibility.\(^\text{132}\) The juvenile death penalty does not fulfill the purpose of deterrence because juveniles, as noted in Part V(B)(1), share many of the same cognitive and behavioral impairments as the mentally retarded. Specifically, the propensity of juveniles to act on impulse and their general failure to consider long-term consequences demonstrate that juveniles are not capable of being deterred because they either cannot or do not consider the possibility that their actions will result in a death sentence. As the Court noted in Thompson, because of these cognitive and behavioral impairments, "[t]he likelihood that the teenage offender has made the kind of cost-benefit analysis that attaches any weight to the possibility of execution is so remote as to be virtually nonexistent."\(^\text{133}\) Moreover, even if juveniles are capable of being deterred, the juvenile death penalty may not actually deter these offenders from committing murder because it is imposed so infrequently. In other words, the notion of the juvenile death penalty as an effective deterrent fails because it wrongly assumes that juveniles are deterred by the very few executions of sixteen and seventeen-year-old offenders that have occurred during the modern period of capital punishment.\(^\text{134}\)

\(^{128}\) Atkins, 122 S. Ct. at 2251.

\(^{129}\) Id. (internal quotations and citations omitted).

\(^{130}\) Id.

\(^{131}\) Id.

\(^{132}\) Id.

\(^{133}\) Thompson, 487 U.S. at 837.

\(^{134}\) Id. at 838. Furthermore, because juveniles commit such a small percentage of murders, any general deterrent value of capital punishment should not be affected by their exemption from capital punishment. Not putting juveniles to death would not incite adults to kill. Crime statistics
The juvenile death penalty may work retributive justice but such retribution is both excessive and ignores the penological purpose of reformation. Retribution is society's "interest in seeing that the offender gets his 'just desserts'— the severity of the appropriate punishment necessarily depends on the culpability of the offender." Capital punishment is appropriately severe only when a defendant's crime reflects "a consciousness materially more 'depraved' than that of any person guilty of murder." In *Atkins*, the Court stated that if "the culpability of the average murderer is insufficient to justify the most extreme sanction available to the State, the lesser culpability of the mentally retarded offender surely does not merit that form of retribution." This rationale applies equally in the case of the less culpable juvenile offender. Furthermore, in *Thompson*, Justice Stevens explained that the execution of a fifteen-year-old offender did not further the purpose of retribution "[g]iven the lesser culpability of the juvenile offender, the teenager's capacity for growth, and society's fiduciary obligations to its children." Retribution should not apply to juvenile offenders because society views, and social and psychological evidence demonstrates, that such offenders have the same lesser culpability that fifteen-year-old offenders had at the time of *Thompson*. Such a punishment, as Justice Stevens noted, would also ignore juveniles' capacity for growth and society's fiduciary obligations to juveniles.

C. Reduced Capabilities of Juveniles and Procedural Failings in Capital Prosecutions

The potential harm of an improper death sentence is tremendous because "the penalty of death is qualitatively different from a sentence of imprisonment, however long." Because the penalty is irreversible, "there is a corresponding difference in the need for reliability in the determination that death is the appropriate punishment in a specific case." Accordingly, the Constitution requires that death sentences be determined reliably. Death is never the appropriate penalty that the vast majority of murders are committed by those over eighteen. In 2000, juveniles committed 832 of 14,697, or 6.8 percent, of all murders and non-negligent manslaughters. Federal Bureau of Investigation, *Crime in the United States, Uniform Crime Report, Section II, Crime Index, Offenses Reported*, at 17 (2000) available at http://www.fbi.gov/ucr/cius_00/00crime2.pdf (last visited Nov. 11, 2002). If juvenile murderers are no longer death eligible, that portion of the 93.2 percent of murderers who kill in death penalty states, knowing the death penalty still applies to them, may still be deterred by that penalty.

137. *Atkins*, 122 S. Ct. at 2251.
140. *Id.* at 305.
sentence for a juvenile offender because such a reliable determination is not possible.

The high reversal rate of juvenile death sentences indicates the unreliability of such sentences.141 There have been 221 juvenile death sentences since the modern period of capital punishment began in 1972.142 Of these, eighty-two remain in force and are being litigated; final resolution has occurred in 139 cases, through execution, reversal or commutation.143 Executions occurred in twenty-one of the finally resolved cases and two juvenile death sentences were commuted.144 One hundred sixteen juvenile death sentences have been reversed.145 Therefore, the reversal rate for juvenile death sentences is eighty-three percent.146 This high rate demonstrates that the vast majority of juvenile offender death sentences have been imposed wrongly.

The constitutionally required reliability is absent from juvenile death sentences because juvenile defendants, like the mentally retarded, are less capable of assisting in the conduct of an adequate defense. In Atkins, the Court noted that the reduced capacity of mentally retarded offenders created the "risk that the death penalty will be imposed in spite of factors which may call for a less severe penalty."147 Constitutional protections serve to ensure that the death penalty is not imposed when a less severe punishment is appropriate but the cognitive and behavioral impairments that make juveniles less culpable also make them less capable of understanding and invoking these safeguards. For example, research shows that juveniles have trouble understanding Miranda warnings.148 Juveniles waive their rights to silence and counsel and make statements regarding suspected felonies approximately ninety percent of the time as compared to approximately sixty percent of the time for adult suspects.149 If juveniles cannot understand and invoke their constitutional rights then procedural safeguards are absent, the chances for fair trials decrease while the chance of mistaken convictions increase and the reliability that the Constitution requires of death sentences becomes an impossibility.

In addition, the inability of mentally retarded defendants to understand and invoke their constitutional rights led to another fact that indicated the cruel and
unusual nature of death sentences for mentally retarded offenders: the “disturbing number” of exonerated death row inmates including “mentally retarded persons who unwittingly confessed to crimes that they did not commit.”¹⁵⁰ These “disturbing” false confessions also frequently occur with juvenile suspects. For example, sixteen-year-old Johnny Ross confessed to a capital rape charge and was sentenced to death in Louisiana in 1975.¹⁵¹ DNA evidence cleared Ross in 1980.¹⁵² In 1986, seventeen-year-old Marcellius Bradford agreed to testify against co-defendants in a murder/rape case in exchange for a twelve-year sentence. DNA evidence exonerated all defendants in 2001.¹⁵³ Seventeen-year-old Mario Hayes confessed to a murder in 1996 but was acquitted at trial after jail records indicated that he had been incarcerated at the time of the murder.¹⁵⁴ Sixteen-year-old Don Olmetti spent two years in jail after he confessed to shooting and killing a woman but Illinois ultimately dropped the murder charge because he had an alibi.¹⁵⁵ A final example of this problem brings us back to the case of Toronto Patterson.

Patterson signed two different statements during his interrogation.¹⁵⁶ In the first, he admitted to being present at the crime scene but identified two other men as the probable killers.¹⁵⁷ Patterson claimed that, after the first statement, the detective yelled and spit at him, struck him in the head and lied to him about evidence that the police had found.¹⁵⁸ Patterson asked to see a lawyer and to talk to his grandmother but was denied.¹⁵⁹ He cried throughout the second interrogation.¹⁶⁰ The detective wrote the second statement in which Patterson confessed to killing his cousins and Patterson did not read it until after he signed it.¹⁶¹ At trial, the judge denied Patterson’s attempt to call a witness who, in a different case, had been coerced into giving two false statements by the same detective.¹⁶²

¹⁵⁰. Akira, 122 S. Ct. at 2252 n.25.
¹⁵⁷. Id.
¹⁵⁸. Id. at *7.
¹⁵⁹. Id.
¹⁶⁰. Id.
¹⁶¹. Id.
¹⁶². Patterson, 2001 WL 520811, at *5.
Absent this evidence, the jury believed the detective and convicted Patterson. Patterson’s second statement was the only time he wavered about his innocence. \(^\text{163}\) It seems probable that this seventeen-year-old boy was executed because of a confession, obtained while he was crying and asking for his grandmother, that he neither wrote nor read before signing.

V. Conclusion

In *Atkins*, the United States Supreme Court declared that the execution of the mentally retarded violated the Eighth Amendment. The Court determined that an evolving standard of decency demonstrated that the practice was cruel and unusual punishment. The Court also found that the diminished capacities of mentally retarded defendants decreased their culpability, making the death penalty unwarranted. Also, because of these characteristics, the execution of the mentally retarded did not further any penological purpose of capital punishment and could be carried out only at great risk of a mistaken execution. These same facts support a prohibition against the juvenile death penalty. The actions of state legislatures and juries and the opinions of the international community, professional and religious organizations, and the American public illustrate an evolving standard of decency and national consensus against the practice. Juvenile offenders are less culpable than adult offenders and, therefore, do not deserve a punishment that is reserved for only the most morally blameworthy murderers. Juveniles possess limited knowledge and experience, act on impulse and disregard long-term consequences in a manner that subjects them to a grave risk of execution when they are innocent or their crimes do not rise to the capital level. These facts compel the determination that the juvenile death penalty is unconstitutional and that another execution of a juvenile offender would be one more too many. The dissenting justices of *Patterson* and *In re Stanford* recognize this fact. It is time to reconsider *Stanford* and find the shameful practice of the juvenile death penalty unconstitutional.

\(^{163}\) American Bar Association Network, *Juvenile Death Penalty*, Toronto Patterson, supra note 2.
CASE NOTES:
United States Supreme Court