

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

The State of South Carolina,

-vs-

Christopher Frank Pittman,
Defendant.

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IN THE COURT OF GENERAL SESSIONS
Indictment Nos. 2004-GS-12-571, 572

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**DEFENDANT'S POST-ARGUMENT BRIEF ABOUT
"EVOLVING STANDARDS" IN LAW, SCIENCE & SOCIETY**

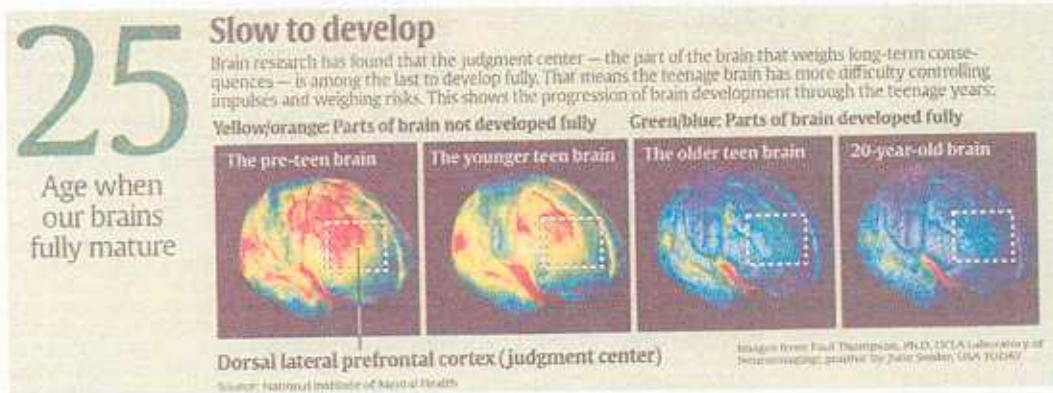
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Law: *[T]oday our society views juveniles, . . . as "categorically less culpable than the average criminal."*
— (Roper v. Simmons)

Science:



Society: **16** Is it too young to drive a car?

Ironically enough, on the very day that this Court convened to hear arguments concerning Chris Pittman's Motion to Reduce Sentence, the United States Supreme Court handed down its decision in *Roper v. Simmons*.¹ Following the arguments, the Court was kind enough to give us the opportunity to file a short, supplemental, post-argument brief addressing the "evolving standards of decency" as reflected in *Roper* and elsewhere. We appreciate the opportunity, and will try not to belabor the point with the Court.

"Evolving Standards" - an Overview

"The basic concept underlying the Eighth Amendment is the dignity of man . . . The Amendment must draw its meaning from the evolving standards of decency that mark the progress of a maturing society."

—Chief Justice Earl Warren²

To give some perspective to this case, we suggest that the following be considered by the Court: Christopher Pittman is the *second youngest person in American history to be prosecuted in an adult court*. The youngest is an 11-year old boy who was prosecuted for murder in 1999 in a Michigan court³

The Court began the arguments with a query about *State v. Standard*, and a very reasonable query, "where is the evidence of evolving standards?" The evidence is all about us. Let's begin with the President:

"But we must have goals beyond just punishment. We must, at the deepest level, embrace our youth instead of fearing them."

—President George W. Bush, July 30, 2001

¹ ___ U.S. ___, 2005 WL 464890 (U.S. March 1, 2005).

² *Trop vs. Dulles* (1958), 356 U.S. 86

³ *Christian Science Monitor*, "Justice for Nathaniel," January 18, 2000.

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Indeed, in another touch of irony, the edition of *USA Today* which came out on the day after the hearing points the way. The main front page of the paper reports on *Roper*. It points out, as we had previously argued, that the **trend** in recent years has been towards greater recognition that kids are kids. But the cover story on the front page of the “Money” section is also about teens. Teen driving. The query is posed, “is 16 too young to drive a car?”

The common denominator of law and society is **science**. The color picture on the front page of this brief, scanned from the cover of *USA Today*, depicts graphically what Dr. Atkins described in her testimony before this Court. It shows, in living color, that there is a dramatic, physical difference between Chris Pittman’s 12 year old, pre-teen brain, a “younger teen” brain, and an “older teen” brain. And these are not simply pretty color pictures that have no relevance to the issues at hand. Dr. Giedd, the NIH researcher who has analyzed 4000 brain scans from 2000 volunteers, explains that the area in Chris’s brain “that’s slow to turn blue – which represents development over time – is the right side just over the temple. . . . The underdeveloped area is called the dorsal lateral prefrontal cortex. The underdeveloped blue area” is that part that controls “impulse and decisions.” It is the “executive function” area of the brain—where judgment is exercised and decisions are made. It’s the area of the brain that the Court is using at this second in reading and analyzing this brief.

Although *USA Today* reported the scientific findings, they are hardly the only source. Many academics have noted these developments. For example, the article attached hereto from the January 2004 publication by the Juvenile Justice Center of the ABA, on [Adolescence, Brain Development and Legal Culpability](#) explains the “[r]esearchers at Harvard Medical School, the National Institute of Mental Health, UCLA and others, are collaborating to ‘map’ the development of the brain from childhood to adulthood and examine its implications.” The UCLA’s website, www.loni.ucla.edu/%7Eethompson/DEVEL/dynamic.html, actually contains a video sequence of the

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developing brain shots depicted on the front page of this Brief and attached hereto as an Appendix. They, too, provide graphic illustration of the point.

That is the science of the matter. To transmute it to legal terms, the underdeveloped part of the 12-year old brain is that portion that gives one capacity (a) to form malice or other criminal intent, and (b) to waive one's Miranda rights.

Even now, at the age of 15, Chris Pittman is not legally old enough to drive, to vote, to buy alcohol, to marry, or to serve in the military service. And at 12, he could not even watch PG-13 movies. But, notwithstanding these facts, the State of South Carolina (a) tried him as an adult, (b) used a confession obtained without parental or attorney advice against him, and then (c) sentenced him to a **mandatory, minimum** prison term of 30 years! With respect, at this juncture of the case, we submit that this punishment, as applied to Chris Pittman, is unconstitutionally excessive.

Kids Are Kids

The fact is that kids are kids. They are not mini-adults.

The legal system could and should have recognized this in one or more of three different ways. First and foremost, it should have recognized it by keeping him in Family Court where he belonged. Defense counsel in this case firmly believe that the decision to "waive" Pittman up to adult court was a serious, fundamental error. But, as this Court has written, at this juncture, this is a "question for appeal."

Second, the system can recognize his minority via the long-standing "presumption of incapacity" which attaches to children under the age of 14. Defense counsel believe that, because the State of South Carolina adduced absolutely no evidence to rebut this presumption, then a

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directed verdict should have been granted on this ground. But our motion in this regard was denied, so that, too, is now an issue “for appeal.”⁴

This leaves only one viable way for this Court to address the issue, i.e., by a modification of Pittman’s sentence. That course of action depends on the Eighth Amendment.

Excessive Punishment: The Crux of the Problem

Fundamental to an understanding of why sentencing Christopher Pittman as an adult violates the Eighth Amendment is a recognition of the very limited choices that his lawyers and the court had available to them. At the time of this trial, the only established defense available under South Carolina law to account for the effect of (1) his age and (2) the ingestion of Zoloft® on Pittman’s mental condition was insanity. Using the *M’Naughten* test, which South Carolina has adopted, the standard for insanity is whether Pittman knew the difference between right and wrong: an extremely difficult burden. If Pittman knew the difference between right and wrong, but was unable to conform his conduct to what he knew to be “right” – an easier burden and one that arguably describes his actual mental condition better than *M’Naughten* test – he fell under the verdict of “guilty but mentally ill [“GBMI”].” Given that Pittman’s condition was temporary rather than permanent – both with respect to his age and the effect of Zoloft® – the court understandably and admirably wrestled with how to fashion an appropriate jury instruction. The court presented an instruction that defined “involuntary intoxication” as incorporating the *M’Naughten* standard. Because of South Carolina precedent on GBMI, the court rejected Pittman’s plea that “involuntary intoxication” should include “inability to conform conduct,” and defined it solely using the inability to distinguish right from wrong. The choice for this 12-year old boy was thus: (1) prove that his age

⁴ The Court did give a very fulsome jury instruction on the presumption.

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and/or his ingestion of Zoloft® rendered him incapable of distinguishing right from wrong, or (2) be guilty and subject to sentencing as an adult.

As the Court knows, the United States Supreme Court has compared the criminal culpability of juveniles with that of persons suffering from mental retardation. Quoting its decision in *Atkins v. Virginia*, 536 U.S. 304, 122 S.Ct. 2242, 153 L.Ed.2d 335 (2002), the Court wrote last week that “[m]ental retardation . . . diminishes personal culpability even if the offender can distinguish right from wrong.” *Roper v. Simmons*, — U.S. —, 2005 WL 464890 at 10 (March 1, 2005).⁵

The jury in this case found that 12-year old Christopher Pittman was able to distinguish right from wrong. Because of his age (even without considering his ingestion of a mind-altering drug), the Supreme Court has held that he has diminished personal culpability for his actions. If this Court imposes an adult sentence on Pittman, it will wholly fail to account for his diminished personal culpability. The only remaining way to account for his diminished personal culpability is to modify his sentence.

Roper is Important, But at the Far Margin of Adolescence

Because of the timing of the *Roper* decision, it is tempting to focus the discussion on that opinion. The holding of *Roper*, however, is that it is unconstitutional to impose the death penalty⁶ on anyone under 18. Christopher Pittman was 12. The portions of *Roper* that are most relevant to

⁵ “It is beyond cavil that juveniles as a class are generally less mature, less responsible, and less fully formed than adults, and that these differences bear on juveniles’ comparative moral culpability.” *Roper v. Simmons*, — U.S. —, 2005 WL 464890 at 28 (March 1, 2005)(O’Connor, J., dissenting).

⁶ The Court has pointed out, and Pittman agrees, that death penalty cases are unique. Nonetheless, the underlying principles discussed in *Roper* and *Atkins* apply equally to non-capital cases. Excessive punishments are unconstitutional. There can be no argument that the Eighth Amendment invalidates excessive punishments in non-capital cases as well as in capital cases. *E.g.*, *Solem v. Helm*, 463 U.S. 277, 103 S.Ct. 3001, 77 L.Ed.2d 637 (1983)(life without parole was excessive punishment for passing a “no account” check for \$100, despite six prior felony convictions); *Robinson v. California*, 370 U.S. 660, 82 S.Ct. 1417, 8 L.Ed.2d 758 (1962)(90 days in jail was cruel and unusual punishment for the crime of being addicted to narcotics); *Weems v. U.S.*, 217 U.S. 349, 30 S.Ct. 544, 54 L.Ed. 793 (1910)(15 years at hard labor excessive punishment for crime of falsifying official document).

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this case are probably where six of the Supreme Court justices belittle the view of the Eighth Amendment as static, noting that:

It is by now beyond serious dispute that the Eighth Amendment's prohibition of "cruel and unusual punishments" is not a static command. Its mandate would be little more than a dead letter today if it barred only those sanctions--like the execution of children under the age of seven--that civilized society had already repudiated in 1791.

Roper at 22 (O'Connor, J., dissenting).⁷ Christopher Pittman was closer to 7 than to 18 at the time of his crime. Again, Justice O'Connor is insightful:

Surely there is an age below which no offender, no matter what his crime, can be deemed to have the cognitive or emotional maturity necessary to warrant the death penalty. But at least at the margins between adolescence and adulthood-- and especially for 17-year-olds such as respondent--the relevant differences between "adults" and "juveniles" appear to be a matter of degree, rather than of kind.

Roper at 29 (O'Connor, J., dissenting). Christopher Simmons was at the margin between adolescence and adulthood. In contrast, Christopher Pittman was not quite at the margin between childhood and adolescence.

Equally instructive is the Supreme Court's opinion in *Thompson v. Oklahoma*, 487 U.S. 815, 108 S.Ct. 2687, 101 L.Ed.2d 702 (1988), in which the Court held that children under the age of 16 could not be subject to the death penalty. "All of this legislation is consistent with the experience of mankind, as well as the long history of our law, that the normal 15-year-old is not prepared to assume the full responsibilities of an adult." 487 U.S. at 824-25. The bottom line of these cases is that: (1) children as a class are different than adults, and (2) as the age of the offender goes down (from 18), the level of constitutional scrutiny goes up. With the exception of the Michigan case mentioned earlier, Pittman has not found a case on point dealing with a child as young as 12.

⁷ "If the meaning of that Amendment had been frozen when it was originally drafted, it would impose no impediment to the execution of 7-year-old children today." *Roper* at 21 (Stevens, J., concurring)

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Standard Is Not Controlling

The Court has raised a concern regarding the South Carolina Supreme Court's opinion in *State v. Standard*, 351 S.C. 199, 569 S.E.2d 325 (2002). *Standard* does not control the disposition of this case.⁸ First, there is an obvious difference in that the defendant in that case was sentenced to life without parole for a crime he committed when he was 20 years old (the "triggering offense" under South Carolina's "Two Strikes" law was committed when he was 15, but the sentencing was for a second crime, committed at age 20), 569 S.E.2d at 327, whereas Christopher Pittman had no prior criminal history and committed his first and only crime when he was 12. More importantly, the South Carolina Supreme Court inadvertently mis-cited the principal case on which it rested its holding. *Compare:*

See Hawkins v. Hargett, 200 F.3d 1279 (10th Cir.1999), *cert. denied* 531 U.S. 830, 121 S.Ct. 83, 148 L.Ed.2d 45 (2000) (sentence of 100 years without parole for 13 year old defendant convicted of burglary, sodomy, rape, and robbery with a dangerous weapon);

Standard, 569 S.E.2d at 329 [emphasis added].

"It is also important to the analysis that Mr. Hawkins' prison sentence, while lengthy, will be shortened considerably by the availability of parole and "good time" credits. ... "[B]ecause parole is 'an established variation on imprisonment of convicted criminals,' " *Rummel*, 445 U.S. at 280-81, 100 S.Ct. 1133, a proper assessment of Mr. Hawkins' punishment cannot ignore the possibility that he will actually only serve roughly one-third of his sentence. *Hawkins v. Hargett*, 200 F.3d 1279, 1284 (10th Cir. 1999).

⁸ Even if *Standard* were on point, this Court would still have to address the Eighth Amendment in light of evolving standards of decency, as explained by Justice Stevens' short concurring opinion in *Roper*:

Perhaps even more important than our specific holding today is our reaffirmation of the basic principle that informs the Court's interpretation of the Eighth Amendment. If the meaning of that Amendment had been frozen when it was originally drafted, it would impose no impediment to the execution of 7-year-old children today. The evolving standards of decency that have driven our construction of this critically important part of the Bill of Rights foreclose any such reading of the Amendment. In the best tradition of the common law, the pace of that evolution is a matter for continuing debate; but that our understanding of the Constitution does change from time to time has been settled since John Marshall breathed life into its text. If great lawyers of his day--Alexander Hamilton, for example--were sitting with us today, I would expect them to join JUSTICE KENNEDY's opinion for the Court. In all events, I do so without hesitation.

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The South Carolina Supreme Court in *Standard* cited both *Hawkins* and *State v. Green*, 348 N.C. 588, 502 S.E.2d 819 (1998), *cert denied*, 525 U.S. 1111, 119 S.Ct. 883, 142 L.Ed.2d 783 (1999). Both of these cases adopt proportionality review of sentencing in a non-capital case.⁹ In conducting its proportionality review, the 10th Circuit focused on the defendant¹⁰:

Solem instructed courts to compare the gravity of an offense with the severity of the sentence by looking at "the harm caused or threatened to the victim or society, and the culpability of the offender." 463 U.S. at 292, 103 S.Ct. 3001. **Culpability can be weighed by examining factors such as the defendant's motive and level of scienter, among other things.** *Id.* at 293-94, 103 S.Ct. 3001.

200 F.3d at 1283 [emphasis added]. The 10th Circuit focused on the defendant's age (13 years, 11 months); the severity of his crime and his eligibility for parole. Likewise, the North Carolina Supreme Court analyzed the defendant's Eighth Amendment claims by examining whether the punishment was grossly disproportionate to the crime, considering his chronological age (13 years, 11 months); his "life experience, knowledge level, psychological development, criminal familiarity, and sophistication"; "his previous record"; and his eligibility for parole ("[d]efendant would have been subject to release only four years after his conviction, at the time he achieved eighteen years of age."). 502 S.E.2d at 832.

⁹ The Supreme Court's opinion in *Roper* is also important for its emphasis that Eighth Amendment jurisprudence involves a proportionality analysis, i.e. whether the punishment is proportional to the crime. *Roper* at 17-18 ("Last, to the extent *Stanford* was based on a rejection of the idea that this Court is required to bring its independent judgment to bear on the proportionality of the death penalty for a particular class of crimes or offenders, *id.*, at 377-378, 109 S.Ct. 2969 (plurality opinion), it suffices to note that this rejection was inconsistent with prior Eighth Amendment decisions, *Thompson*, 487 U.S., at 833-838, 108 S.Ct. 2687 (plurality opinion); *Enmund*, 458 U.S., at 797, 102 S.Ct. 3368; *Coker*, 433 U.S., at 597, 97 S.Ct. 2861 (plurality opinion). It is also inconsistent with the premises of our recent decision in *Atkins*. 536 U.S., at 312-313, 317-321, 122 S.Ct. 2242."). *Accord*, *Roper* at 23 (O'Connor, J., dissenting). Justice Scalia, who wrote the plurality opinion on *Stanford* and a stinging dissent in *Roper*, has taken a dim view of proportionality analyses.

¹⁰ See also *Enmund v. Florida*, 458 U.S. 782, 800-01, 102 S.Ct. 3368, 73 L.Ed.2d 1140 (1982) ("As for retribution as a justification for executing *Enmund*, we think this very much depends on the degree of *Enmund*'s culpability--what *Enmund*'s intentions, expectations, and actions were. . . . For purposes of imposing the death penalty, *Enmund*'s criminal culpability must be limited to his participation in the robbery, and his punishment must be tailored to his personal responsibility and moral guilt.")

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Although the courts in both cases found that there was no Eighth Amendment violation, the case at bar presents a different situation: (1) Pittman was only 12 at the time of his crimes, and even one year makes a huge developmental difference; (2) he was under the influence of a mind-altering drug at the time; (3) he has no prior criminal record whatsoever; (4) he has no possibility of parole; and (5) recent developments in science have further illuminated just how underdeveloped a 12-year old's brain is, especially with respect to the capacity to form criminal intent.

Conclusion

As legal, scientific and societal concerns about juvenile justice converge, there is no question that the trend is to recognize and act on the physiological differences between children and adults, the effect of those differences on judgment and behavior and the extent to which the less mature, developing members of our society are held accountable in the adult criminal justice system for what otherwise would be criminal behavior. The more that is learned about the developing human brain, the less support there is—in law and medicine—for integrating the juvenile and adult criminal justice systems. The defense would respectfully suggest to the Court that a sentence of thirty years without parole is contrary to the evolving standards of decency which were identified, discussed and applied by the United States Supreme Court in the *Roper* decision.

Respectfully submitted,

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Certificate of Service

The undersigned hereby certifies that this pleading was served, this 8th day of March, 2005, to all known counsel:

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Paul Waldner

Cruel and Unusual Punishment: The Juvenile Death Penalty **Adolescence, Brain Development and Legal Culpability**

"[They] 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 mistakes and learn from experience, to engage in logical reasoning, to control impulses, and to understand the reactions of others.... Their deficiencies do not warrant an exemption from criminal sanctions, but they do diminish their personal culpability."

*Atkins v. Virginia, 536 U.S. 304, 318,
122 S.Ct. 2242, 2250 (2002)*

In 2002, the U.S. Supreme Court banned the execution of mentally retarded persons. This decision, *Atkins v. Virginia*, cited the underdeveloped mental capacities of those with mental retardation as a major factor behind the Justices' decision.

Adolescence is a transitional period during which a child is becoming, but is not yet, an adult. An adolescent is at a crossroads of changes where emotions, hormones, judgment, identity and the physical body are so in flux that parents and even experts struggle to fully understand.

As a society, we recognize the limitations of adolescents and, therefore, restrict their privileges to vote, serve on a jury, consume alcohol, marry, enter into contracts, and even watch movies with mature content. Each year, the United States spends billions of dollars to promote drug use prevention and sex education to protect youth at this vulnerable stage of life. When it comes to the death penalty, however, we treat them as fully functioning adults.

The Basics of the Human Brain

The human brain has been called the most complex three-pound mass in the known universe. This is a well deserved reputation, for this organ contains billions of connections among its parts and governs countless actions, involuntary and voluntary, physical, mental and emotional.

The largest part of the brain is the *frontal lobe*. A small area of the frontal lobe located behind the forehead, called the *prefrontal cortex*, controls the brain's most advanced functions. This

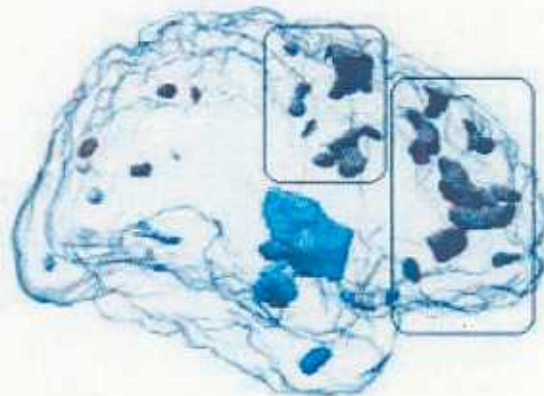
part, often referred to as the "CEO" of the body, provides humans with advanced cognition. It allows us to prioritize thoughts, imagine, think in the abstract, anticipate consequences, plan, and control impulses.

Along with everything else in the body, the brain changes significantly during adolescence. In the last five years, scientists, using new technologies, have discovered that adolescent brains are far less developed than previously believed.

New Technology, New Discoveries

Scientists are now utilizing advances in magnetic resonance imaging (MRI) to create and study three-dimensional images of the brain without the use of radiation (as in an x-ray). This breakthrough allows scientists to safely scan children over many years, tracking the development of their brains.¹

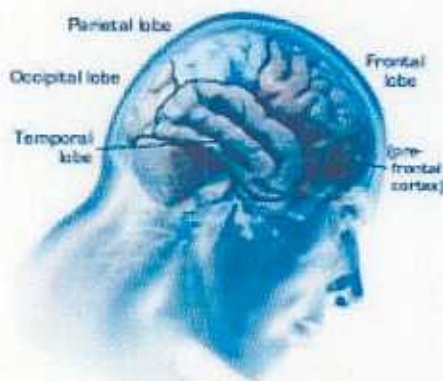
Researchers at Harvard Medical School, the National Institute of Mental Health, UCLA, and others, are collaborating to "map" the development of the brain from childhood to adulthood and examine its implications.



A three dimensional "map" showing portions of gray matter "pruned" from the brain between adolescence and adulthood. The dark portions in the two boxes indicate sections that will be discarded from the **frontal lobe**. The box on the far right indicates the **prefrontal cortex**, a subsection of the frontal lobe that controls judgment.

Image adapted from *Nature Neuroscience*.

Lobes of the Brain:



©2002 Hybrid Medical Animation

The scientists, to their surprise, discovered that the teenage brain undergoes an intense overproduction of *gray matter* (the brain tissue that does the “thinking”). Then a period of “pruning” takes over, during which the brain discards gray matter at a rapid rate.² This process is similar to pruning a tree: cutting back branches stimulates health and growth.

In the brain, pruning is accompanied by *myelination*, a process in which *white matter* develops. White matter is fatty tissue that serves as insulation for the brain’s circuitry, making the brain’s operation more precise and efficient.³

Researchers have carefully scrutinized the pace and severity of these changes and have learned that they continue into a person’s early 20s. Dr. Elizabeth Sowell, a member of the UCLA brain research team, has led studies of brain development from adolescence to adulthood. She and her colleagues found that the frontal lobe undergoes far more change during adolescence than at any other stage of life.⁴ It is also the last part of the brain to develop, which means that even as they become fully capable in other areas, adolescents cannot reason as well as adults: “[m]aturation, particularly in the frontal lobes, has been shown to correlate with measures of cognitive functioning.”⁵

Biology and Behavior

Jay Giedd, a researcher at the National Institute of Mental Health, explains that during adolescence the “part of the brain that is helping organization, planning and strategizing is not done being built yet.... It’s sort of unfair to expect [adolescents] to have adult levels of organizational skills or decision making before their brain is finished being built.”⁶

Dr. Deborah Yurgelun-Todd of Harvard Medical School has studied the relation between these new findings and teen behavior and concluded that adolescents often rely on emotional parts

of the brain, rather than the frontal lobe. She explains, “one of the things that teenagers seem to do is to respond more strongly with gut response than they do with evaluating the consequences of what they’re doing.”⁷

Also, appearances may be deceiving: “Just because they’re physically mature, they may not appreciate the consequences or weigh information the same way as adults do. So we may be mistaken if we think that [although] somebody looks physically mature, their brain may in fact not be mature.”⁸

This discovery gives us a new understanding into juvenile delinquency. The frontal lobe is “involved in behavioral facets germane to many aspects of criminal culpability,”⁹ explains Dr. Ruben C. Gur, neuropsychologist and Director of the Brain Behavior Laboratory at the University of Pennsylvania. “Perhaps most relevant is the involvement of these brain regions in the control of aggression and other impulses.... If the neural substrates of these behaviors have not reached maturity before adulthood, it is unreasonable to expect the behaviors themselves to reflect mature thought processes.

“The evidence now is strong that the brain does not cease to mature until the early 20s in those relevant parts that govern impulsivity, judgment, planning for the future, foresight of consequences, and other characteristics that make people morally culpable.... Indeed, age 21 or 22 would be closer to the ‘biological’ age of maturity.”¹⁰

Other Changes in the Body

In addition to the profound physical changes of the brain, adolescents also undergo dramatic hormonal and emotional changes. One of the hormones which has the most dramatic effect on the body is testosterone. Testosterone, which is closely associated with aggression, increases tenfold in adolescent boys.¹¹

“Just because they’re physically mature, they may not appreciate the consequences or weigh information the same way as adults do. So, [although] somebody looks physically mature, their brain may in fact not be mature.”

Deborah Yurgelun-Todd, PhD
Brain Imaging Laboratory,
McClean Hospital
Harvard University Medical School

Emotionally, an adolescent “is really both part child and part adult,”¹² explains Melvin Lewis, an expert in child psychiatry and pediatrics at Yale University School of Medicine. Normal development at this time includes self-searching, during which the adolescent tries to grow out of his or her childlike self. This change is complicated by the conflict between an adolescent’s new sense of adult identity and remaining juvenile insecurities.

The behaviors associated with this process include self-absorption, a need for privacy, mood swings, unique dress, and escapism, such as video games, music, and talking on the phone, as well as riskier behaviors, such as drug use or sexual activity.¹³

Childhood Abuse and Violence

In addition to this context of change and volatility, research shows that abusive childhood experiences can trigger violent behavior. The American Academy of Pediatrics has identified several risk factors that can spark violence in adolescents, including being witness to domestic violence or substance abuse within the family, being poorly or inappropriately supervised, and being the victim of physical or sexual assault.¹⁴

Researcher Phyllis L. Crocker of Cleveland-Marshall College of Law has written that "the nexus between poverty, childhood abuse and neglect, social and emotional dysfunction, alcohol and drug abuse and crime is so tight in the lives of many capital defendants as to form a kind of social historical profile."¹⁵

"The evidence now is strong that the brain does not cease to mature until the early 20s in those relevant parts that govern impulsivity, judgment, planning for the future, foresight of consequences, and other characteristics that make people morally culpable...."

Ruben Gur, MD, PhD
Director, University of
Pennsylvania Medical Center

Dr. Chris Mallett, Public Policy Director at Bellefaire Jewish Children's Bureau in Ohio, recently completed the most comprehensive study of traumatic experiences in the lives of death row juvenile offenders to date.¹⁶ He found that:

- 74% experienced family dysfunction¹⁷
- 60% were victims of abuse and/or neglect¹⁸
- 43% had a diagnosed psychiatric disorder¹⁹
- 38% suffered from substance addictions²⁰
- 38% lived in poverty²¹

More than 30% of death row juvenile offenders had experienced six or more distinct areas of childhood trauma with an overall average of four such experiences per offender. Most children and adolescents do not face even one of these defined areas of difficulty.²² Mallett also found that such mitigating evidence was presented to juries in fewer than half of the offenders' trials.²³

Mallett's research confirmed findings in previous studies. In 1992, researchers found that two-thirds of all juveniles sentenced to death had backgrounds of abuse, psychological disorders, low IQ, indigence, and/or substance abuse.²⁴



Dr. Jay Giedd of the National Institute of Mental Health. Image courtesy of PBS Frontline report *Inside the Teenage Brain*.

In 1987, an investigation into 14 juveniles on death row²⁵ (40% of the total at the time) revealed that nine had major neuropsychological disorders²⁶ and seven had psychotic disorders since early childhood.²⁷ All but two had IQ scores under 90.²⁸ Only three had average reading abilities, and another three had learned to read only after arriving on death row.²⁹ Twelve reported having been physically or sexually abused, including five who were sodomized by relatives.³⁰

Delinquency Link

The turmoil often associated with adolescence can result in poor decisions and desperate behaviors. For example, studies have found that 20 to 30% of high school students consider suicide. Suicide is the third-leading cause of death among teenagers, occurring once every two hours, or over 4,000 times a year, according to the U.S. Surgeon General.³¹ Approximately 30% of youths reported using an illicit drug at least once during their lifetime, and 22.2% reported using an illicit drug within the past year.³²

Conclusion

New discoveries provide scientific confirmation that the teen years are a time of significant transition. They shed light on the mysteries of adolescence and demonstrate that adolescents have significant neurological deficiencies that result in stark limitations of judgment. Research suggests that when compounded with risk factors (neglect, abuse, poverty, etc.), these limitations can set the psychological stage for violence.

These discoveries support the assertion that adolescents are less morally culpable for their actions than competent adults and are more capable of change and rehabilitation. The ultimate punishment for minors is contrary to the idea of fairness in our justice system, which accords the greatest punishments to the most blameworthy.

This fresh understanding of adolescence does not excuse juvenile offenders from punishment for violent crime, but it clearly lessens their culpability. This concept is not new; it is why we refer to those under 18 as "minors" and "juveniles"—because, in so many respects, they are *less than adult*.

American Bar Association Juvenile Justice Center

Notes

- ¹ For an excellent overview, see Elkhonon Goldberg, *The Executive Brain: Frontal Lobes and the Civilized Mind*, Oxford University Press (2001).
- ² Sowell, Elizabeth R, Paul M. Thompson, Colin J. Holems, Terry L. Jernigan and Arthur W. Toga. *In vivo evidence for post-adolescent brain maturation in frontal and striatal regions*. 2 *Nature Neuroscience* 10 (1999), also Paus, Tomas, Jay Giedd, et. al. *Structural maturation of neural pathways in children and adolescents: in vivo study*. *Science*, 283 (1999).
- ³ *Id.*
- ⁴ *Id.*
- ⁵ Sowell, Elizabeth R, Paul M. Thompson, Kevin D. Tessner and Arthur W. Toga. *Mapping continued brain growth and gray matter density reduction in dorsal frontal cortex: inverse relationships during postadolescent brain maturation*. 21 *Journal of Neuroscience* 22 (2001), at 8819, also Reiss, A.L., et. al., *Brain development, gender and IQ in children, a volumetric imaging study*. *Brain*, 119 (1996).
- ⁶ PBS Frontline, *Inside the Teen Brain*. See *Interview with Jay Giedd*, online at www.pbs.org/wgbh/pages/frontline/shows/teenbrain/.
- ⁷ *Id.*, at *Interview with Deborah Yurgelun-Todd*.
- ⁸ *Id.*
- ⁹ Gur, Ruben C. Declaration of Ruben C. Gur, PhD, *Patterson v. Texas*. Petition for Writ of Certiorari to US Supreme Court, J. Gary Hart, Counsel. (Online at: www.abanet.org/crimjust/juvjus/patterson.html)
- ¹⁰ *Id.*
- ¹¹ See Adams, Gerald R., Raymond Montemayor, and Thomas P. Gullota, eds. *Psychosocial Development during Adolescence*. Thousand Oaks, CA, Sage Publications (1996).
- ¹² Lewis, Melvin. *Child and Adolescent Psychiatry: A comprehensive textbook*. Lippincott Williams and Wilkins (2002).
- ¹³ See *id.*, and Cobb, Nancy J. *Adolescence: Continuity, Change and Diversity*. Mayfield Publishing, CA (1998).
- ¹⁴ American Society of Pediatrics, *Policy Statement*, 1 *Pediatrics*, 103 (1999).
- ¹⁵ Phyllis L. Crocker. *Childhood Abuse and Adult Murder: Implications for the Death Penalty*, 77 *NC L. Rev.* 1143 (1999).
- ¹⁶ Mallett, Chris. *Socio-Historical Analysis of Juvenile Offenders on Death Row*, 3 *Juv. Cort. Mental Health Report* 65 (2003).
- ¹⁷ *Id.*, at 77.
- ¹⁸ *Id.*, at 78.
- ¹⁹ *Id.*, at 77.
- ²⁰ *Id.*, at 78.
- ²¹ *Id.*
- ²² *Id.*
- ²³ *Id.*
- ²⁴ Robinson, DA and Stephens, OH; *Patterns of mitigating factors in juvenile death penalty cases*, 3 *Criminal Law Bulletin* 28 (1992).
- ²⁵ Lewis, DO, Pincus, Bard, Richardson, Pritchep, Feldman, Yeager. *Neuropsychiatric, psychoeducational, and family characteristics of 14 juveniles condemned to death in the United States*, 5 *Am. J. of Psychiatry* 145 (1988).
- ²⁶ *Id.*
- ²⁷ *Id.*
- ²⁸ *Id.*
- ²⁹ *Id.*
- ³⁰ *Id.*
- ³¹ Office of the U.S. Surgeon General, *At a Glance, Suicide Among the Young*. Online at www.surgeongeneral.gov/library/calltoaction/fact3.htm
- ³² White House Office of National Drug Control Policy, *Juveniles and Drugs*, at www.whitehousedrugpolicy.gov/drugfact/juveniles/index.html

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Images of Developing Human Brain

