

**ETHICAL CONSIDERATIONS FOR THE  
TREATMENT OF JUVENILES IN SENTENCING  
DECISIONS**

"...WHAT [ARE WE] TRULY AFRAID OF...THAT THEY WILL NEVER GET BETTER, [OR]  
THAT THEY MIGHT."

Professor Sally Terry Green

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**HOW SHOULD WE THINK ABOUT  
ETHICS AND JUVENILE JUSTICE?**

- What is the duty owed to the juvenile client?
- What obligations do we owe to others? To society?
- What about the spirit and purpose of the law regarding constitutional protections against cruel and unusual punishment?
  - Latitude in our approaches to advocacy

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Does juvenile justice raise broader ethical issues?



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## PRE-ROPER STUDY JUVENILE DEATH ROW INMATES

- Profile of Youth Affected:
  - 14 of 37 juvenile offenders, or 40%, had suffered head injuries as children
  - 9 had major neuropsychological disorders
  - 7 had psychotic disorders since early childhood
  - 7 had serious psychiatric disturbances
  - 7 were psychotic at the time of evaluation or had been diagnosed in early childhood
  - Only 2 had IQ scores above 90
  - Only 3 had average reading abilities
    - 2 had learned how to read on death row
  - 12 reported having been brutally abused physically, sexually or both
  - 5 reported being sodomized by relatives

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## THE CHANGING PRINCIPLES AND PURPOSE OF JUVENILE SENTENCING—UNITED STATES SUPREME COURT 2005-2016

### Areas of significance:

- Death Penalty- *Roper v. Simmons*
- Life Without Parole- *Graham v. Florida; Miller v. Alabama*
- Retroactive treatment of juveniles serving life without parole sentences- *Montgomery v. Louisiana*

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## HOW ARE JUVENILES DIFFERENT?

- Neurobiological Differences
  - Adolescent brains are not as fully developed as adults.
  - Human brain is not fully developed until age 25.
- Psychosocial and Developmental Differences
  - Advanced cognition and psychosocial development continue into their 20s
  - Inhibited decision making capabilities
  - More receptive and responsive to influences and opinions of peers
  - Hormonal changes of puberty affect ability to process emotional and social information

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LIFE WITHOUT PAROLE SENTENCING:  
THE HYPOTHETICAL "FATHER-SON" FAMILY

- Dad, currently 44 years old
- Conjugal visits with girlfriend
- Son, currently 18 years old
- Share a criminal history

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DAD'S STORY

- Dad was 17 years old in 1990.
- He and his posse were regularly stopped by police officers.
- Posse members incited Dad.
- Dad had to prove himself to his posse.
- Dad fatally shot the police officer.
- Dad convicted of murder.

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DEATH PENALTY UNDER MOST JURISDICTIONAL LAW  
UNTIL ROPER V. SIMMONS

- Imposition of the death penalty for juveniles under age of 18 who commit homicides is cruel and unusual punishment.
- Juveniles are different.
  - (1) lack maturity and understanding of responsibility.
  - (2) more vulnerable or susceptible to negative influences and outside pressures, including peer pressure.
  - (3) possess a unique capacity for change and rehabilitation because of the developmental period of distinct change and growth.

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## GENERAL ETHICAL OBLIGATIONS

- Role of the Prosecutor:
  - Retribution
  - Pursues justice
  - Seeks imposition of punishment on wrongdoers
- Role of the Defense Counsel
  - Zealous Advocacy

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## DAD OWES A DEBT TO SOCIETY: RETRIBUTION=MANDATORY SENTENCING

- Retribution:
  - Dad murdered a cop in cold blood
  - Premeditated
  - "Dad had to prove himself to his posse"
  - If not death, then mandatory life without parole
- What about other options that might balance retribution with rehabilitative goals in *Roper*?

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## BALANCING RETRIBUTION VS. REHABILITATION

*Roper*: Punishment must be regarded differently because of the differences between juvenile and adult offenders are too marked."

Defense Counsel as forerunner for rehabilitative outcomes

Significant Prosecutorial power to shape outcomes

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RETRIBUTION VS. REHABILITATION  
DETERMINATE SENTENCING

- Seek retention of juvenile court jurisdiction
- Possible parole before transfer to adult prison.
- **Dad** was "more vulnerable or susceptible to negative influences and outside pressures, including peer pressure";
- **Dad** has a "unique capacity for change and rehabilitation because [he's 17 and still in] ...the developmental period of distinct change and growth."

"Posse members incited Dad. Dad had to prove himself to his posse"

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SON'S STORY

- It's 2013. Son is 14 years old.
- Some friends needed cash to buy the newest game console system.
- They decided to rob a video store.
- Son fatally shot the clerk.
- Son is sentenced to a minimum 40 year life term with possibility of parole.

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MAXIMUM PENALTY  
OF LIFE WITHOUT PAROLE  
UNTIL MILLER

- Mandatory life without parole for those under the age of 18 at the time of their crimes violates the Eighth Amendment's prohibition on cruel and unusual punishments.
- 'Life without parole forswears altogether rehabilitative goals'
- Penological justifications disavowed:
  - Retribution directly links to blameworthiness.
  - Deterrence is incongruent with diminished culpability.
  - Need to be incapacitated disconnects from unlikelihood of an ordinary adolescent's future danger.

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## INDIVIDUALIZED SENTENCING

This is "virtual" LWOP: A meaningful opportunity for release must be afforded before 40 years

Judges must consider mitigating circumstances before imposing life without possibility of parole.

A mandatory **minimum term with chance of parole after 40 years** does not violate the 8th Amendment.

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## POST- MILLER MITIGATION: ARGUMENTS FOR AND AGAINST INDIVIDUALIZED SENTENCING

Age & Immaturity

Commonality in Ethical Conduct

Impetuousness

**Defense Counsel** – Benefits from rehabilitative measures with ability to rejoin society derived in less than 15 years.

**Prosecutor** – A minimum term of 15 or more years serves society and the juvenile.

Familial & Peer Pressure

Failure to Appreciate Risks/Consequences

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## A COSTLY DEBT OWED TO, BUT YET PAID BY SOCIETY: THE COST OF A LIFE SENTENCE

- National Housing Cost
  - \$34,135 per year to house an average prisoner.
  - This cost roughly doubles if prisoner is over 50.
  - A 50-year sentence for a 16-year old will cost approximately \$2.25 million.

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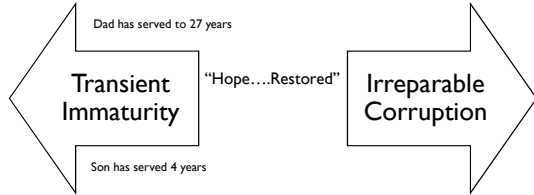
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### A FATHER AND SON'S RETROACTIVITY UNDER MONTGOMERY

Will there be retroactive relief for those currently serving LWOP sentences?




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#### PUBLIC DEFENDER OR DEFENSE ATTORNEY

"JDC defense attorneys understand that the best interest of the child may mean mandated treatment attendance and that the use of adolescent / individualized sanctions can assist with affecting positive behavior change in youth."



#### Collaborative Ethical Roles: Juvenile Drug Courts



"The judge is the leader ... has ultimate responsibility for imposing the conditions of probation, making decisions regarding admission, case plans and service delivery, incentives and sanctions...JDC judges may choose to be less formal, more collaborative..."



#### STATE'S ATTORNEY OR PROSECUTOR

"The role of the prosecutor on the JDC team can be difficult because of the traditional prosecutorial emphasis on individual accountability. However, I don't think the competing interests between the drug court and public safety are unresolvable. When I work with the JDC team to come up with a plan to make the child successful, I am in fact fulfilling my role as a prosecutor because a mere person who has life skills is less likely to endanger the public."

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### FAILURE UNDER LIFE WITHOUT PAROLE SENTENCING: THE PAULA COOPER STORY

- In 1985, received death sentence at 16 for fatally stabbing a 77-year-old Bible school teacher named Ruth Pelke.
- Youngest death row prisoner in the country.
- In 1986, Indiana law - defendants as young as 10 years old could be tried as adults-receive death penalty.
- Paula was eventually released in 2013.
- She was 43 years old having spent her entire adult life in prison.

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PAULA'S STORY:  
SUCCESSFUL RE-INTEGRATION OR EVIDENCE OF  
SYSTEM FAILURES?

- Defense Counsel
    - chronic runaway;
    - Abusive and neglectful home
    - father beat and rape mother;
    - victim of attempted suicide at her mother's hands
  - Lake County prosecutor - a social misfit; no hope of rehabilitation; requested death penalty.
- Alleged sexual abuse while incarcerated      Released on good behavior in 2013 having earned her GED and other multiple degrees

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PAULA'S STORY:  
SUCCESSFUL RE-INTEGRATION OR EVIDENCE OF  
SYSTEM FAILURES?

- Upon release, secured job working in the kitchen.
- Hired at Five Guys Hamburgers; Became manager.
- Later worked as a legal assistant at the Indiana Federal Community Defenders;
- Began speaking to college classes.
- Found dead; Apparent Suicide

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“...what [are we] truly afraid of  
...that they will never get better,  
[or] that they might.”

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