

Supreme Court to Rule on Executing Young Killers

by Adam Liptak , *The New York Times*, January 3, 2005

1 In August, six months after the United States Supreme Court agreed to consider the constitutionality of the juvenile death penalty, Robert Acuna, a high school student from Baytown, Tex., was put on trial for his life. The jury convicted Mr. Acuna of killing two elderly neighbors, James and Joyce Carroll, when he was 17, shooting them "execution style," as prosecutors described it, and stealing their car. At sentencing, when jurors weighed his crime against factors counseling leniency, Mr. Acuna's youth should have counted in his favor.

2 Instead, his brooding and volatile adolescent demeanor may have hurt more than helped, and the Houston jury sentenced him to die. "They probably thought that he wasn't showing remorse," said Mr. Acuna's mother, Barbara. Renee Magee, who prosecuted Mr. Acuna, now 18, agreed that his behavior at the trial had alienated the jury. "He was very nonchalant," Ms. Magee said. "He laughed at inappropriate things. He still didn't quite get the magnitude of everything he did."

3 Mr. Acuna is the latest person to enter death row for a crime committed before age 18. He may also be the last. If the Supreme Court prohibits the execution of 16- and 17-year-olds in a case it accepted a year ago, involving a Missouri man, the lives of Mr. Acuna and 71 other juvenile offenders on death row will be spared.

4 A central issue before the court, which is expected to rule in the next few months, is whether the plummeting number of such death sentences - there were two last year - lends weight to the argument that putting youths on death row amounts to cruel and unusual punishment. Supporters of the juvenile death penalty argue that the small number proves instead that the system works and that juries are making discerning choices on whom to sentence to death, taking due account of the defendants' youth and reserving the ultimate punishment for the worst of the worst.

5 But a look at the cases of some of the juvenile offenders now on death row raises questions about how reliable and consistent juries have been in making those decisions. Age can shape every aspect of a capital case. Crimes committed by teenagers are often particularly brutal, attracting great publicity and fierce prosecutions. Adolescents are more likely to confess, and are not adept at navigating the justice system.

6 Jurors' reactions to teenagers' demeanor and appearance can be quite varied. The defendants they see have aged an average of two years between the crime and the trial. And jurors may not necessarily accept expert testimony concerning recent research showing that the adolescent brain is not fully developed.

7 The Supreme Court in 1988 banned the execution of those under 16 at the time of their crimes. During arguments in October on whether to move that

categorical line to 18, Justice Antonin Scalia said the drop in juvenile death sentences was proof that juries could be trusted to sort through and weigh evidence about defendants' youth and culpability. "It doesn't surprise me that the death penalty for 16- to 18-year-olds is rarely imposed," Justice Scalia said. "I would expect it would be. But it's a question of whether you leave it to the jury to evaluate the person's youth and take that into account or whether you adopt a hard rule."

8 Juries in capital cases involving juvenile offenders certainly place great weight on the defendants' youth. The defendants seldom testify, but jurors inspect them closely and draw conclusions from how they look and handle themselves. And the very same factors may cut both ways. Adolescent recklessness may suggest diminished responsibility to some and a terrible danger to others.

9 The youth of Christopher Simmons, the defendant whose case is now before the Supreme Court, was such a double-edged sword. Mr. Simmons was 17 in 1993, when he and a friend robbed, bound and gagged Shirley Crook, 46, and pushed her into a river, where she drowned. During Mr. Simmons's sentencing hearing, a Missouri prosecutor scoffed at the notion that Mr. Simmons's age should count as a mitigating factor in his favor. "Seventeen years old," the prosecutor, George McElroy, said. "Isn't that scary? Doesn't that scare you? Mitigating? Quite the contrary, I submit. Quite the contrary."

10 Mr. Acuna had a tough-looking buzz cut at the time of the killings, said Tim Carroll, the son of the couple Mr. Acuna killed. At the trial, he looked different. "He appeared as though someone had tried to make him look 8 years old all over again," Mr. Carroll said. "His hair was all combed down, almost in little bangs."