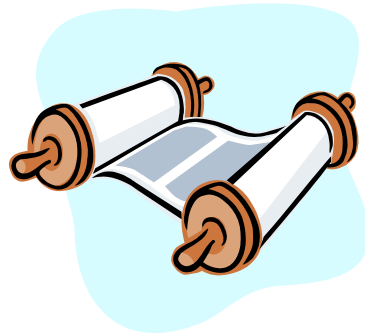


SIXTH ANNUAL

MARSHALL-BRENNAN CONSTITUTIONAL LITERACY PROJECT

CONSTITUTION DAY TEACHING MODULE



The Eighth Amendment, Cruel and Unusual Punishment, and Graham v. Florida

September 17, 2010

Produced by the **Marshall-Brennan Constitutional Literacy Project** at American University Washington College of Law. Substantial contributors to this unit include Heidi Sahmel, Caleb Medearis, and Maryam Ahranjani.

The Eighth Amendment, Cruel and Unusual Punishment, and Graham v. Florida

Description:

This unit can be taught during the week of Constitution Day or afterwards. The goal is to commemorate this important day in our Nation's history by teaching 9th-12th grade students about the significance of the Constitution as a living document that confers rights upon them as young people.

More specifically, this lesson plan focuses on the Eighth Amendment's ban on cruel and unusual punishment. This constitutional provision is illustrated through several of the punishments implicated by the Eighth Amendment, including the death penalty and the closely related issue of life imprisonment without parole.

Objectives:

1) To learn about how the Supreme Court's interpretation of the Eighth Amendment's ban on cruel and unusual punishment has developed over time as seen through Supreme Court cases. Primarily, this lesson plan will focus on the Eighth Amendment's applicability to the death penalty and life without parole.

2) To learn about Graham v. Florida, the Supreme Court's most recent interpretation of cruel and unusual punishment. This case, decided in 2010, helped define cruel and unusual punishment by prohibiting sentences of life imprisonment without parole for juveniles found guilty of non-homicide crimes.

Length of Lesson: 2-4 class periods

Day One:

Complete Part One, including the Background Discussion, Amendment Overview, and Modern Application – “Evolving Standards of Decency” lesson and exercise. Review vocabulary list found under Resources for Further Study. Begin Part Two with a discussion of the Death Penalty by teaching the section “Cruel and Unusual Punishment: the Death Penalty.” (Homework: complete “Death Penalty Writing Exercise”)

Day Two:

Finish Part Two, including a discussion of the Death Penalty, and the Death Penalty and Juveniles. Complete the corresponding exercises and end with the students filling in the “Death Penalty Timeline” worksheet. (Homework: have students read the Death Penalty Information Center's packet on Death Penalty statistics and come to class prepared to discuss points of interest)

Day Three:

Review the death penalty, discuss death penalty statistics and complete “Discovering Justice” exercise. Then transition into a discussion about life without parole, finishing Part Three of the lesson plan by reading the Graham v. Florida excerpt. Assign the worksheet for homework.

Day Four:

Give students time to finish up their Graham v. Florida worksheets, review the worksheets, and play the Jeopardy review game.

Additionally, the lesson plan’s length can be adjusted depending on the time constraints of the class. The grid, found on page 4, organizes the supplemental exercises by type and topic so the teacher can choose the exercises that best suit the needs of the class.

Supplies Needed:

1. This packet
2. Article entitled, “Rasta Inmates Spend Decade in Isolation For Dreadlock Hair,” available at http://www.usatoday.com/news/religion/2010-05-08-rastafarian-dreadlocks_N.htm
3. Death penalty fact sheet produced by the Death Penalty Information Center, available at <http://www.deathpenaltyinfo.org/documents/FactSheet.pdf>
4. If possible, obtain the textbook Youth Justice in America (CQ Press, 2005). The textbook is available online through major booksellers and also through the publisher’s web site (www.cqpress.com). The relevant portions of the text are summarized in this lesson, but teachers who want a more well-rounded understanding of the concepts and cases may want to obtain a desk copy.

Overview of Teaching Module

Part One: Background of the Eighth Amendment (pp. 6-14)

- Brief Overview of the Constitution and the Bill of Rights
- Brief Overview of the Supreme Court and the Common Law System
- Amendment Overview
 - o Exercise – Medieval Torture Devices Handout
- Modern Application – “Evolving Standards of Decency”
 - o Exercise – Determining What Cruel and Unusual Punishment Looks Like: A Hairy Situation

Part Two: The Eighth Amendment and the Death Penalty (pp. 15-26)

- Cruel and Unusual Punishment: The Death Penalty (adapted from Youth Justice in America text, p. 248)
 - o Exercise – Death Penalty Writing Assignment (Youth Justice, p. 249)
- The Death Penalty and Juveniles (Youth Justice, p. 250)
 - o The Supreme Court and the Juvenile Death Penalty (Youth Justice, p. 251)
 - o Exercise – Advocates, Opponents, and the Sniper (Youth Justice, p. 261)
 - o The Supreme Court and the Juvenile Death Penalty: Continued (text adapted from Youth Justice and We the Students)
 - o Exercise – Death Penalty Time Line Handout
 - Teacher's Guide
 - o Exercise – Death Penalty Statistics
 - o Exercise – Discovering Justice

Part Three: The Eighth Amendment and Life without Parole (pp. 27-39)

- The Eighth Amendment and Life Imprisonment without Parole
 - o Graham v. Florida
 - o Worksheet on Graham v. Florida
 - o Worksheet KEY
 - o Exercise – Jeopardy: A Review of the Eighth Amendment

Part Four: Resources for Further Study (pp. 40-44)

- Vocabulary List
- Helpful Books and Websites
- Supplemental Corporal Punishment Lesson Plan (available upon request)

Exercise Type	Topic		
	8th Amendment	Death Penalty	Life without Parole
Class Discussion		Advocates, Opponents, and the Sniper Discovering Justice	Jeopardy: A Review of the Eighth Amendment
Reading Comprehension	Determining What Cruel and Unusual Punishment Looks Like		<u>Graham v. Florida</u>
Writing Exercise	Determining What Cruel and Unusual Punishment Looks Like Worksheet	Death Penalty Writing Assignment	Worksheet on <u>Graham v. Florida</u>
Visual Aid	Medieval Torture Devices	Death Penalty Statistics Death Penalty Timeline	

PART ONE. Brief Overview of the Constitution and the Bill of Rights

The Constitution is the central organizing document of our nation. It sets up the structure of government and explains what rights and powers are granted to the government.

- Article I explains the structure and powers of the legislative branch.
- Article II explains the structure and powers of the executive branch.
- Article III explains the structure and powers of the judicial branch.

In simple terms, the legislature creates the laws, the executive administers the laws, and the judicial branch interprets the laws. The power in our constitutional system is divided between the three separate powers (this is called the “separation of powers”). Power is also divided between the federal government and the state governments (this is called federalism). The Constitution intentionally divides the power of the government – both among its branches and between states and the federal government—to create a system of “checks and balances” protecting citizens from a single source of power.

The Bill of Rights includes the first ten amendments to the Constitution. It contains our fundamental guarantees of individual liberty. The Bill of Rights was not included in the original constitution. In fact, the Bill of Rights was not ratified until four years after the Constitution was approved by the citizens.

The Bill of Rights limits government interference in certain areas of life. Unlike some systems, the American constitutional system begins with the assumption that we have certain basic freedoms.

Brief Overview of the Supreme Court and the Common Law System

The Supreme Court is the most powerful court in America. It is the final decision maker (or arbiter) when it comes to interpreting the Constitution. Questions about how to interpret the Constitution constantly arise and must be addressed by federal courts.

Our common law system is based on case precedent. All courts decide cases by looking at how other courts have decided similar issues in the past, and Supreme Court decisions are the most important and binding.

The vast body of cases about each part of the Constitution binds future judges when they decide cases about the meaning of those sections in the Constitution. Judges look to past cases, legislative history, and other legal principals to answer the question of how to decide the cases before them.

Amendment Overview

The Eighth Amendment: "Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted."

- United States Constitution, Amendment VIII

Quick Overview: The Constitutional Text

- After reading the text of the Eighth Amendment, think about what each of these phrases really means.
 - o First, look to the history of the 8th Amendment and the reasons why the Constitutional Framers found the issue so important.
 - The Framers modeled the provision on the English Bill of Rights but did not agree with the unnecessarily harsh punishments criminals actually received in England.
 - Specifically, the framers were inspired by the case of a man named Oates, who was sentenced to life in prison with three days every year of torture. Oates had only committed perjury. This punishment was extremely severe considering the crime he had committed, and this shocked the members of the community.
 - o Therefore, "excessive bail," "excessive fines," and "cruel and unusual punishment" all refer to punishments that are disproportionately harsh compared to the crime committed.
 - o But what does "disproportionately harsh" mean?
 - "Disproportionately harsh" means that the punishment is too severe considering the crime committed, rendering the punishment unjust and unnecessary.
- Keeping the 8th Amendment in mind, decide whether you think the following situations are constitutional.
 - o A man is sent to jail for drinking and driving, but he can be released if he pays a bail of \$1 million. Is this an excessive bail? (Yes)
 - o A teenager is fined \$10 for trespassing. Is this an excessive fine? (No)
 - o A young girl is publicly whipped by the police for stealing a candy bar. Is this cruel and unusual punishment? (Yes)

Medieval Torture Devices Handout

Pictures and Text from: <http://www.medievality.com/torture.html>

The following torture devices were used by many societies throughout time, ranging from the ancient Greeks and Romans to colonial America. This handout is designed to illustrate the harsh and unjust punishments the Framers were trying to ban through the implementation of the Eighth Amendment.



The Coffin Torture

The Coffin Torture was feared throughout the Middle Ages. It is enough for one to look at the picture to the left to realize the reason.

The victim was placed inside the "coffin". Torturers were well-known for forcing overweight victims into the device, or even making the "coffin" slightly larger than normal to make the victims more uncomfortable.

The period of time a victim was to be kept inside the coffin was determined by his or her crime. Very serious crimes, such as blasphemy, were punished by death inside the coffin where the victim was to be kept inside under the sun with animals eating his or her flesh.

The coffin was sometimes placed in a public plaza so the local population would congregate around it and mock the unlucky victim. Sometimes death occurred because of the hatred towards the person as others often threw rocks and other objects to further increase the pain.



The Brazen Bull

The brazen bull is an executionary device first invented in Ancient Greece.

Its inventor, Perillos of Athens, proposed to Phalaris; a tyrant, the need of a more painful way to kill criminals. This was done hoping to dissuade the poor population from committing any more crimes.

As the story goes, when Perillos finished the brazen bull, Phalaris asked Perillos to try it out by himself. He then ordered him locked inside the brazen bull and set a fire underneath it. He was very pleased with the results. Being burned alive was a very exciting act to watch.

When a victim is placed inside the brazen bull, he or she is slowly burned to death. This device gradually became more sophisticated until the Greek invented a complex system of tubes in order to make the victim's screams sound like an infuriated ox.

This torture is similar to being boiled alive.

Dunking



Dunking is a form of punishment that was mainly reserved for supposed witches. The victim was tied to a chair which was elevated or lowered by the torturer. If he noticed that the victim was going to pass out, he elevated the chair. When he needed information and the victim was unwilling to cooperate, he lowered it. This method was widely used during the Spanish Inquisition and in England

and France. The victim was usually intermittently submerged for many hours until he or she revealed information or death occurred.

While witches were commonly tortured using this method, thieves and murderers could be subject to it in order to extract a confession. This was more common when other more sophisticated torture devices were not present.

The Iron Maiden



The Iron Maiden, otherwise known as the Virgin of Nuremberg, was a device used from the XVI century to torture criminals.

It stands 7 feet tall and is able to accommodate a man. The victim was tied inside the Maiden and one of the two doors was shut, penetrating the victim's flesh with the strategically-placed spikes that didn't penetrate any vital organs. When completely closed, the screams from the victim could not be heard outside, nor could the victim see any light or hear anything. This increased the psychological pain. Additionally, the spikes blocked the wounds so it took many hours - or even days - for death to occur.

If the door was opened, the victim would stand in the exact same position so if the torturer chose to close the door again, the spikes would penetrate the exact same wounds. Sometimes the door was intermittently closed to maximize the victim's pain without delivering death.



The Thumb Screw

The victim's fingers were placed inside the instrument and slowly crushed as the torturer turned the handle on top. This method was primarily used to extract confessions as it was both painful and long lasting.

If the victim refused to speak, the torturer could choose from many other torture methods.

The same instrument was also used to crush victim's toes.

A bigger variant of the instrument that followed the same principle was used to crush victim's feet, knees and elbows. The Head Crusher was used for crushing the head.



The Rack

The rack is commonly considered the most painful form of medieval torture. It was a wooden frame usually above ground with two ropes fixed to the bottom and another two tied to a handle in the top.

The torturer turned the handle causing the ropes to pull the victim's arms. Eventually, the victim's bones were dislocated with a loud crack. If the torturer kept turning the handles, some of the limbs were torn apart, usually the arms.

This method was mostly used to extract confessions, as not confessing meant that the torturer could stretch more. Sometimes, torturers forced their victim to watch other people be tortured with this device to implant psychological fear.

Sometime this method was limited to dislocating a few bones, but the torturer often went too far and rendered the legs or arms (sometimes both) useless. In the late Middle Ages, some new variants of this instrument appeared. They often had spikes that penetrated the victim's back - as the limbs were pulled apart, so was his spinal cord increasing not only the physical pain, but the psychological one of being handicapped at best, too.

Modern Application – “Evolving Standards of Decency”

Today, torture devices like the ones you have just seen and other cruel and excessive punishments are no longer allowed in the United States under the Eighth Amendment. As stated in the opinion of Trop v. Dulles (1958), modern society must apply the Eighth Amendment in light of the “evolving standards of decency that mark the progress of a maturing society.” Using these standards, the Court determines what punishments are not only inherently cruel, but also what punishments are excessively disproportionate to the crime committed.

Exercise – Determining What Cruel and Unusual Punishment Looks Like: A Hairy Situation

Article Text can be found at: http://www.usatoday.com/news/religion/2010-05-08-rastafarian-dreadlocks_N.htm

Courts often look to morality in determining what is cruel and unusual. As seen in the “evolving standards of decency” section above, what society views as moral is always changing. But what if a punishment is arguably cruel and unusual because of the criminal’s personal religion?

Read the article titled “Rasta Inmates Spend Decade in Isolation For Dreadlock Hair,” and have the class individually complete the following worksheet. Then use the completed worksheet as a roadmap for a class discussion about whether or not the students think the Brunswick Correctional Center’s treatment of inmate Kendall Ray Gibson is cruel and unusual punishment.

“Rasta Inmates Spend Decade in Isolation For Dreadlock Hair” Worksheet

1. What crimes has Gibson committed and what sentence did he receive?

2. What is the prison's policy and why? How has this affected Gibson?

3. Do you think the prison's policy is necessary to ensure safety?

4. Can you think of any other ways the prison could accomplish its goal of maintaining safety while not keeping people with Gibson's beliefs in solitary confinement? If so, what?

5. If you came up with alternatives for Question 4, do you think the fact that there are alternatives automatically makes this prison's policy cruel and unusual?

“Rasta Inmates Spend Decade in Isolation For Dreadlock Hair” Worksheet KEY

1. What crimes has Gibson committed and what sentence did he receive?

Gibson was found guilty of robbery, abduction, and gun charges. He has been sentenced to 47 years in prison.

2. What is the prison's policy and why? How has this affected Gibson?

The prison's policy is to require all inmates to cut their hair short in the interest of maintaining safety. Because Gibson is Rastafarian, it is against his religion to cut his hair. As a result, he has spent 10 years in solitary confinement.

3. Do you think the prison's policy necessary in order to ensure safety in a dangerous environment?

Students' answers will vary. Prisons certainly have a responsibility to maintain safety for inmates and in fact are subject to legal liability if inmates are injured or die in their care.

4. Can you think of any other ways the prison could accomplish its goal of maintaining safety while not keeping people with Gibson's beliefs in solitary confinement? If so, what?

Students's answers will vary, but some alternatives could include: keeping all prisoners who share similar religious beliefs together; allowing rule-abiding prisoners to decide if they are willing to live with prisoners who do not cut their hair; allow prisoners to keep their hair but enforce more frequent and thorough searches of inmates, etc.

5. If you came up with alternatives for Question 4, do you think the fact that there are alternatives automatically makes this prison's policy cruel and unusual?

Once again, answers will vary, but the law does not require the least intrusive alternative in terms of punishment. The law merely prohibits cruel and unusual punishments.

PART TWO. Cruel and Unusual Punishment: The Death Penalty (text adapted from Youth Justice, p. 248)

In the United States, the death penalty has been available – and controversial – since the nation was founded. Although it is still a widely used practice, its critics are chipping away at the death penalty. The number of people sentenced to die has sharply declined in the new century. From 1994 to 2000, the death row population grew by an average of 296 people each year. In 2000, there were only 226 new death sentences. In 2001, the number fell to 155, the lowest recorded since 1973. Throughout time, the number of juveniles sentenced to death also has decreased, which is part of the reason in 2005 the Supreme Court outright abolished the juvenile death penalty.

Why the sharp decline in jury sentences of death? One important factor has been media coverage about wrongful convictions of people on death row. These cases involved DNA technologies to examine evidence that can conclusively refute the finding of guilt. Some people speculate that jurors, now very much aware that the justice system is imperfect, are fearful of putting an innocent person to death and as a result are choosing instead to sentence people to life in prison without the possibility of parole, a punishment we will discuss at greater length later on in this lesson plan. Of the thirty-eight states that have death penalty laws, thirty-six have life without parole statutes.

Another possible explanation for the decline in sentences of death is the reluctance of prosecutors to incur the high costs of litigating capital punishment cases. According to one estimate, prosecution costs in a non-capital case rarely exceed \$10,000, but because of the large number of procedural safeguards built into death penalty cases, they can routinely reach \$500,000 or more.

Furthermore, a general erosion of support has occurred among the public for the death penalty as an answer to crime. With growing media attention on ineffective counsel in criminal cases, governors imposing moratoriums on the death penalty, and the U.S. Supreme Court's ban on the execution of people with mental retardation (Atkins v. Virginia [2002]), enthusiasm for the death penalty is slowly fading. Still, the death penalty remains an option in most states and is an important feature of the criminal justice landscape.

Exercise – Death Penalty Writing Assignment

(text adapted from Youth Justice, p. 249)

People have argued for centuries about the morality of capital punishment. Most nations have banned the practice as uncivilized, but as of September 2010, U.S. states, the federal government, and the military allow it. Depending on your opinion on the death penalty right now, write an essay responding to the relevant questions below. The goal is to get you to think critically about all arguments in favor of and against the death penalty.

ESSAY FOR DEATH PENALTY ABOLITIONISTS

If you oppose the death penalty, imagine that you are confronted by the families, friends, and loved ones of hundreds of people killed in a terrorist attack. Some of them want the death penalty for the people convicted of mass murder in the attack. Try to convince them that the death penalty is wrong or ineffective. What do you say? Do you lose any conviction that you are right in opposing the death penalty?

ESSAY FOR DEATH PENALTY SUPPORTERS

If you favor the death penalty, under what circumstances would you be willing to *personally* administer it? For example, would you be able to administer the death penalty to a convicted criminal who grew up in an abusive home and later in life murdered his parents while they were asleep?

As of 2005, thirty-seven states allowed for death by lethal injection of a poison, ten by electrocution, five in a gas chamber, two by hanging, and two by firing squad. Some states offer more than one method. Explain your answers to the following questions.

- Would you be willing to inject the prisoner with the lethal substance?
- Would you pull the switch on the electric chair?
- Would you release the poison into the gas chamber?
- Would you pull the floor from beneath the person to be hanged?
- Would you participate as a shooter in a firing squad?

The Death Penalty and Juveniles (Youth Justice, p. 250)

The colonies and the states that would later form the United States have a long history of executing juveniles who commit murder. The first such execution of a convict under the age of eighteen took place in 1642 in Plymouth Colony, Massachusetts.

At the beginning of 2005, the laws of twenty states permitted executions of juveniles, but few engaged in the practice. In fact, a number of states had actively backed away from executing juvenile offenders. For example, in 1992 Indiana increased the minimum age for imposing the death penalty to eighteen. Montana did the same in 1999. Bills were introduced in ten state legislatures that would raise to eighteen the legal limit for imposition of capital punishment. Nonetheless, in the majority of states that permitted the death penalty, if a prosecutor decided that a juvenile had committed an especially terrible murder and demonstrated a lack of regard for human life, he or she could choose to seek the death penalty.

The juvenile death penalty has long been controversial. Its supporters believe that it is just punishment for young people who commit savage crimes. If you are old enough to take someone else's life, they think, you are old enough to suffer the loss of your own. Juries could decide whether the defendant was sufficiently mature to understand what he or she was doing. Furthermore, supporters of the juvenile death penalty argue that the punishment deters criminal gangs and drug-dealing operations from recruiting minors to commit murders for them.

Opponents of the juvenile death penalty point out that juveniles are not trusted to vote, drink alcohol, or make personal medical decisions. Thus, society in this respect already acknowledges the intellectual immaturity and inadequate judgment of young people. Should they be killed because of bad decisions they make as minors? Moreover, opponents argue that little reliable evidence is available that the death penalty works to prevent young people, who are often impulsive and shortsighted, from committing crimes. These critics have long argued that the United States – until recently the only democratic country with a juvenile death penalty – should join the rest of the world in abolishing the punishment.

Mirroring recent general trends, prosecutors began seeking the death penalty for juveniles less often, and juries imposed it less frequently. In 1994, eighteen juveniles were sentenced to death; in 1999 fourteen were, and by 2000 only two juveniles were. Between 1989 and 2005, six states banned the execution of juveniles.

The Supreme Court and the Juvenile Death Penalty (Youth Justice, p. 251)

The death penalty is unlike any other punishment in that it is not only permanent and irreversible but requires an act of state violence against the condemned prisoner. For these reasons, the Supreme Court has long struggled with the issue and faced repeated claims that executions of juveniles are horrific and uncivilized.

In Thompson v. Oklahoma (1988), the Court found that executions of people under sixteen violate the Eighth Amendment ban on cruel and unusual punishment and are thus unconstitutional. The court reasoned that giving the death penalty to children in this age range would not serve to deter criminals from committing violent crimes because “adolescents have less capacity to control their conduct and to think in long-range terms....”

However, one year after Thompson v. Oklahoma, the Supreme Court heard a case involving a capital defendant who was seventeen years old when he committed crimes – murder, sodomy, robbery, and receiving stolen property – for which he was sentenced to death. In another case, Missouri certified as an adult a juvenile defendant who was sixteen years old when he committed a murder. He was convicted of first-degree murder and sentenced to death.

The Supreme Court merged the two cases and held in Stanford v. Kentucky that imposition of capital punishment on a defendant for a crime committed at sixteen or seventeen years of age did not violate evolving standards of decency, and therefore, did not constitute cruel and unusual punishment under the Eighth Amendment.

Like the juvenile death penalty opponents, those against sentencing mentally retarded persons to death were facing opposition in the courts as well. In the 1989 case Penry v. Lynaugh, the Supreme Court decided that executing a mentally retarded person did not violate the Eighth Amendment's ban on cruel and unusual punishment. However, the Court revisited this issue when it agreed to hear Atkins v. Virginia in 2002.

In Atkins, the Supreme Court held that executing a mentally retarded adult is cruel and unusual punishment because it exacts retribution against a person who does not fully comprehend what he has done. That decision, which overruled the Penry case, gave opponents of the juvenile death penalty hope that the Supreme Court would return its attention to the “evolving standards of decency” under the Eighth Amendment.

The biggest success for juvenile death penalty opponents came in January 2004, when the Supreme Court agreed to examine Roper v. Simmon.

The case raised the issue of whether executing an offender who was seventeen years old at the time of the crime violates the Eighth Amendment's protection against cruel and unusual punishment. The Court heard oral arguments in October 2004 and issued a ruling on March 1, 2005. In a 5-4 decision, a divided Court held that executing juveniles violates the Eighth Amendment's ban on cruel and unusual punishment. Scott Allen Hain – at the time of the decision the most recent person to have been executed (in April 2003) in Oklahoma for a crime he committed as a juvenile – missed the possibility of his sentence being commuted by less than one year.

In deciding that individuals under the age of 18 should not be executed, the Court relied on sociological and scientific research to determine the applicable “evolving standards of decency.” The Court looked to scientific studies that proved that juveniles lack maturity and a sense of responsibility that adults possess. The Court also referenced studies demonstrating that juveniles are more vulnerable to negative influences and outside pressures. In support of these findings, the Court cited the “national consensus” exhibited by other laws prohibiting minors from enjoying the privileges adults enjoy, such as voting, serving on juries, and marrying without parental consent.

The Court also looked to the infrequency with which states were applying capital punishment for juvenile offenders, in addition to death penalty practices in other countries. Between 1990 and when the case was heard in 2004, the United States was among only eight countries who had executed a juvenile. These countries include Iran, Pakistan, Saudi Arabia, Yemen, Nigeria, the Democratic Republic of Congo, and China. Unlike the United States, however, all of these countries had either stopped or publicly disavowed executing juveniles.

With all of this in mind, Justice Kennedy, who wrote the majority opinion in Roper, stated that “the death penalty is disproportionate punishment for offenders under 18.” This decision effectively overruled Stanford v. Kentucky.

Exercise – Advocates, Opponents, and the Sniper (Youth Justice, p. 261)

Divide the students into three groups: death penalty advocates, death penalty fence-sitters, and death penalty opponents. Review the following case and devise arguments about whether the defendant should be sentenced to death, using what you have learned from the cases just discussed.

Lee Boyd Malvo, a seventeen-year-old Jamaican youth, was charged with murder by the state of Virginia in connection with the October 2002 sniper shootings in the Washington, D.C., area that left ten people dead. For almost a month, residents of the metropolitan Washington area were afraid to leave their houses, stop for gas, or go grocery shopping, for fear of becoming a victim in this spree of drive-by shootings. Malvo, by media accounts a quiet, respectful young man living illegally in the United States with his mother, was traveling with John Allen Muhammad, a forty-one-year-old army veteran of Operation Desert Storm who took Malvo under his wing and kept him to a strictly regimented diet. Virginia prosecuted Malvo as an adult. In closing arguments, Malvo's attorney passionately argued on behalf of his client:

Defense attorney Michael Arif said Muhammad indoctrinated Malvo, who was desperate for a father figure in his life, by using rigorous exercise, controlling his diet and personal hygiene, exposing him to violence, playing audiotapes under Malvo's pillow as he slept, and encouraging him to suppress his feelings.

"Right was what John Muhammad said it was. Wrong was what John Muhammad said," Arif said. "Did he [Malvo] know the acts were illegal? Probably. But that was not what was important. Right or wrong is what John Muhammad said it was."

Arif admitted that one psychologist who examined Malvo in jail characterized Malvo as "goofy," saying he smiled inappropriately.

"He's facing potentially the death penalty and he's making lawnmower sounds," Arif said. "Something's wrong."

Arif told jurors, "Lee could no more separate from John Muhammad that you could separate from your shadow on a sunny day."

Arif also said, "the pain inflicted" on victims and families in the sniper shootings "is inexcusable" but "adding another life to that pile of death is not going to solve anything."

"Lee Malvo is gone," Arif said. "What you have now... you have John Muhammad junior."

Arif finished his presentation by projecting onto a courtroom screen a photo of a menacing-looking Muhammad and telling the jury that Malvo was "the last victim of John Muhammad."

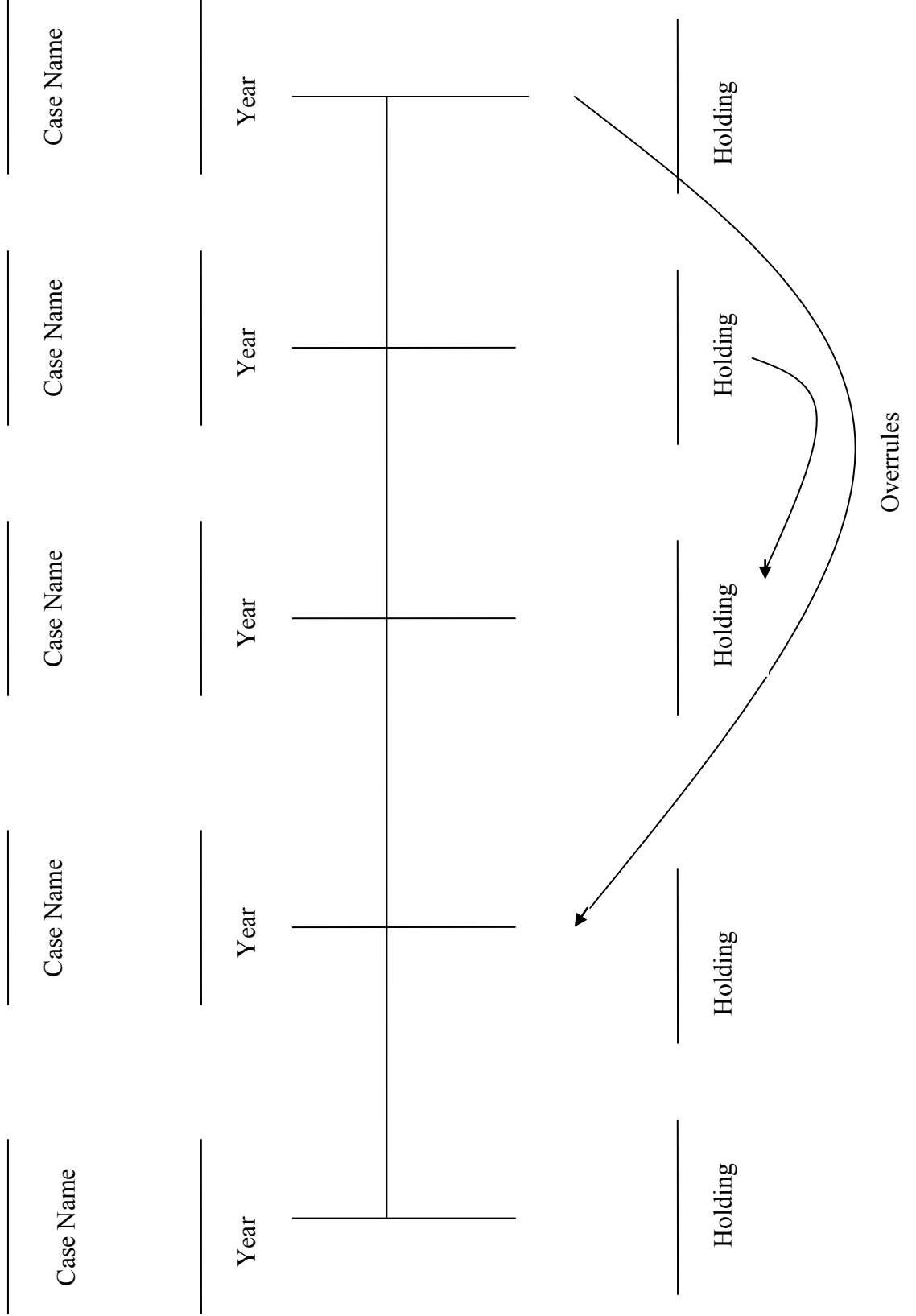
Teacher's Answer: In January 2004, a jury convicted Malvo of murder and in March 2004 sentenced him to life without parole. In a separate trial, a jury sentenced Muhammad to death.

Exercise – Death Penalty Time Line Handout

Now that the class has learned about the leading cases dealing with the death penalty and cruel and unusual punishment, have the students individually fill in the following handout. The handout is intended to give the students a visual reference of the case names, the years they were decided, and the holdings of each case.

Once the timeline is completed, the students will have a better understanding of the powerful implications of each case, and how later cases have either upheld or overturned previous court decisions. Specifically, this timeline visually demonstrates how the common law system relies on the use of precedent in making future decisions, as previously mentioned in the lesson plan. For example, between 1989 and 2004, all courts had to find the execution of juveniles 16 and older constitutional because of the Supreme Court decision in **Stanford v. Kentucky**. However, after 2004 when the Supreme Court finally held in **Roper v. Simmons** that executing juveniles under the age of 18 was cruel and unusual, courts were no longer allowed to impose such a sentence for minors.

Death Penalty Timeline

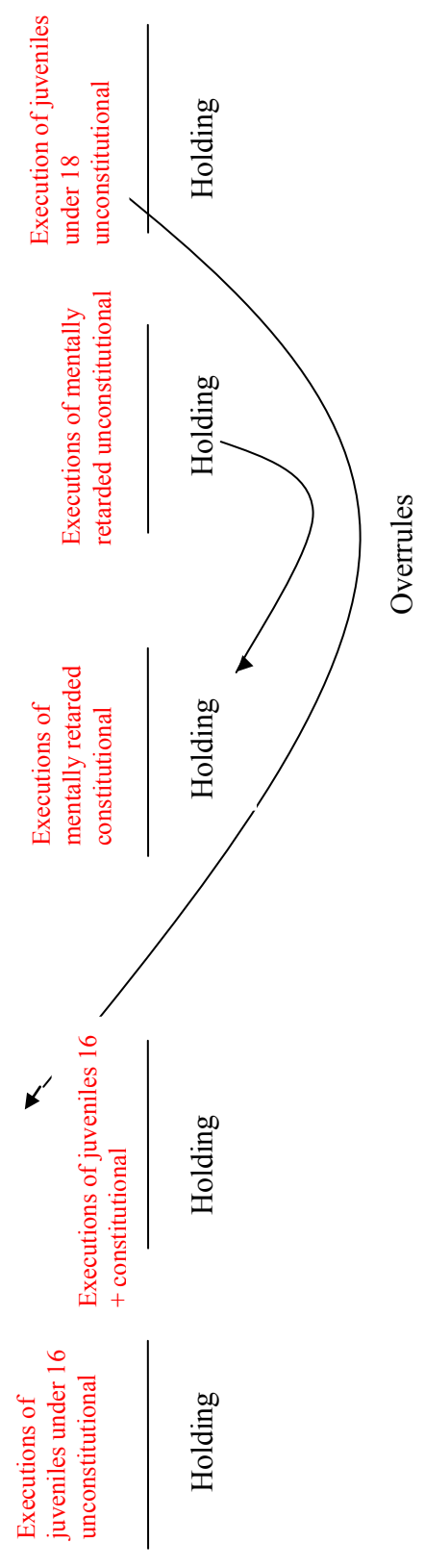


Death Penalty Timeline

Thompson v. Oklahoma Stanford v. Kentucky Penry v. Lynaugh Atkins v. Virginia Roper v. Simmons

Case Name	Case Name	Case Name	Case Name	Case Name
1988	1989	1989	2002	2004

Year	Year	Year	Year	Year



Exercise – Discovering Justice (Information about Cases taken from: Equal Justice Initiative’s Publication – “Cruel and Usual: Sentencing 13- and 14-Year Old Children to Die in Prison”)

Before a case goes to trial, both parties go through a process called discovery. Discovery is when both parties request information from the other side in the hopes that they will find out important information about the matter they are arguing. For example, if a man is accused of stealing money from a supermarket, both sides will probably try to get a copy of the store's security camera tapes from the night in question. Many times in the real world, though, important information is found out much later, completely changing the case for all parties involved.

The following hypotheticals are real life examples of individuals who have been accused of crimes. Have the class listen to the facts of their stories and discuss how they think the defendant should be punished. Then, read the previously withheld facts regarding their cases, revealing each new set of facts individually. As each new set of facts is revealed, have the class think whether this newly discovered information changes their opinion about the defendant's culpability. How and why?

1. In an attempt to runaway from home, this defendant's grandfather and aunt were shot and killed by the defendant's lover.
 - a. What sentence do you believe this defendant should receive?
 - b. Now listen to the previously withheld information. How does each new set of facts change your opinion about their culpability?
 - i. The defendant was only 14 when the crime occurred.
 - ii. The defendant's mother was addicted to crack cocaine and abandoned her in crack houses while she was still in diapers. Her mother threatened her at gunpoint repeatedly, and she ended up in the hospital after being assaulted by her father. She was also sexually assaulted by her stepfather at the age of 11.
 - iii. Both the defendant's grandmother and sister, who were also injured, want the defendant to be released from jail so she can come home.
 - c. This defendant's name is Ashley Jones, and she is the only girl in Alabama to be sentenced to death in prison for an offense committed at the age of 14. Today, Ashley is 22 years old and has been said to have matured into a bright and promising young woman. Nevertheless, she is still sentenced to die in prison because Alabama's mandatory sentencing law does not recognize mitigation, mercy, or abusive dysfunction leading to crime.

2. Because the defendant's brother had something the defendant wanted, the defendant killed him.
 - a. What sentence do you believe this defendant should receive?
 - b. Now listen to the previously withheld information. How does each new set of facts change your opinion about their culpability?
 - i. The defendant's parents taught him that problems were solved by fighting.
 - ii. The defendant saw his uncle gunned down in his front yard.
 - iii. The defendant's mother used and sold crack cocaine out of their house, and when he was removed from her custody he smelled of urine, and his legs, arms and head were bruised from being beaten with curtain rods.
 - iv. The defendant was 14 when he committed the crime.
 - c. This defendant's name is Quantel Lotts and he has been convicted of murder by the state of Missouri. Despite his stepmother's begging that Quantel have a chance at parole, Quantel has been sentenced to life in prison.

3. The defendant was a passenger in a high speed chase where gunshots were fired. Another passenger in the car claimed that he had been kidnapped by the defendant and the driver.
 - a. What sentence do you believe this defendant should receive?
 - b. Now listen to the previously withheld information. How does each new set of facts change your opinion about their culpability?
 - i. No one was injured during the chase.
 - ii. The alleged kidnapping victim and the driver picked the defendant up at a party.
 - iii. The alleged kidnapping victim and the driver were nearly twice the defendant's age. The defendant was 14 at the time of the incident.
 - iv. One year earlier, at the age of 13, the defendant was shot while riding his bicycle, and his brother, who had come to rescue him, was then shot in the head and killed.
 - c. This defendant's name is Antonio Nunez. He is the only child in the country known to be serving a death in prison sentence for his involvement, at age 14, in a single incident where no one was injured.

4. After a home invasion during which money and jewelry were stolen, the defendant later returned with another assailant to sexually assault the elderly homeowner.
 - a. What sentence do you believe this defendant should receive?
 - b. Now listen to the previously withheld information. How does each new set of facts change your opinion about their culpability?

- i. The defendant was 13 at the time of the crime.
 - ii. The defendant is severely mentally disabled, and has since developed an illness which limits him to a wheelchair.
 - iii. No DNA was presented that linked the defendant to the crime. The only way the prosecution could identify the defendant was through the victim who had previously rehearsed her identification with the prosecution.
- c. This defendant's name is Joe Sullivan and he has spent 18 years in prison in Florida. When he first entered the adult prison at the age of 14, he was repeatedly victimized by older inmates. Today, he continues to serve his sentence of life without parole.

PART THREE. The Eighth Amendment and Life Imprisonment without Parole

Primary source: <http://eji.org/eji/childrenprison/deathinprison/sullivan.graham>

The death penalty has been said to be a unique punishment because it irrevocably takes the life of those sentenced. Life without parole, however, has recently gained great attention from the legal community. Many argue that life in prison without parole is an equally severe punishment, for although it does not sentence the inmate to death, it is sentencing the inmate to die in prison, permanently removed from society, friends, family, and freedom.

Earlier in this unit, in the “Discovering Justice Exercise,” the class learned about a young man named Joe Sullivan who was charged with sexual battery at the age of 13 and sentenced to life in prison. This sentence made Sullivan one of only two thirteen year olds in the country sentenced to life without parole for a non-homicidal crime. By way of review, in 1989, a thirteen year old Sullivan was convinced by two older boys to commit a home burglary, where they stole money and jewelry before leaving. Later that afternoon, the home owner was sexually assaulted in the home and Sullivan was blamed, although speculation has been made that one of the older assailants was responsible. Nevertheless, the two older boys were sentenced to juvenile detention and released shortly thereafter, but Sullivan was tried in adult court.

During Sullivan's one day trial, biological evidence collected from the victim was not entered into evidence at trial and was destroyed before it could be subjected to DNA testing. Additionally, Sullivan was identified by the victim, but the victim had rehearsed the identification with the prosecutor prior to trial. A six-person jury convicted Sullivan.

Arguably the most exasperating detail of Sullivan's case, however, is the fact that Sullivan's lawyer failed to object to the identification, and filed a brief on appeal saying that there were no issues to appeal with the case. Sullivan's lawyer was later disbarred, but Sullivan remains in jail, resigned to a wheelchair as a result of his Multiple Sclerosis.

On November 9, 2009, Sullivan argued to the Supreme Court that his sentence of life without parole violates the Eighth Amendment's ban against cruel and unusual punishment. Sullivan's case heavily relied on Roper v. Simmons, a case we just discussed that held the sentencing of juveniles under the age of 18 to death to be unconstitutional. Sullivan argued that life without parole is equally as severe and permanent, rendering it equally unconstitutional.

That same day, Terrance Graham also had the opportunity to challenge the constitutionality of the life without parole sentence he received as a minor in the Supreme Court. Graham was sixteen years old when he and another man tried to rob a store and the co-defendant hit the store manager with a pipe. The store manager had to receive stitches. Graham was charged with armed burglary and attempted arm robbery, and received three years probation after entering a guilty plea. One year later, at the age of 17, Graham found himself in trouble again when he was accused of committing a home invasion with two 20 year old men. Graham denied involvement in the robbery but admitted to violating his probation by missing curfew. The judge found him guilty of both charges, and sentenced him to life without parole.

On November 9, 2009, Graham argued that his sentence of life without parole violated the Eighth Amendment's ban on cruel and unusual punishment because only about seven percent of juveniles nationwide who have also received that sentence committed non-homicide offenses. Additionally, Graham argued that such a sentence for a minor was in violation of international law, pointing out the fact that the United States is the only country in the world that sentences children to die in prison.

After hearing both arguments, the Supreme Court issued its decision on May 17, 2010. In an opinion delivered by Justice Kennedy, the Court held the sentence of life without parole for a minor who committed a non-homicide offense to be in violation of the Eighth Amendment. Looking to both international law and United States precedent, the Court found the sentence to be contrary to the widely held belief that juveniles have a "lessened culpability" because they are less mature, have an underdeveloped sense of responsibility, and are more vulnerable to negative influences. This belief, which was the basis for the decision in Roper, demonstrates the juveniles should be given the chance to reform because they are still developing members of society. Taking all of this into consideration, the Court found the sentence of life without parole for minors guilty of a non-homicide crime to be cruel and unusual punishment.

An excerpt from important decision is included in the following pages. To assist in reading comprehension, vocabulary words have been bolded and their definitions can be found in the attached vocabulary list.

In the Supreme Court of the United States

Graham v. Florida

Argued Nov. 9, 2009.

Decided May 17, 2010.

Justice KENNEDY delivered the opinion of the Court.

The issue before the Court is whether the Constitution permits a juvenile offender to be sentenced to life in prison without parole for a **nonhomicide** crime. The sentence was imposed by the State of Florida. Petitioner challenges the sentence under the Eighth Amendment's Cruel and Unusual Punishments Clause, made applicable to the States by the Due Process Clause of the Fourteenth Amendment.

I

Petitioner is Terrance Jamar Graham. He was born on January 6, 1987. Graham's parents were addicted to crack cocaine, and their drug use persisted in his early years. Graham was diagnosed with attention deficit hyperactivity disorder in elementary school. He began drinking alcohol and using tobacco at age 9 and smoked marijuana at age 13.

In July 2003, when Graham was age 16, he and three other school-age youths attempted to rob a barbecue restaurant in Jacksonville, Florida. One youth, who worked at the restaurant, left the back door unlocked just before closing time. Graham and another youth, wearing masks, entered through the unlocked door. Graham's masked **accomplice** twice struck the restaurant manager in the back of the head with a metal bar. When the manager started yelling at the assailant and Graham, the two youths ran out and escaped in a car driven by the third accomplice. The restaurant manager required stitches for his head injury. No money was taken.

Graham was arrested for the robbery attempt. Under Florida law, it is within a **prosecutor's** discretion whether to charge 16- and 17-year-olds as adults or juveniles for most felony crimes. Graham's prosecutor elected to charge Graham as an adult. The charges against Graham were armed **burglary** with **assault** or **battery**, a **first-degree felony** carrying a maximum penalty of life

imprisonment without the possibility of **parole**; and attempted armed-robbery, a **second-degree felony** carrying a maximum penalty of 15 years' imprisonment.

On December 18, 2003, Graham pleaded guilty to both charges under a **plea agreement**. Graham wrote a letter to the trial court. After reciting "this is my first and last time getting in trouble," he continued "I've decided to turn my life around." Graham said "I made a promise to God and myself that if I get a second chance, I'm going to do whatever it takes to get to the [National Football League]."

The **trial court** accepted the plea agreement. The court withheld **adjudication** of guilt as to both charges and sentenced Graham to **concurrent** 3-year terms of **probation**. Graham was required to spend the first 12 months of his probation in the county jail, but he received credit for the time he had served awaiting trial, and was released on June 25, 2004.

Less than 6 months later, on the night of December 2, 2004, Graham again was arrested. The State's case was as follows: Earlier that evening, Graham participated in a home invasion robbery. His two accomplices were Meigo Bailey and Kirkland Lawrence, both 20-year-old men. According to the State, at 7 p.m. that night, Graham, Bailey, and Lawrence knocked on the door of the home where Carlos Rodriguez lived. Graham, followed by Bailey and Lawrence, forcibly entered the home and held a pistol to Rodriguez's chest. For the next 30 minutes, the three held Rodriguez and another man, a friend of Rodriguez, at gunpoint while they ransacked the home searching for money. Before leaving, Graham and his accomplices barricaded Rodriguez and his friend inside a closet.

The State further **alleged** that Graham, Bailey, and Lawrence, later the same evening, attempted a second robbery, during which Bailey was shot. Graham, who had borrowed his father's car, drove Bailey and Lawrence to the hospital and left them there. As Graham drove away, a police sergeant signaled him to stop. Graham continued at a high speed but crashed into a telephone pole. He tried to flee on foot but was **apprehended**. Three handguns were found in his car.

When detectives interviewed Graham, he denied involvement in the crimes. He said he encountered Bailey and Lawrence only after Bailey had been shot. One of the detectives told Graham that the victims of the home invasion had identified him. He asked Graham, "Aside from the two robberies tonight how many more were you involved in?" Graham responded, "Two to three before tonight." That night Graham allegedly committed the robbery, he was 34 days short of his 18th birthday.

Graham maintained that he had no involvement in the home invasion robbery; but, even after the court underscored that the **admission** could expose him to a life sentence on the earlier charges, he admitted violating probation conditions by fleeing. *** The court further found that Graham had violated his probation by committing a home invasion robbery, by possessing a firearm, and by associating with persons engaged in criminal activity.

The trial court held a **sentencing hearing**. Under Florida law the minimum sentence Graham could receive ... was 5 years' imprisonment. The maximum was life imprisonment. Graham's attorney requested the minimum ... sentence of 5 years. A **presentence report** prepared by the Florida Department of Corrections recommended that Graham receive an even lower sentence-at most 4 years' imprisonment. The State recommended that Graham receive 30 years on the armed burglary count and 15 years on the attempted armed robbery count.

After hearing Graham's testimony, the trial court explained the sentence it was about to pronounce:

"... I don't understand why you would be given such a great opportunity to do something with your life and why you would throw it away. The only thing that I can rationalize is that you decided that this is how you were going to lead your life and that there is nothing that we can do for you. And as the state pointed out, that this is an escalating pattern of criminal conduct on your part and that we can't help you any further. We can't do anything to deter you. ***

"... I have to start focusing on the community and trying to protect the community from your actions. ***

The trial court found Graham guilty of the earlier armed burglary and attempted armed robbery charges. It sentenced him to the maximum sentence authorized by law on each charge: life imprisonment for the armed burglary and 15 years for the attempted armed robbery. Because Florida has **abolished** its parole system, a life sentence gives a defendant no possibility of release unless he is granted **executive clemency**.

Graham filed a motion in the trial court challenging his sentence under the Eighth Amendment. ***

To determine whether a punishment is cruel and unusual, courts must look beyond historical conceptions to "the evolving standards of decency that mark the progress of a maturing society.' This is because '[t]he standard of extreme

cruelty is not merely descriptive, but necessarily embodies a moral judgment.
***''

The Cruel and Unusual Punishments Clause prohibits the imposition of inherently barbaric punishments under all circumstances. “[P]unishments of torture,” for example, “are forbidden.” These cases underscore the essential principle that, under the Eighth Amendment, the State must respect the human attributes even of those who have committed serious crimes.

*** The concept of proportionality is central to the Eighth Amendment. Embodied in the Constitution's ban on cruel and unusual punishments is the “**precept** of justice that punishment for crime should be graduated and proportioned to [the] offense.”

III

A

The analysis begins with **objective indicia** of national consensus. *** Six **jurisdictions** do not allow life without parole sentences for any juvenile offenders. Seven jurisdictions permit life without parole for juvenile offenders, but only for homicide crimes. Thirty-seven States as well as the District of Columbia permit sentences of life without parole for a juvenile nonhomicide offender in some circumstances. Federal law also allows for the possibility of life without parole for offenders as young as 13. Relying on this metric, the State and its **amici** argue that there is no national consensus against the sentencing practice at issue.

This argument is incomplete and unavailing. *** Here, an examination of actual sentencing practices in jurisdictions where the sentence in question is permitted by statute discloses a consensus against its use. ... [S]entences of life without parole for juvenile nonhomicide offenders ... are most infrequent. According to a recent study, nationwide there are only 109 juvenile offenders serving sentences of life without parole for nonhomicide offenses.

Thus, only 12 jurisdictions nationwide in fact impose life without parole sentences on juvenile nonhomicide offenders-and most of those impose the sentence quite rarely-while 26 States as well as the District of Columbia do not impose them despite apparent statutory authorization.

The sentencing practice now under consideration is exceedingly rare. And “it is fair to say that a national consensus has developed against it.”

B

Roper established that because juveniles have lessened culpability they are less deserving of the most severe punishments. As compared to adults, juveniles have a “‘lack of maturity and an underdeveloped sense of responsibility’ ”; they “‘are more vulnerable or susceptible to negative influences and outside pressures, including peer pressure’”; and their characters are “‘not as well formed.’” A juvenile is not **absolved** of responsibility for his actions, but his transgression “‘is not as morally reprehensible as that of an adult.’”

***As petitioner's amici point out, developments in psychology and brain science continue to show fundamental differences between juvenile and adult minds. For example, parts of the brain involved in behavior control continue to mature through late adolescence. Juveniles are more capable of change than are adults, and their actions are less likely to be evidence of “**irretrievably depraved character**” than are the actions of adults. ***

The Court has recognized that defendants who do not kill, intend to kill, or foresee that life will be taken are categorically less deserving of the most serious forms of punishment than are murderers. There is a line “‘between homicide and other serious violent offenses against the individual.’” Serious nonhomicide crimes “‘may be devastating in their harm ... but ‘in terms of moral depravity and of the injury to the person and to the public,’ ... they cannot be compared to murder in their **‘severity and irrevocability.’** ” This is because “[l]ife is over for the victim of the murderer,” but for the victim of even a very serious nonhomicide crime, “‘life ... is not over and normally is not beyond repair.’”

It follows that, when compared to an adult murderer, a juvenile offender who did not kill or intend to kill has a twice **diminished moral culpability**. The age of the offender and the nature of the crime each bear on the analysis.

As for the punishment, life without parole is “‘the second most severe penalty permitted by law.’” It is true that a death sentence is “‘unique in its severity and irrevocability’”; yet life without parole sentences share some characteristics with death sentences that are shared by no other sentences. The State does not execute the offender sentenced to life without parole, but ... [i]t deprives the convict of the most basic liberties without giving hope of restoration, except perhaps by executive clemency—the remote possibility of which does not **mitigate** the harshness of the sentence. ***

Life without parole is an especially harsh punishment for a juvenile. Under this sentence a juvenile offender will on average serve more years and a greater percentage of his life in prison than an adult offender. ***

The **penological** justifications for the sentencing practice are also relevant to the analysis. ***A sentence lacking any legitimate penological justification is by its nature disproportionate to the offense. With respect to life without parole for juvenile nonhomicide offenders, none of the goals of penal sanctions that have been recognized as legitimate- **retribution, deterrence, incapacitation, and rehabilitation**- provides an adequate justification.

Retribution is a legitimate reason to punish, but it cannot support the sentence at issue here. *** Roper found that “[r]etribution is not proportional if the law's most severe penalty is imposed” on the juvenile murderer. The considerations underlying that holding support as well the conclusion that retribution does not justify imposing the second most severe penalty on the less culpable juvenile nonhomicide offender.

Deterrence does not suffice to justify the sentence either. Roper noted that “the same characteristics that render juveniles less culpable than adults suggest ... that juveniles will be less susceptible to deterrence.” ***

Incapacitation, a third legitimate reason for imprisonment, does not justify the life without parole sentence in question here. Recidivism is a serious risk to public safety, and so incapacitation is an important goal. But while incapacitation may be a legitimate penological goal sufficient to justify life without parole in other contexts, it is inadequate to justify that punishment for juveniles who did not commit homicide. ***

Here one cannot dispute that this defendant posed an immediate risk, for he had committed, we can assume, serious crimes early in his term of supervised release and despite his own assurances of reform. Graham deserved to be separated from society for some time in order to prevent what the trial court described as an “escalating pattern of criminal conduct,” but it does not follow that he would be a risk to society for the rest of his life. ***

Finally there is rehabilitation, a penological goal that forms the basis of parole systems. ***

A sentence of life imprisonment without parole, however, cannot be justified by the goal of rehabilitation. *** By denying the defendant the right to reenter the community, the State makes an irrevocable judgment about that person's value and place in society. This judgment is not appropriate in light of a juvenile nonhomicide offender's capacity for change and limited moral culpability. ***

In sum, penological theory is not adequate to justify life without parole for juvenile nonhomicide offenders. *** This Court now holds that for a juvenile offender who did not commit homicide the Eighth Amendment forbids the sentence of life without parole. *** Because “[t]he age of 18 is the point where society draws the line for many purposes between childhood and adulthood,” those who were below that age when the offense was committed may not be sentenced to life without parole for a nonhomicide crime.

A State is not required to guarantee eventual freedom to a juvenile offender convicted of a nonhomicide crime. What the State must do, however, is give defendants like Graham some meaningful opportunity to obtain release based on demonstrated maturity and rehabilitation. *** It bears emphasis, however, that while the Eighth Amendment forbids a State from imposing a life without parole sentence on a juvenile nonhomicide offender, it does not require the State to release that offender during his natural life. ***

Terrance Graham's sentence guarantees he will die in prison without any meaningful opportunity to obtain release, no matter what he might do to demonstrate that the bad acts he committed as a teenager are not representative of his true character, even if he spends the next half century attempting to atone for his crimes and learn from his mistakes. The State has denied him any chance to later demonstrate that he is fit to rejoin society based solely on a nonhomicide crime that he committed while he was a child in the eyes of the law. This the Eighth Amendment does not permit.

D

There is support for our conclusion in the fact that, in continuing to impose life without parole sentences on juveniles who did not commit homicide, the United States adheres to a sentencing practice rejected the world over. ***

Today we continue that longstanding practice in noting the global consensus against the sentencing practice in question. A recent study concluded that only 11 nations authorize life without parole for juvenile offenders under any circumstances; and only 2 of them, the United States and Israel, ever impose the punishment in practice. *** But ... Israel ... not appear to impose that sentence for nonhomicide crimes; all of the seven Israeli prisoners whom commentators have identified as serving life sentences for juvenile crimes were convicted of homicide or attempted homicide.

Thus, as **petitioner** contends and **respondent** does not contest, the United States is the only Nation that imposes life without parole sentences on juvenile nonhomicide offenders. ***

The Court has treated the laws and practices of other nations and international agreements as relevant to the Eighth Amendment not because those norms are **binding** or **controlling** but because the judgment of the world's nations that a particular sentencing practice is inconsistent with basic principles of decency

* * *

The judgment of the First District Court of Appeal of Florida affirming Graham's conviction is **reversed**, and the case is **remanded** for further proceedings not inconsistent with this opinion.

It is so ordered.

Justice STEVENS, with whom Justice GINSBURG and Justice SOTOMAYOR join, concurring.

*** We learn, sometimes, from our mistakes. Punishments that did not seem cruel and unusual at one time may, in the light of reason and experience, be found cruel and unusual at a later time; unless we are to abandon the moral commitment embodied in the Eighth Amendment, proportionality review must never become effectively obsolete.

Justice THOMAS, with whom Justice SCALIA joins, and with whom Justice ALITO joins as to Parts I and III, dissenting.

The Court holds today that it is "grossly disproportionate" and hence unconstitutional for any judge or jury to impose a sentence of life without parole on an offender less than 18 years old, unless he has committed a homicide. Although the text of the Constitution is silent regarding the permissibility of this sentencing practice, and although it would not have offended the standards that prevailed at the founding, the Court insists that the standards of American society have evolved such that the Constitution now requires its prohibition.

I am unwilling to assume that we, as members of this Court, are any more capable of making such moral judgments than our fellow citizens. Nothing in our training as judges qualifies us for that task, and nothing in **Article III** gives us that authority.

I respectfully dissent.

Exercise – Jeopardy: A Review of the Eighth Amendment

The following exercise reinforces the material provided in this lesson through an interactive game.

The game is comprised of a set of questions intended to be asked in the form of Jeopardy. Students are to divide into teams, each team taking turns choosing which question they would like to answer. The game board, to be placed at the front of the classroom, should resemble the following format:

Dates	Case Names	Mystery Questions
\$100	\$100	\$100
\$200	\$200	\$200
\$300	\$300	\$300
\$400	\$400	\$400
\$500	\$500	\$500

The corresponding questions and answers can be found below:

Dates

- \$100: What year was Roper v. Simmons decided?
 - o 2004
- \$200: In what year was Stanford v. Kentucky overruled?
 - o 2004
- \$300: In what year did the Supreme Court decide that the state could not execute minors under the age of 16?
 - o 1988 (Thompson v. Oklahoma)
- \$400: In what year did it become unconstitutional for a minor to be sentenced to life in prison without parole for a non-homicide?
 - o 2010 (Graham v. Florida)
- \$500: In what year did this state stop using the death penalty?
 - o Please see Death Penalty Statistics handout for the applicable rule. Depending on your location, this may be a trick question.

Cases

- \$100: What Supreme Court case said that it was constitutional to execute mentally retarded individuals?
 - o Penry v. Lynaugh
- \$200: What Supreme Court case finally held the execution of mentally retarded persons to be unconstitutional?
 - o Atkins v. Virginia

- \$300: What Supreme Court case found that it was constitutional to execute minors between the ages of 16 and 18?
 - o [Stanford v. Kentucky](#)
- \$400: What Supreme Court case prohibits the sentencing of juveniles under the age of 18 to life without parole for non-homicide crimes?
 - o [Graham v. Florida](#) (or [Sullivan v. Florida](#))
- \$500: What Supreme Court case overruled [Stanford v. Kentucky](#)?
 - o [Roper v. Simmons](#)

Mystery Questions

- \$100: The Eighth Amendment prohibits what kind of punishment?
 - o [Cruel and unusual punishment](#)
- \$200: State two reasons some people believe minors should be given the death penalty.
 - o [These answers will vary but may include:](#)
 - [Do the crime, do the time](#)
 - [Old enough to commit the crime, old enough to be punished](#)
 - [Actions of consequences](#)
 - [Make an example](#)
 - [Teach them a lesson](#)
- \$300: State two reasons some people believe minors should not be given the death penalty.
 - o [Once again, these answers will vary but may include:](#)
 - [Immature](#)
 - [Easily influenced by others](#)
 - [Not fully developed psychologically or hormonally](#)
 - [Impulsive](#)
 - [Limited ability to understand/predict consequences](#)
- \$400: Name one reason why the evidence against Joe Sullivan seemed suspicious.
 - o [Answers may vary, but should include either:](#)
 - [No DNA from the victim after attack was entered into evidence](#)
 - [DNA evidence was destroyed before trial](#)
 - [DNA evidence was destroyed before it could be tested](#)
 - [The witness practiced her identification of Sullivan prior to trial with the prosecutor](#)
- \$500: The Supreme Court did a lot of research before deciding that it was unconstitutional to execute minors in [Roper v. Simmons](#). Name two resources the Supreme Court relied on in making this decision.
 - o [National consensus](#)
 - o [International law](#)
 - o [Morality](#)
 - o [Scientific research](#)

PART FOUR. Additional Resources

Vocabulary List to Accompany Graham v. Florida Excerpt

Abolished	To end , i.e. the observance or effect of
Absolved	To set free from Ex. Once the DNA evidence was entered, the defendant was absolved from guilt.
Accomplice	A person who joins with another in carrying out some plan (especially an unethical or illegal plan)
Adjudication	The final judgment in a legal process
Admission	Acknowledgment that a fact or statement is true
Alleged (used as verb)	To argue Ex. The defendant <i>alleged</i> that he was not at the scene of the crime on the night in question.
Amendment	Addition to the Constitution, found in the Bill of Rights, conferring explicit rights to the people
Amici Brief (<i>amicus curiae</i>)	Legal Latin term, translated as "friend of the court"; someone not related to the case who provides useful information in the court's decision (sometimes given in the form of a brief)
Apprehended	To arrest, to seize
Burglary	Entering a building unlawfully with intent to commit a felony or to steal valuable property
Article 3	A declaration in the U.S. Constitution that establishes the judicial branch of the federal government.
Assault	A threat or attempt to inflict offensive physical contact or bodily harm on a person that puts the person in immediate danger of or in apprehension of such harm or contact
Bail	The legal system that allows an accused person to be temporarily released from custody
Battery	An offensive touching or use of force on a person without the person's consent
Binding	Commanding adherence to a commitment, obligation, or duty
Capital Punishment	Death penalty; execution of a person by judicial process as a punishment for an offense
Concurrent	Happening at the same time Ex. The judge sentenced Graham to <i>concurrent</i> 3-year terms of probation.

Controlling	Required Ex. The Court has treated the laws and practices of other nations important to the 8 th Amendment not because these norms are <i>controlling</i> but to practice consistency with basic law principles.
Corporal Punishment	The infliction of physical injury on one who has committed a crime
Deterrence	A theory that criminal laws are passed with well-defined punishments to discourage individual criminal defendants from becoming repeat offenders and to discourage others from committing similar crimes
Diminished Moral Capacity	A principle that decides how much a person should be blamed for a crime and whether he/she intended to do wrong
Due Process Clause	Principle that the government must respect all of the legal rights that are owed to a person according to the law
Executive Clemency	The power (usually of a president or governor) to pardon or commute the sentence of someone convicted in that jurisdiction
Evolving Standards Of Decency	A concept in American constitutional interpretation which claims that the Constitution has a dynamic, changing meaning.
First-Degree Felony	A serious crime punishable by execution or a prison term more than 1 year; first-degree felony is the most severe classification of a crime
Incapacitation	To deprive somebody or something of power, force, or effectiveness Ex. Because he was a dangerous criminal, the court decided to <i>incapacitate</i> him by sentencing him to ten years in prison.
Irretrievably Depraved Character	Someone with a personality marked by evil and malice
Irrevocability	Unable to recover or regain Ex. The <i>irrevocability</i> of the badly burnt evidence made it hard for detectives to lead a successful investigation.
Homicide	The killing of a human being by another being
Jurisdiction	The right and power to interpret and apply the law; the territory where law can be exercised/practiced
Mitigate	To make less severe or harsh

Objective Indicia	Hints leading to a fact, which are undistorted by emotion or personal bias Ex. Before giving her client advice, the lawyer decided to rely on <i>objective indicia</i> by researching the applicable law instead of just going with whatever felt right.
Penological	Of or relating to penology; the field dealing with prison management and the treatment of offenders
Perjury	The voluntary violation of an oath or vow either by swearing to what is untrue or by omission to do what has been promised under oath; false swearing
Petitioner	One who presents a formal, written application to a court, officer, or legislative body that requests action on a certain matter
Plea Agreement (also known as Plea Bargain)	An agreement in a criminal case whereby the prosecutor offers the defendant the opportunity to plead guilty, usually to a lesser charge or to the original criminal charge with a recommendation of a punishment lighter than the maximum sentence
Precedent	Legal principle, created by a court decision, which provides an example or authority for judges deciding similar issues later
Precept	A civil warrant issued by an authorized person demanding another's action or an order issued by legally constituted authority to a subordinate official (lower-ranking) subordinate
Presentence Report	The investigation into the history of person convicted of a crime before sentencing to determine if there are extenuating circumstances which should ameliorate the sentence or a history of criminal behavior to increase the harshness of the sentence
Probation	A way of dealing with offenders without imprisoning them; a defendant found guilty of a crime is released by the court without imprisonment subject to conditions set by the court
Probation officer	The officer of the court who supervises probationers
Prosecutor	A lawyer who decides whether to charge a person with a crime and tries to prove in court that the person is guilty
Retribution	A justly deserved penalty or punishment
Rehabilitation	A restoration of reputation and character
Remanded	When an appellate court sends back a case to the trial court or lower appellate court for action

Respondent	The appellee, or the opposing party, in an appeal; the defendant in a proceeding commenced by a petition
Retribution	A justly deserved penalty; the act of correcting for your wrongdoing
Reversed	A judgment by a higher court that the judgment of a lower court was incorrect and should be set aside
Second-Degree Felony	A serious crime punishable by no less than one year imprisonment; second-degree is less severe than first-degree (see above)
Sentence	A final judgment of guilty in a criminal case and the punishment that is imposed
Sentencing Hearing	A hearing before a Judge where the punishment of a defendant is decided
Severity	Harshness
Solitary Confinement	Confinement of a prisoner in isolation from other prisoners
Trial Court	The first court before which the facts of a case are decided; these courts are said to have original jurisdiction
Writ of Certiorari	A discretionary device used by the Supreme Court to choose the cases it wishes to hear

Helpful Books and Websites

***Youth Justice in America*, by Maryam Ahranjani, Andrew G. Ferguson, and Jamin B. Raskin**

This textbook covers the rights and responsibilities of young people as they relate to privacy, right to counsel, and other concepts related to crime and punishment. The curriculum focuses on cases that explore the Fourth, Fifth, Sixth, and Eighth Amendments to the U.S. Constitution (including search and seizure, self-incrimination, the right to legal counsel, and cruel and unusual punishment). The book offers an excellent overview of the separate criminal justice systems for youth and adults. Available through cqpress.com, amazon.com, and borders.com.

***We the Students: Supreme Court Cases for and about Students*, by Jamin B. Raskin**

Designed to help students achieve "constitutional literacy," *We the Students* examines dozens of interesting and relevant Supreme Court cases pertaining to young people at school. Through meaningful and engagingly written commentary, excerpts of relevant cases, and exercises and class projects, the

text provides students with the tools to gain an understanding and appreciation of democratic freedoms and challenges, underscoring students' responsibility in preserving constitutional principles. Topics include bullying on campus, religion in schools, sexual harassment, segregation and desegregation, drug testing, school vouchers, affirmative action, corporal punishment in schools, freedom of speech, and much more. Available through cypress.com, amazon.com, and borders.com.

Web sites

www.wcl.american.edu/marshallbrennan

www.band-of-rights.org

www.constitutioncenter.org

www.justicelearning.org

www.justicetalking.org

<http://www.deathpenaltyinfo.org/>

<http://ejl.org/ejl/childrenprison/deathinprison/sullivan.graham>

<http://www.medievality.com/torture.html>

Corporal Punishment Lesson Plan

Although this lesson plan covers the most recent case ([Graham v. Florida](#)) and many of the Eighth Amendment's applications, the Eighth Amendment has also been discussed in the context of corporal punishment in public schools. For students and teachers who would like to learn more about the Eighth Amendment in the context of public schools, a supplemental lesson plan focusing on corporal punishment is available upon request.

Students may find the issue of corporal punishment in schools more interesting than the death penalty or life without parole because it applies to their everyday lives. Additionally, teachers under time constraints may find the corporal punishment lesson plan more appropriate for their class because it is concise and focused.

For more information about the [Graham v. Florida](#) teaching module or about the Marshall-Brennan Constitutional Literacy Project, please contact Professor Maryam Ahranjani, at 202-274-4387 or mahranjani@wcl.american.edu. We welcome your feedback on this lesson!