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The Case Against Juvenile Life Without Parole: Good Policy *and* Good Law

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Two paths Diverge: Joe and Kareem

In 1989, a 13-year-old boy named Joe Sullivan joined two older teens in his neighborhood to break into Lena Bruner's home in Pensacola, Florida. He was convicted of raping the elderly woman.

In 2000, a 13-year-old boy named Kareem Watts stabbed his neighbor, Darlyne Jules, to death. He became the youngest person in Bucks County, Pennsylvania to be charged with first-degree murder.

Two boys, over a decade apart, shared more than a conflict with the law. They shared the challenge of growing up in a broken home and the nightmare of struggling with mental illness. But when the futures of Joe and Kareem were left in the hands of the legal system, their paths diverged.

Kareem was sentenced in juvenile court. While he was detained in a juvenile facility until age 21, he received mental health and anger management treatment. Today, Kareem is a counselor assistant at a juvenile facility, has earned his GED, and was appointed by the Pennsylvania governor's office to serve on a state juvenile justice committee.

Joe was tried in adult court and sentenced to life in adult prison without the possibility of parole. He has fought unsuccessfully for two decades to appeal his sentence. Today, Joe is 33 years old, suffering from multiple sclerosis, and wheelchair-bound. He is frequently bullied and attacked by other inmates. Joe knows that unless a court intervenes he will never have an opportunity to demonstrate his growth and change. He knows that he will never have a "second chance."

Many children in conflict with the law come to the same crossroads as Joe and Kareem. And there, the courts must decide: **Should a juvenile convicted of a crime – even a violent crime – be sentenced to life and denied any meaningful opportunity for parole?** In November, the United States Supreme Court will answer this question when it hears the cases of Joe Sullivan and Terrance Graham, another Florida juvenile who was sentenced to life without parole (LWOP).

The stories of Joe and Kareem demonstrate that the Court's answer should be no – both as a matter of policy and as a mandate of law. Where the paths of Joe and Kareem diverge, the paths of policy and law come together, leading to one conclusion: juvenile LWOP is a violation of the Eighth Amendment's prohibition of cruel and unusual punishment.

The Path of Policy

Both Kareem and Joe illustrate why eliminating juvenile LWOP is good policy. The overwhelming majority of juvenile offenders do *not* become chronic offenders. Instead, they follow Kareem's path, embracing the opportunity to reform and becoming productive members of society.

Children change over time. Juveniles who commit crimes are in the midst of their cognitive and psychological development. According to the American Medical Association, adolescents are more likely to engage in risky, sensation-seeking behavior because their brains are not fully developed. The frontal lobe of the brain, which controls our most advanced functions (like judging consequences and controlling impulses), continues to evolve into our early 20s.

The result? More often than not, a juvenile offender's propensity for impulsive (even criminal) behavior will dissipate in adulthood. The difference between a youth offender and an adult offender is clear: the child's identity is unformed, meaning that his "criminal" character is far less likely to be chiseled in stone. As the American Psychological Association tells us, juveniles have "greater changeability" and a strong capacity to reform.

Every time a child is sentenced to LWOP in our country, science collides with morality. We know from the soundest neurological and psychological research that youth offenders are not as competent or hardened as their adult counterparts. And yet, Joe Sullivan's formative and fluid identity met an irreversible fate when he was sentenced in 1991.

The United States stands alone in the world. The immorality of "throwing away the key" for juveniles in prison becomes striking when comparing the United States to the rest of the world. As of May 2009, an estimated 2,600 juveniles in the United States are serving LWOP sentences. *No* child outside of the United States is serving such a sentence. The United Nations Convention on the Rights of the Child contains an express prohibition on juvenile LWOP. The United States and Somalia are the only two countries in the world that have not ratified the Convention.

Of course, brain studies and moral guideposts do not always lead to *law*. Yet, in the context of the Eighth Amendment, these two policy arguments become essential to the analysis of whether a sentence is cruel and unusual. To send future children down Joe's path is not only bad policy, it is also bad law.

The Path of Law

In 2005, the Supreme Court held in [*Roper v. Simmons*](#) that the imposition of the death penalty on juveniles is unconstitutional. In declaring the sentence a violation of the Eighth Amendment's prohibition of cruel and unusual punishment, the Court relied on a two-step test. First, the Court asked whether objective indicia indicated a national consensus against the sentence. Second, the Court asked whether the sentence was morally disproportionate – and thereby an affront to the basic concept of human dignity - when applied to juveniles of presumptively diminished culpability.

Importantly, the second step of the *Roper* test is grounded in the two policy arguments outlined above. The question of moral disproportionality necessarily draws on both adolescent brain studies and international consensus.

A national consensus exists against juvenile LWOP. At first glance, the consensus against juvenile LWOP seems weaker than the consensus against juvenile capital sentences. Based on a 2005 Human Rights Watch study, 42 states allow LWOP as a sentence for a variety of crimes committed by juveniles. In contrast, only 20 states allowed the death penalty for juveniles when the Court heard *Roper*.

However, the Court made clear in *Roper* that state law is not the only measure of national consensus; *state*

practice is equally instructive. And in practice juvenile LWOP stands out in its rarity. Only 109 individuals are serving LWOP sentences for a non-homicide offense committed as a juvenile. Only 64 individuals are serving LWOP sentences for offenses they committed at the age of 14; and only 9 individuals, including Joe Sullivan, are serving LWOP for an offense committed at the age of 13. Given that more than 290,000 youth 14 years of age and younger were arrested for the violent crimes of murder, non-negligent homicide, rape or robbery between 1978 and 2007, these low numbers show the rarity of the LWOP sentence for children. Strengthening the national consensus against juvenile LWOP in non-homicide cases is the fact that just three states (Florida, Iowa, and Louisiana) account for an astonishing 90% of the 109 LWOP sentences for non-homicide offenses committed as a juvenile.

LWOP is morally disproportionate when applied to all juveniles. While numbers dictate the first step of the *Roper* test, determining moral disproportionality is largely within the Court's discretion. Yet, the mounting evidence on youth and adolescent development – including the adolescent brain studies described above – must drive the Court's analysis. It is here that the path of policy becomes the path of law.

As noted, children are more amenable to change because their brains are not fully formed. This incomplete development also makes children less culpable for their behavior. The *Roper* Court noted that the death penalty is the ultimate punishment, reserved for the very worst class of offenders. The majority concluded that juveniles *inherently* cannot be considered "among the worst offenders" because of their limited capacity for mature decision-making.

Scientific research since *Roper* continues to confirm and strengthen the notion that "children are different." Children do not have fully developed frontal lobes, which enable adults to evaluate consequences and reliably control impulses when making decisions. Instead, children rely on the amygdala – the part of the brain used for gut reactions. As a result, and as the *Roper* Court recognized, juveniles lack maturity and have an underdeveloped sense of responsibility that often leads to impetuous decisions.

Should this research apply with lesser force to an analysis of juvenile LWOP? The answer is no.

Like death, LWOP is a final and irrevocable sanction reserved for the worst class of offenders because it is based on the idea that these offenders cannot be rehabilitated. A 2006 article, *Roper v. Simmons: Unveiling Juvenile Purgatory: Is Life Really Better than Death?*, reveals that many juveniles imprisoned for life would prefer the death penalty because they consider LWOP to be a slower form of death. Indeed, LWOP may be a *crueler* fate than death. Juveniles have a diminished capacity to cope with long-term confinement, face a higher risk of assault in prison, and will be confined for a much longer time than their adult counterparts.

International consensus indicates moral disproportionality.

The moral proportionality of a sentence is not defined in a vacuum. The very concept of moral proportionality evolves over time, taking its cues from the practices within our borders and abroad. Justice requires our legal system to take note when the United States is out of step with every other country in the world – including nations often considered to be human rights violators.

The *Roper* Court viewed worldwide practices as additional confirmation of the juvenile death penalty's inherent disproportionality. Similarly, the overwhelming international consensus against juvenile LWOP (noted above) serves as further evidence that the sentence is cruel and unusual.

Is the Path a Slippery Slope?

There are, of course, concerns that arise when a potential punishment for juveniles is eliminated. Beginning with *Thompson v. Oklahoma* in 1988, the Supreme Court has heard a series of cases, each of which has restricted punishments available for juvenile offenders. Naysayers argue that the path to these decisions is a slippery slope, one that excuses juveniles from criminal behavior and offends public safety and victims' rights.

The naysayers fears are unwarranted because the path from *Thompson* to *Roper* and beyond travels through very limited territory. In *Sullivan* and *Graham*, the Court is not considering whether juvenile offenders should be punished – or punished severely - for their crimes. The Court is considering the narrow question of whether juvenile offenders should be afforded meaningful opportunities for parole.

Youth offenders, like all offenders, should be held accountable for their crimes – even by life imprisonment. Regardless of the Court's decisions in *Sullivan* and *Graham*, the very worst juvenile offenders still may spend the rest of their lives in prison. An opportunity for parole is just that: a *chance* for a prisoner to show strong evidence of rehabilitation. If a juvenile offender does not demonstrate change and is deemed a threat to public safety, the parole board will not grant parole. Victims' rights have long been protected through the parole hearing process, with victims retaining a right to participate and be heard before any decision on parole is granted.

Support for eliminating juvenile LWOP should not be construed as part of a broader movement to erode all juvenile punishment. Instead, juvenile sentencing – as with all criminal sentencing – is considered as justice requires under the Eighth Amendment. When determining whether a punishment is "cruel and unusual" under the Eighth Amendment, the Court looks to "the evolving standards of decency that mark the progress of a maturing society" as noted in [Trop v. Dulles](#).

Hearing cases about juvenile LWOP is not another step down the slope, but rather a defined and narrow step forward by a Court that is fully entrenched in the principles of constitutional law.

Conclusion

When a child is robbed of the chance to reform, our country is robbed as well. The overwhelming majority of juvenile offenders can and do become thriving, productive citizens. This is not an unattainable ideal – it is an irrefutable truth, supported by the research of acclaimed scientists and the stories of inspiring youths like Kareem Watts.

This fall, the Supreme Court has the chance to follow the law – and ensure that Joe Sullivan's and Terrance Graham's path becomes the road not taken for other juvenile offenders.

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