

LOCKED AWAY FOREVER?

THE SUPREME COURT IS CONSIDERING WHETHER LIFE IMPRISONMENT FOR TEEN OFFENDERS CONSTITUTES 'CRUEL AND UNUSUAL' PUNISHMENT

By Adam Liptak in Washington, D.C.

Joe Sullivan was 13 when he was convicted of sexually assaulting a 72-year-old woman in Pensacola, Florida, in 1989. Having already committed a string of petty crimes, he was sentenced to life in prison without the possibility of parole.

In an appeal now being considered by the Supreme Court, Sullivan, now 34, and Terrance Graham, who committed armed burglary in Florida at age 16, are asking the Court to decide whether their sentences violate the Constitution's Eighth Amendment ban on "cruel and unusual punishments."

A ruling is expected this spring. In the meantime, debate rages over the ethics of locking up teenage offenders for the rest of their lives.

The United States is the only country that makes routine use of life-without-parole sentences for juvenile offenders. Human rights groups say about 2,500 prisoners in the U.S. are serving such sentences for crimes they committed when they were 17 or younger. A vast majority of those crimes involved a killing by the defendant or an accomplice. But 109 people are serving life without parole for juvenile offenses that did not involve a homicide.

In Florida—the state with the highest number of non-

homicide juvenile lifers—judges, lawmakers, and prosecutors are divided about whether sentencing juveniles to life without parole is appropriate.

"Sometimes a 15-year-old has a tremendous appreciation for right and wrong," says Florida State Representative William Snyder. "I think it would be wrong for the Supreme Court to say that it was patently illegal or improper to sen-

tence a youthful offender to life without parole. At a certain point, juveniles cross the line, and they have to be treated as adults and punished as adults."

ROPER V. SIMMONS

But John R. Blue, a retired Florida appeals court judge, doesn't see it that way. "To lock them up forever seems a little barbaric to me," Judge Blue says.

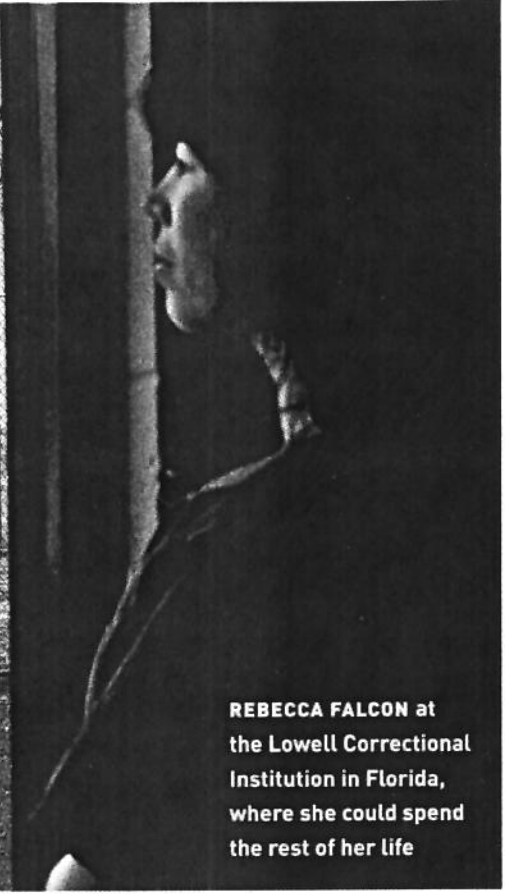
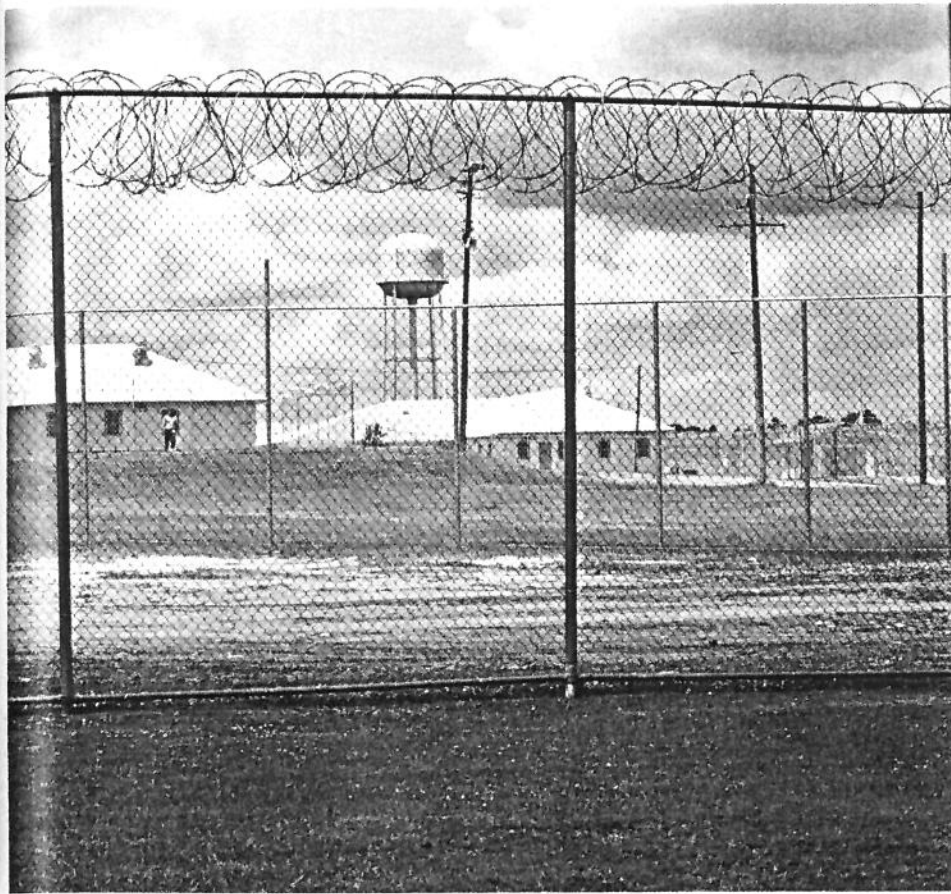
"You ought to leave them some hope."

At the Supreme Court hearing in November, Justice Stephen G. Breyer seemed to be thinking along the same lines. "It's pretty unusual to have this," he said. And, at least for 13-year-olds, he continued, "it is a cruel thing to do to remove from that individual his entire life."

The question of whether life without parole for juveniles is constitutional is a logical next step following the Court's 2005

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—FLORIDA STATE REP. WILLIAM SNYDER



REBECCA FALCON at the Lowell Correctional Institution in Florida, where she could spend the rest of her life

decision in *Roper v. Simmons*, which struck down the death penalty for crimes committed by juveniles. (See “Teen Rights: What the Supreme Court Has Said,” p. 17.)

Writing for the majority in that case, Justice Anthony M. Kennedy said that even older teenagers are different from adults—less mature and more susceptible to peer pressure—and therefore less accountable for their actions. These factors, Kennedy wrote, made it “less supportable to conclude that even a heinous crime committed by a juvenile is evidence of irretrievably depraved character.”

A ruling that extended that reasoning beyond the death penalty “could be the *Brown v. Board of Education* of juvenile law,” says Paolo G. Annino of Florida State University’s law school.

Although the case before the Supreme Court deals specifically with the constitutionality of juvenile life without parole for crimes that did not involve homicide, Annino says the Court could issue a broader ruling that bans life without parole for any teen offender, regardless of the crime.

“When our children make mistakes, are we going to lock them up and throw away the key for life?” says Bryan Gowdy, a lawyer for Terrance Graham. “If you follow the rationale of *Roper*, that’s not appropriate.”

So far, outside the context of the death penalty, the Supreme Court has generally allowed states to decide for themselves what punishments fit what crimes.

GET-TOUGH APPROACH

Several states, including Florida, have taken a get-tough approach, prompted by a spike in juvenile crime in the 1990s.

As a result, many more juveniles were tried as adults, sentences were increased, and parole for capital crimes was eliminated.

One of those teens was Rebecca Falcon, who was 15 when she got drunk and committed the crime for which she is now serving a life sentence with no possibility of parole.

At the time, Falcon was living with her grandmother in Panama City, Florida. On Nov. 19, 1997, upset over an ex-boyfriend, she downed a large amount of whiskey and hailed a cab with an 18-year-old friend. He had a gun and, within minutes, the cab driver had been shot in the head. The driver, Richard Todd Phillips, 25, died several days later. Each of the teens later

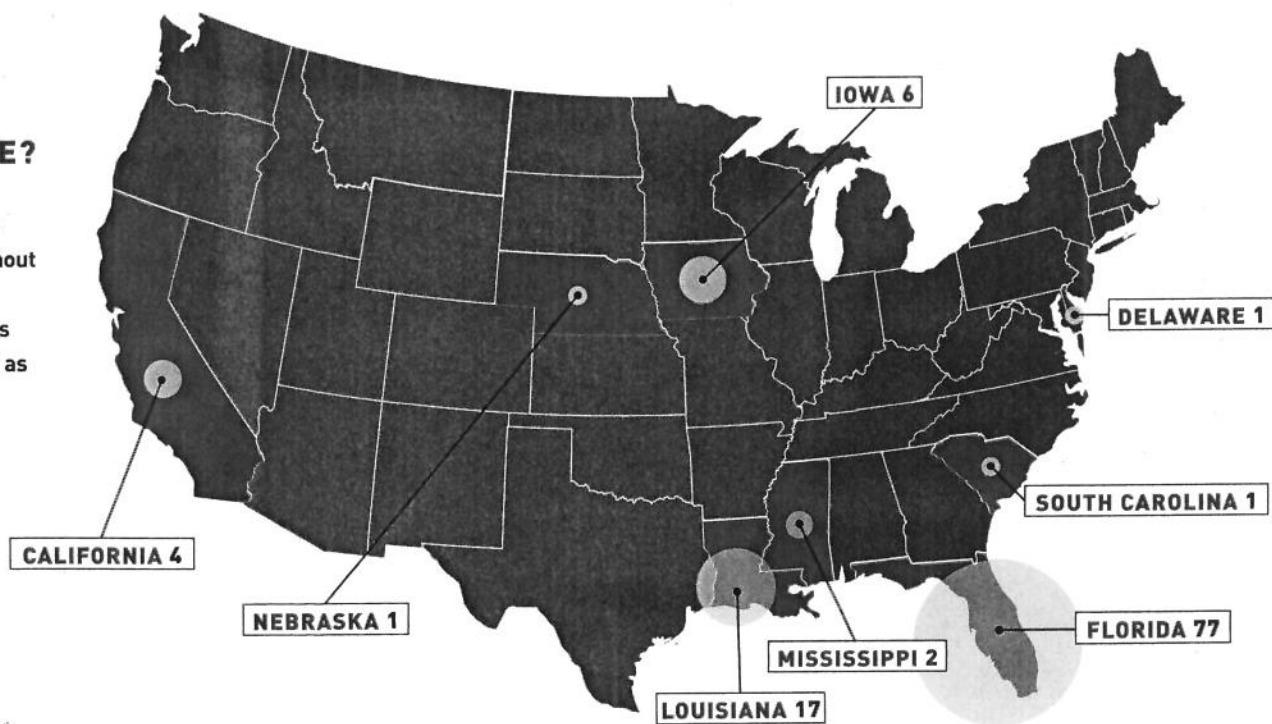
“When our children make mistakes, are we going to lock them up and throw away the key for life?”

—DEFENSE LAWYER BRYAN GOWDY

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A JUST SENTENCE?

109 people in eight states are serving life without parole for non-homicide crimes they committed as juveniles.



SOURCE: JUVENILE LIFE WITHOUT PAROLE FOR NONHOMICIDE OFFENSES, FLORIDA STATE UNIVERSITY

claimed the other had done the shooting.

Though the jury never did sort out exactly what happened that night, Falcon was found guilty of felony murder, meaning she participated in a crime that led to a killing but was not proved to have killed anyone.

"It broke my heart," says Steven Sharp, the jury's foreman. "As tough as it is, based on the crime, I think it's appropriate. It's terrible to put a 15-year-old behind bars forever."

Falcon, now 27, is imprisoned at the Lowell Correctional Institution in Ocala, Florida. Looking back, she faults her choice of friends. "I was like a magnet for the wrong crowd," she says.

A FAIR TRIAL?

Douglas A. Berman, an authority on sentencing law at Ohio State University, says it's time for the Supreme Court and the legal system to widen its focus beyond death-penalty cases and to look at other severe

sentences as well. He says cases involving the death penalty receive careful review at multiple levels, while life sentences may not be reviewed at all.

Joe Sullivan's trial, for instance, lasted one day. He was represented by a lawyer who made no opening statement

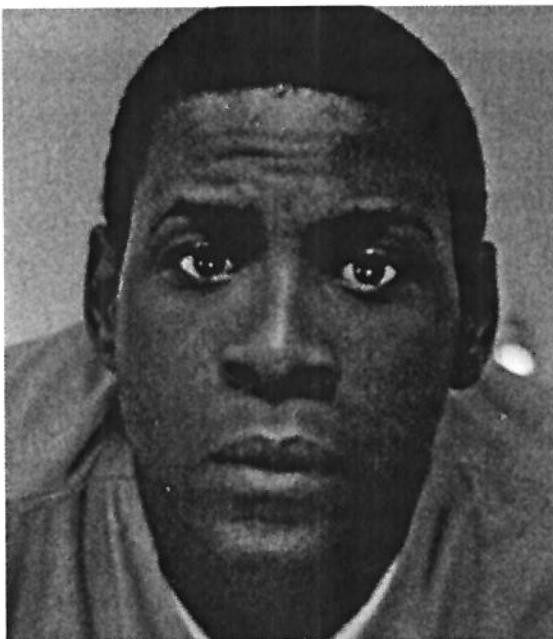
and was later suspended; there was biological evidence from the rape, but it was not presented at trial.

"FIT TO DIE"?

People can argue about whether the punishment in Sullivan's case is cruel, but there's little question that it's unusual.

According to court papers and a report from the Equal Justice Initiative, which now represents Sullivan, only eight people in the world are serving sentences of life without parole for crimes they committed when they were 13. All are in the U.S.

"To say to any child of 13 that you are only fit to die in prison is cruel," says Bryan Stevenson,

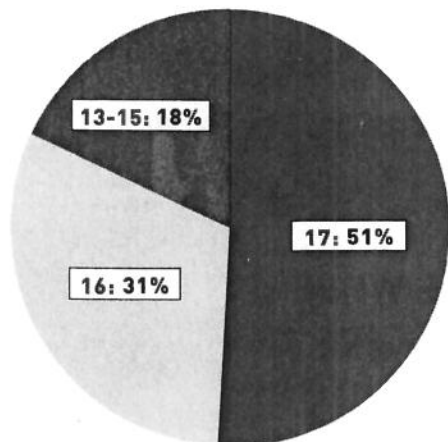


JOE SULLIVAN, now 34, has appealed his life sentence to the Supreme Court.

PHOTO BY GLENN PAUL COURTESY OF EQUAL JUSTICE INITIATIVE

AT THE TIME OF THEIR CRIMES...

Ages of Florida's 77 teen offenders serving life without parole when they committed their crimes



SOURCE: JUVENILE LIFE WITHOUT PAROLE FOR NONHOMICIDE OFFENSES, FLORIDA STATE UNIVERSITY

the executive director of the Equal Justice Initiative. "It can't be reconciled with what we know about the nature of children."

Aside from Sullivan's case, there seems to be only one other appeals court decision about whether young teenagers may be locked away forever for rape. It was issued 40 years ago in Kentucky, and it involved two 14-year-olds. The court struck down the part of the sentences precluding the possibility of parole.

Juveniles "are not permitted to vote, to contract, to purchase alcoholic beverages, or to marry without the consent of their parents," the appeals court said. "It seems inconsistent that one be denied the fruits of the tree of the law, yet subjected to all of its thorns." ●

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

—EIGHTH AMENDMENT

TEEN RIGHTS: WHAT THE SUPREME COURT HAS SAID

IN 1967, the Supreme Court ruled for the first time, in an Arizona case known as *In Re Gault*, that teenagers have distinct rights and are not just the property of their parents. Since then, the Court has examined many issues involving teens. Here's a look at five key Supreme Court rulings that affect teenagers.

KENT V. UNITED STATES (1966) Can teens be tried and punished as adults for serious crimes? This case—which involved a 16-year-old charged with three burglaries, three robberies, and two rapes—established that they can. But the Justices said that in deciding whether to remove a case from juvenile court, judges must consider the seriousness of the crime, the juvenile's age, and the defendant's criminal background and mental state.

TINKER V. DES MOINES INDEPENDENT SCHOOL DISTRICT (1969) In a case involving two Ohio teenagers who wore black armbands to school to protest the Vietnam War, the Court said that students do not "shed their constitutional rights to freedom of speech or expression at the schoolhouse gate." But the Court also said students' freedom of expression was

not unlimited and must be balanced against a school's need to keep order.

NEW JERSEY V. T.L.O. (1985) Does searching the purse of a 14-year-old caught smoking at school violate her privacy rights? The Court ruled that students' belongings can be searched, but not arbitrarily: School officials must have a "reasonable suspicion" that a school rule has been broken or that a crime has been or is being committed.

VERONIA SCHOOL DISTRICT V. ACTON (1995) Does requiring student athletes to take drug tests violate their privacy rights? The Court ruled that schools can require these tests. "Students who voluntarily participate in school athletics have reason to expect intrusions upon normal rights and privileges, including privacy," the Justices said.

ROPER V. SIMMONS (2005) In a case brought by a 17-year-old sentenced to death for murder, the Court said juveniles cannot be held to the same standard of accountability as adults; therefore the death penalty constitutes cruel and unusual punishment. This case abolished capital punishment for juvenile offenders. ●