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SIDEBAR

# Defining 'Cruel and Unusual' When Offender Is 13

By [ADAM LIPTAK](#)

WASHINGTON

In 1989, someone raped a 72-year-old woman in Pensacola, Fla. Joe Sullivan was 13 at the time, and he admitted that he and two older friends had burglarized the woman's home earlier that day. But he denied that he had returned to commit the rape.

The victim testified that her assailant was "a colored boy" who "had kinky hair and he was quite black and he was small." She said she "did not see him full in the face" and so would not recognize him by sight. But she recalled her attacker saying something like, "If you can't identify me, I may not have to kill you."

At his trial, Mr. Sullivan was made to say those words several times.

"It's been six months," the woman said on the witness stand. "It's hard, but it does sound similar."

The trial lasted a day and ended in conviction. Then Judge Nicholas Geeker, of the circuit court in Escambia County, sentenced Mr. Sullivan to life without the possibility of parole.

"I'm going to send him away for as long as I can," Judge Geeker said.

Mr. Sullivan is 33 now, and his lawyers have asked the [United States Supreme Court](#) to consider the question of whether the Eighth Amendment's ban on cruel and unusual punishment extends to sentencing someone who was barely a teenager to die in prison for a crime that did not involve a killing.

People can argue about whether the punishment in Mr. Sullivan's case is cruel. There is no question that it is unusual.

According to court papers and a [report](#) from the Equal Justice Initiative, which now represents Mr. 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 United States.

And there are only two people in that group whose crimes did not involve a killing. Both are in Florida, and both are black.

[Joe Sullivan](#) is one; [Ian Manuel](#), who is in prison for a 1990 robbery and attempted murder, is the other.

About 1,000 people under 15 are arrested on rape charges every year, according to Justice Department data. But none of them have been sentenced to life without parole since Mr. Sullivan was. Indeed, no 13-year-old

has been sentenced to life without parole for any crime that did not involve a killing in more than 15 years.

Florida's attorney general, [Bill McCollum](#), waived his right to file a response to Mr. Sullivan's petition to the [Supreme Court](#), a sign suggesting that he considers the case insubstantial if not frivolous. Sandi Copes, a spokeswoman for Mr. McCollum's office, declined to discuss the case.

Last month, the court indicated that it found the case more interesting than Florida does, [requesting](#) a response from the state. That probably means that at least one justice considered the case significant or difficult. But it is nothing like a guarantee that the court will agree to hear it.

On the other hand, the question of whether life without parole for juveniles is constitutional is the logical next step following the court's 2005 decision in [Roper v. Simmons](#), which struck down the death penalty for crimes committed by 16- and 17-year-olds. Writing for the majority in that case, Justice [Anthony M. Kennedy](#) said that even older teenagers are different from adults. They are less mature, more impulsive, more susceptible to peer pressure and more likely to change for the better over time.

Last year, in [Kennedy v. Louisiana](#), the court issued another ruling that helps frame Mr. Sullivan's case. That decision said crimes against individuals that did not involve killing, including the rape of a child by an adult, may not be punished by death.

In 2007, after Mr. Sullivan had served almost two decades in prison, a Florida appeals court declined to have another look at his case. The Roper decision, the appeals court said, "established only one new constitutional right, the right for a juvenile not to be given the death penalty."

Douglas A. Berman, an authority on sentencing law at [Ohio State](#), said it was time for the Supreme Court and the legal system to widen its relentless focus on capital cases and to look at other severe sentences as well. Cases involving the death penalty receive careful review at multiple levels, he said. Life sentences can receive almost none.

Mr. Sullivan's trial, for instance, lasted a day. He was represented by a lawyer who made no opening statement and whose closing argument occupies about three double-spaced pages of the trial transcript. The lawyer was later suspended, and the Florida Bar's Web site says he is "not eligible to practice in Florida."

There was biological evidence from the rape, but it was not presented at the trial. When Mr. Sullivan's new lawyers recently sought to conduct DNA testing on it, they were told that the state had destroyed it in 1993.

"I absolutely believe he is innocent," Bryan A. Stevenson, the executive director of the Equal Justice Initiative, said of Mr. Sullivan. Mr. Stevenson said he believed that one of the older youths who committed the burglary with Mr. Sullivan and who testified against him was probably the actual assailant.

But the point made by Mr. Sullivan's brief to the Supreme Court is not that he is innocent. It is not even that he should be released after 20 years in prison. It is only that he should someday be allowed to make his case to the Florida Parole Commission.

"I don't think it's possible to say that a 13-year-old will never change and that life without parole is an appropriate punishment," Mr. Stevenson said.

Aside from Mr. Sullivan's case, it seems there is 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 court said. "It seems inconsistent that one be denied the fruits of the tree of the law, yet subjected to all of its thorns."

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