



Practice Supreme Court Oral Argument¹

BAILIFF: (Gavels three times) All rise! (Justices enter) Hear ye! Hear ye! Hear ye! The Supreme Court of Indiana is Now in Session” (Gavel once) “Please be seated.”

CHIEF JUSTICE: We will hear argument first this morning in *Graham v. Indiana*. The Appellant is represented by Bryan S. Gowdy. Good morning. The State is represented by Attorney General Marcus Boyd. Welcome back. The Court has granted each side twenty minutes. Mr. Gowdy?

MR. GOWDY: Mr. Chief Justice, and may it please the Court:

Sentencing an adolescent to life without any possibility of parole condemns him to die in prison and rejects any hope that he will change for the better. This sentence, like the death penalty, cruelly ignores the inherent qualities of youth and the differences between adolescents and adults. At --

ASSOCIATE JUSTICE 1: Are you urging that in all cases, including homicide cases? Or are you drawing the line at homicide?

MR. GOWDY: We are -- we are drawing the line, Your Honor, at -- at non-homicide cases because we recognize under the Eighth Amendment that we must look at societal consensus, and society has said that murder is different and has said that in the sentencing practices, as demonstrated by the fact that outside of Indiana judges and juries have imposed this sentence on just 30 non-homicide offenders in just 6 States.

CHIEF JUSTICE: Thirty-nine States—the vast majority of States— allow this sentence, though, don't they?

MR. GOWDY: The vast majority allow it and they have for some time, and we believe that the fact that it has been allowed for so long and imposed so rarely, as the States themselves have admitted, is -- is strong evidence of societal consensus.

CHIEF JUSTICE: I would have thought that would be strong evidence that they appreciate the gravity of the sentence in the particular circumstances of juveniles and therefore only impose it rarely.

MR. GOWDY: Your Honor, I would -- I would disagree. I would -- if -- if there's 30 -- 31 States that have allowed it and have never imposed it, in -- in our judgment, that -- that's evidence that it's very unusual, and you couple that --

ASSOCIATE JUSTICE 2: No sentence can be -- can be imposed rarely?

¹ Based on *Graham v. Florida*, a case decided by the U.S. Supreme Court in 2010 and argued in the 2010 INYaG Supreme Court

MR. GOWDY: No, Your Honor, it has to —

ASSOCIATE JUSTICE 2: When a sentence is imposed rarely, it becomes unconstitutional?

MR. GOWDY: No, Your Honor.

ASSOCIATE JUSTICE 2: That's not your position? What --

MR. GOWDY: Our position is that you are looking at two things. One, is it cruel? It's cruel because life without parole is unique, is particularly cruel to adolescents because it -- it gives up on the adolescent and determines that he is forever unfit to live in civil society.

ASSOCIATE JUSTICE 2: It doesn't make it crueler to him. I don't see why it's any crueler to an adolescent than it is to -- what -- where do you draw the line? At 21?

MR. GOWDY: We draw the line at 18, the same line that the Court drew in *Roper*. And it's cruel because of the inherent -- the inherent qualities of youth.

ASSOCIATE JUSTICE 4: I'm interested in -- in two different things and you can address them during the course of your argument. One is the assumption of the argument seems to be that there are in place parole -- throughout all the States -- parole systems which are effective, which are operating, and that they have the capacity to make accurate judgments about rehabilitation. What can I read -- what -- what studies do you have to -- that -- that comment on that?

MR. GOWDY: Your Honor, I would point you to the amicus brief filed by the various correctional officers that talk about the types of programs that can be done. I think that that has -- is very thorough and -- and would answer it far better than I can in a couple minutes up here.

But, yes, to answer short, we -- we believe that -- that the parole systems in place can be effective to do this, and in all seven States where there are currently non-homicide juvenile offenders, they all have functioning parole systems. Even Indiana has it. Even though it -- it abolished parole in 1983, Indiana still has 6,000 parole-eligible inmates and last year they heard over --they made over 1,700 parole determinations. So the --the administrative burden to the State of adding these --

ASSOCIATE JUSTICE 4: What -- what would you do if there were a crime spree and there were different jurisdictions? One jurisdiction imposes for 35 years, the next jurisdiction for another 35 years, to be served consecutively.

MR. GOWDY: Well, Your -- Your Honor, I -- I think that the -- that you would get into the question about whether that sentence is the equivalent of life without parole, and there could be an argument made that if you -- obviously, if you sentence someone to 150, 200 years, there's no conceivable hope of ever release, 150 years without parole.

ASSOCIATE JUSTICE 4: So the second jurisdiction has the obligation, but not the first? Is that the way it works?

MR. GOWDY: I would think that the -- if you had that -- I would think that the -- that the judge making that sentence would have to take that into consideration, that this sentence is going to -- based on all adolescent conduct -- it has to be all adolescent conduct, not if some of the conduct is post-juvenile. But, yes, I would think that the -- that the second sentencing judge would need to take that into consideration.

ASSOCIATE JUSTICE 2: So he -- he could sentence up to 1 year before the life expectancy of the -- of the person in prison? That -- that would be okay?

MR. GOWDY: I -- I wouldn't say that would be okay, Your Honor. I think that --

ASSOCIATE JUSTICE 2: Well, what's he supposed to do? How many years can he give -- MR. GOWDY: I think --

ASSOCIATE JUSTICE 2: -- consecutive?

MR. GOWDY: I think there has to be some --

ASSOCIATE JUSTICE 2: There obviously does. What do you propose? I propose, you know, 1 year before his life expectancy.

MR. GOWDY: Your -- Your Honor, I think that would be coming so close to the -- the constitutional line, it would be -- it would be difficult to see that as constitutional, but -- but --

ASSOCIATE JUSTICE 2: Oh, 1 year before life is also unconstitutional?

MR. GOWDY: Your Honor, I'm --

ASSOCIATE JUSTICE 2: Two years before life?

MR. GOWDY: Your -- Your Honor, there would definitely be a -- a difficult line to draw at that case. Life without parole, though, is unequivocal. And even that sentence that you are describing, there is some difference between it and life without parole, because only life without parole makes the unequivocal assessment that the adolescent cannot be returned to civil society.

CHIEF JUSTICE: We have -- you are arguing for a categorical rule.

MR. GOWDY: Yes.

CHIEF JUSTICE: Your friend on the other side is arguing for a categorical rule, always permissible. But we have a precedent that suggests in -- in an individual case, you assess the proportionality of the sentence to the crime.

Now, we know from *Roper* that death is different, and we know from *Roper* that juveniles are different. Wouldn't it make sense to incorporate the consideration of the juvenile status into the proportionality review? So that if you do have a case where it's the 17-year-old who is 1 week shy of his 18th birthday and it is the most grievous crime spree you can imagine, you can determine that in that case life without parole may not be disproportionate.

But if it's -- and I know you would argue that these are the facts here -- if it's a less grievous crime and there is, for example, a younger defendant involved, then in that case maybe it is disproportionate. Why -- why doesn't that seem more sensitive? And it avoids all of the line-drawing problems we have been discussing.

MR. GOWDY: Well, two things: First, Your Honor, *Roper* states, and the science -- states it based on the science, that at that age we cannot make a determination about whether or not the adolescent will or will not reform. Even an expert psychologist, psychiatrist cannot do it.

CHIEF JUSTICE: Oh, I understand. But I don't think they'll say that we can't make that determination at 17 years 11 months, but we can make that determination at 18 years 1 month.

MR. GOWDY: Well, anywhere you draw the line, Your Honor, you're going to come up with an example where you are 1 day before or 1 day after, and the Court in *Roper* struggled with where to draw the line between maturity and immaturity, and it concluded, rightly so, to draw the line at 18 based on both the science and the legislative determinations.

CHIEF JUSTICE: But that is because, as they told us, death is different. And you do -- once you decide that, you do have to draw a line somewhere. I'm just wondering why we have to go all the way in with you or all the way with your opponent when our precedent allows us to consider an issue of this sort on a case-by-case basis.

MR. GOWDY: I think it's because adolescents are different. Adolescents are different in that we can't tell at this age whether they are going to reform or not. And all we are proposing is that an adolescent not necessarily be released, but that he be given a later opportunity. And it boils -- it just comes down to adolescents are different, Your Honor, and the determination can't be made at age 17 even for the most heinous crimes that are committed.

ASSOCIATE JUSTICE 2: You assume -- doesn't your argument assume that the only purpose of punishment is deterrence in the sense of protecting society from this person in the future, so that, you know, once that's no longer a problem, we should let this person out. But that isn't the only purpose of punishment that we've acknowledged. One of the purposes is retribution, punishment for just perfectly horrible actions. And I don't know why that value of retribution diminishes to the point of zero when it's a person who's, you know, 17 years 9 months old.

MR. GOWDY: We are not suggesting that it goes to the point of zero. We're not -- and we concede the State has a right to -- to exact retribution from the juvenile offender. And in this case, 30 years would have been a lot of retribution for Terrance Graham, both

ASSOCIATE JUSTICE 2: Most States didn't -- don't think so, or many States don't think so.

MR. GOWDY: Well, Your Honor, we -- but a Juvenile is -- not only does he have an inherent capacity to grow; he is less culpable. And so to exact the most -- for a non-homicide crime whether you are adult or juvenile, this is the most severe punishment you can receive, and to exact that most severe punishment for a less culpable offender that the Court has recognized is

a less culpable offender doesn't -- is too much retribution. We are not saying the State can't exercise retribution, but that life without parole is --is too much for those types of crimes.

ASSOCIATE JUSTICE 3: Mr. Gowdy, can I ask this question?

MR. GOWDY: Yes, Justice.

ASSOCIATE JUSTICE 3: If your client in this case had been processed in the juvenile system instead of the adult system, what would the maximum penalty he could have received been?

MR. GOWDY: He would have had to have been released when he was 22 years.

ASSOCIATE JUSTICE 3: So the choice is between that short a term and an indefinite term?

MR. GOWDY: No, no, Your Honor. We -- we concede that the State of Indiana may continue to prosecute juveniles in adult court and that makes sense in order to get a term of years that is longer than you can get in juvenile court. And in this case, if the judge had gone along with the prosecutor's recommendation, it would have meant a 30-year sentence for my client, which would have been far longer than he could have gotten in the juvenile court. Worse --

CHIEF JUSTICE: The logic in *Roper* was very straightforward. It says, "Death is reserved for the worst of the worst." I think that was the quote. We know that juveniles are not the worst of the worst, for the reasons you have articulated, that they are not fully developed, don't have moral sense to the same extent as an adult. But life without parole is not reserved for the worst of the worst, and so it seems to me that the logic of our precedent suggests that you can't necessarily rely on the juvenile status to exempt them from a penalty that is not reserved for the worst of the worst, but perhaps it makes sense to consider in a particular instance whether the penalty is disproportionate, given the juvenile's characteristics that you suggest.

MR. GOWDY: Well, I guess we will come back to the point that I think life with parole would be a long sentence, and I don't -- I don't see how you can do it on a case-by-case basis at age 17. You can certainly do it --

ASSOCIATE JUSTICE 1: But you haven't answered my colleague's point, which is: What's the difference a month before he's 18 and a month after? What makes us more capable at the 18th birthday to affirm a judgment that someone can't be -- can't be -- can't be rehabilitated?

MR. GOWDY: There is not much difference, Your Honor, but the line has to be drawn somewhere. And society, as this Court recognized in *Roper*, has generally drawn that line at 18 -- as between the --

ASSOCIATE JUSTICE 2: A line has to be drawn somewhere only if we accept your approach that there has to be a categorical exemption. A line does not have to be drawn somewhere if you adopt the approach of, case by case, decide whether this is proportional, given how old the individual was, given the nature of the crimes, and all of the other factors. You don't have to draw a line then, and that's the attraction of that approach.

MR. GOWDY: You -- I -- I think that the ---- based on -- I would just ask to conclude and then I will sit down.

Based on the -- on what scientists have told us, the categorical approach is the most logical approach because we can't tell which adolescents are going to change and which aren't.

CHIEF JUSTICE: Thank you, Mr. Gowdy.

Mr. Boyd.

MR. BOYD: Mr. Chief Justice, and may it please the Court:

The categorical rule that Appellant seeks here would undermine what Indiana and other States have adopted in terms of juvenile justice. And in particular, it would go against three major trends: The strong punishment for juveniles that States have enacted over the last 15-20 years; the various transfer and waiver laws that States have enacted over the last 10, 15, 20 years allowing juveniles to be transferred into adult court; and then finally, what is really at issue is parole. Parole has been eliminated in many States. Fifteen States have totally eliminated it in the last 10, 15 years. So what they are seeking is a categorical rule that goes against the national consensus and the national trend.

The concession here was that Graham's sentence could be even up to life as long as there is the possibility of parole. We believe that's very telling. In their brief, they point out that Graham could have been sentenced to something just short of his actuarial life. His actuarial life is around 64 years old, which means just about a 46-year sentence. And the standard that we suggest here is that there cannot be any categorical rule, for the reasons Justice Alito pointed out. We have --

CHIEF JUSTICE: Well, but you are arguing for a categorical rule of your own. You are saying that under a -- under -- juveniles under the age of 18, what, it's never -- it can be never determinative that they are juvenile in setting the sentence as a matter of Federal law?

MR. BOYD: Well, Mr. Chief Justice, we do agree that age does matter, and we ask that there be three things that the Court look at.

First, look at the legislative structure. Indiana structure doesn't -- Indiana structure is a very balanced, thoughtful approach, in waiving children into the adult court only when it's a violent crime and only under certain -- when certain ages are in play. Look at the age. It does play a role. The judicial discretion plays a role. The trial judge --

ASSOCIATE JUSTICE 3: May I ask this: Is there a minimum age when a juvenile can be transferred to --to adult procedures?

MR. BOYD: It's a three-tiered system, Justice. And let me --

ASSOCIATE JUSTICE 3: Well, I'm just interested in one. Is there a minimum?

MR. BOYD: Yes. The way in which --

ASSOCIATE JUSTICE 3: Is that an arbitrary line, or how do you -- how do we know it shouldn't be higher or lower than the line?

MR. BOYD: Well, the legislature has set the line at 14-15 for certain crimes and 16-17 for others. And then for indictment, where it goes to a grand jury, there is no age limitation. That has been on our books for the better part of 50, 60 years, allowing indictment -- allowing the grand jury to make a decision about whether the particular juvenile shall be brought into the adult court. So --

ASSOCIATE JUSTICE 2: Does the trial judge have discretion to choose a lower sentence because of the -- of tender years of the defendant?

MR. BOYD: Well, absolutely, the trial judge does. And you can see the trial judge here grappling with that.

ASSOCIATE JUSTICE 3: But the statute doesn't draw any distinctions once he is in -- in the adult --

MR. BOYD: I guess the answer to your question is there is no specific statute that says the trial judge shall consider age specifically.

CHIEF JUSTICE: And -- and there's -- well, I guess that answers my question. He is not required to as a matter of Federal law. He can say: I am not considering the fact that this is a juvenile because I think his crime should be treated as an adult crime.

MR. BOYD: No -- I mean, certainly not under any Federal constitutional principle I am aware of.

CHIEF JUSTICE: Well, that's what we are arguing about.

MR. BOYD: Right, right. Well, certainly here, I mean, what we would say, assuming there is no categorical rule and the Court decides to go into the proportionality balance here, we think that certainly Graham's offense certainly is off the scales and would be grossly -- probably be -- it would be --

ASSOCIATE JUSTICE 1: That's -- that's one of the problems, is the individual sentencing judge might think that Graham is a very bad individual, but the prosecutor had a different judgment of it. This judge, I think, surprised everyone in the courtroom with the -- with the sentence. Certainly it was far beyond what the prosecutor recommended.

MR. BOYD: Well, the prosecutor recommended 30 years, that's correct, and the judge here entered life. As I say, that translates into -- essentially a 46-year actuarial life sentence. That was within the trial judge's discretion, and particularly given the seriousness of the offenses that Graham committed. We are talking about violence.

And violence does matter. This Court has said -- and certainly in oral argument in *Solem* and others, the -- violence versus non-violent acts plays a major role in sentencing, and it should play a major role as well when it comes to juveniles.

I don't read *Roper* to say that it takes off the table lengthy sentences for violent crimes by juveniles.

ASSOCIATE JUSTICE 1: Counsel --

MR. BOYD: Yes.

ASSOCIATE JUSTICE 1: Do you think that it categorically violates the Eighth Amendment for a 10-year-old to be sentenced to life without parole?

MR. BOYD: Well, the answer to that is it certainly raises a concern about the age. Age does matter. And as the age goes down, it does.

ASSOCIATE JUSTICE 1: So once it matters, the question for me is -- help me draw the line -- if 10 is in my judgment too early, why isn't 14, 16, or 18? Meaning why should a -- someone below the age of 14 be sentenced to life without parole? That's the -- that's the Sullivan case --

MR. BOYD: Right.

ASSOCIATE JUSTICE 1: -- but it begs the question, which is age is -- matters a lot. And so, take on your adversary's argument that it matters a lot because this is a less culpable person.

MR. BOYD: Sure. It matters -- I think it does matter and it certainly matters from a legislative perspective, from a judicial perspective, and from an Eighth Amendment perspective.

ASSOCIATE JUSTICE 2: What about historical perspective? I mean, you might appeal to the fact that at common law, which was in effect when the Cruel and Unusual Punishments Clause was adopted, 12 years was -- was viewed as the year when a -- when a person reaches the age of reason. And -- and the death penalty could not be inflicted on anyone --

MR. BOYD: Well, certainly that historical perspective has --

ASSOCIATE JUSTICE 2: -- and all felonies were the death penalty.

MR. BOYD: Sure. And it has importance. To some extent, the States have displaced the common law with their juvenile justice systems. And we -- as I say, I believe Indiana's is -- is very balanced. Going back to the earlier question, I think that the way age plays a role is that we -- in our system in Indiana, we have no one under the age of 13. And that's sort of provides us--

ASSOCIATE JUSTICE 1: How young could the youngest person in Indiana be to be prosecuted as an adult and be eligible for life without parole?

MR. BOYD: Under the indictment statute, there is no age limitation.

ASSOCIATE JUSTICE 1: So a 5-year-old could be put away for life?

MR. BOYD: That is theoretically. We would hope that the system would not allow that to occur. And that that would be certainly violative of the --

CHIEF JUSTICE: In -- in your earlier response, you said age certainly matters. As -- as a -- as a matter of what law? In other words, I understood your submission to be that there was nothing in the Constitution that requires different consideration of age. So when you say age matters, why?

MR. BOYD: Well, we suggest that it may matter in a particular case, and when you get to the gross disproportionality --

CHIEF JUSTICE: Under the authority of what law? Age matters in a particular case because of --

MR. BOYD: Well, I -- I -- I think our --country's traditions recognize it --

CHIEF JUSTICE: Because of the Eighth Amendment?

MR. BOYD: Well, I believe it could be certainly a part of the Eighth Amendment analysis. I think just -- certainly age matters in the legislative branch, judicial branch, executive branch. It matters that we look at the age and make considerations about it when Indiana has made those considered judgments.

What we are saying is that if the Court decides to go down the path that's perhaps fraught with more line-drawing than one can imagine and decides that age will be a part of the proportionality, it creates serious problems. But here --

CHIEF JUSTICE: I'm sorry. Why is that? If you go down on a case-by-case basis, there are no line-drawing problems. You just simply say age has to be considered as a matter of the Eighth Amendment.

ASSOCIATE JUSTICE 2: And then we apply a totality of the circumstances test --

MR. BOYD: Well -- well --

ASSOCIATE JUSTICE 2: -- which means whatever seems -- seems like a good idea.

CHIEF JUSTICE: Well, we apply the proportionality review that we articulated in *Harmelin*, and *Solem* and *Ewing*.

MR. BOYD: Well, of course --

CHIEF JUSTICE: It's already there.

MR. BOYD: Well, if that's applied, and even if you consider age in these cases that are before the Court, they are on the violent side of the line. They are out in the tail of the distribution in terms of seriousness of the offense. So it would be the same result in either case. I think perhaps --

ASSOCIATE JUSTICE 1: Well, if we -- if we have already said that you can't impose death on an adult who hasn't committed a homicide, an intentional death, and so for an adult the

most serious sentence that we can give them is life without parole, why should that same sentence be given to a juvenile who we have recognized as being less capable than an adult? And why should we permit it for a crime that's not comparable to a homicide and/or something akin in seriousness to that?

MR. BOYD: Because it is still a very serious, violent crime. We are talking about weapons and guns and people's lives at risk. And the legislature has made the judgment in Indiana and other States to say that that type of crime --

ASSOCIATE JUSTICE 1: Do we know why the co-perpetrators got so -- their sentences were dramatically lower. Do we know why that was so?

MR. BOYD: The home invasion -- there was an 11-year sentence for the codefendant.

ASSOCIATE JUSTICE 1: Yes.

MR. BOYD: He helped -- helped and testified and basically assisted the prosecution, so I believe he got a lower sentence.

ASSOCIATE JUSTICE 1: Because he assisted the prosecutor.

ASSOCIATE JUSTICE 1: Indiana recognizes the difference between an adult and a minor. And you have to make the line. We have it at 18. But think of the teenager can't drink, can't drive, can't marry. There are so many limitations on children just because they are children. Why not limit sentencing in the way Appellant suggests?

MR. BOYD: We ask that the same respect for our juvenile justice system be given to those laws enacted in Indiana that protect the -- the juveniles. It is the legislature on the ground there and seeing what's going on in our State that makes these decisions about who can drive, who gets the right to have a tattoo, or who gets --

CHIEF JUSTICE: Do you have a study about what age cohort is responsible for most violent crime?

MR. BOYD: There are -- there are studies everywhere, and I have looked at many of them, and it appears that it certainly increases from age 13, and it goes up to 14. And it keeps going up until about 16, 17, and 18. It peaks. It depends on the crime, and it depends upon what jurisdiction, and so forth. But it tends to peak in the early 20s, the late teens or early 20s. So that's -- that's -- I think that's typical.

The empirical question in this case, I think, is very important because they are asking that a constitutional rule be established on studies that have just been generated literally over this summer and have not been subject to meaningful review.

We have a concern with that. We think that the definitional questions that they have raised, you know, about the offenses and what is life -- is life -- the studies tend to focus on life. But what is life? Well, in Indiana we have some juveniles who are serving prison terms that have 50-, 60-, 70-, 80-year sentences, but they are not included within that study.

We also have in this case, for example, Graham, he had a -- let's say that the judge decided to give him 30 years for the main offense and 15 for the second and made them consecutive. That's 45 years. Graham's actuarial life.

If there's no further questions --

CHIEF JUSTICE: Thank you, Mr. Boyd. Mr. Gowdy, you have 4 minutes remaining.

ASSOCIATE JUSTICE 4: Why does a juvenile have a constitutional right to hope, but an adult does not?

MR. GOWDY: Because the juvenile is different than an adult. A juvenile is less culpable. He's -- we know over time he will change and -- and potentially reform, as opposed to an adult. Once you are fully formed, you are more culpable and you don't have that same inherent capacity to change.

ASSOCIATE JUSTICE 2: But do you know anybody who is willing to say that, as a categorical matter, that --you know, the 18th birthday is the magical date for every single person?

MR. GOWDY: No, Your Honor, and nobody was willing to say that in Roper, but, yet, the Court still drew the line at 18 for the death penalty in Roper.

ASSOCIATE JUSTICE 2: Because the Court, up to this point, has said that death is different, and the rules -- the Eighth Amendment rules in capital cases are entirely different from the Eighth Amendment rules in --in all other cases.

MR. GOWDY: We are not -- we were not --

ASSOCIATE JUSTICE 2: If we -- you know, if we abandon that, then one of two things has to happen, either the rules for noncapital cases have to change dramatically, or the rules for capital cases have to change dramatically, unless death is different, in fact.

MR. GOWDY: Well, I -- first, we -- we are not asking that the procedural rules in the intricate individualized death penalty sentencing scheme be transported or moved over to the noncapital cases.

ASSOCIATE JUSTICE 2: I know you are not asking for that, but that -- isn't that where this, logically, is going? If death is not different, then there should be uniform rules across the board.

MR. GOWDY: Absolutely not, Your Honor, because those rules make no sense when you are talking about adolescents, who are different, because those --which a Court recognized in Roper, that those rules can't be applied to adolescents because we -- you can't, as a sentencer, predict the future.

And so, though death is different, it's not different in any critical respects here because the punishment, life without parole, just like death, says that the offender is forever irredeemable, is forever unfit to live in society, and must die in prison.

ASSOCIATE JUSTICE 2: Why does it say that? Why doesn't it just say that, in this particular case, what this individual has done is so bad that, even if this person can be rehabilitated and would not present a danger to -- to society at age 60 or 70, that this person is -- should be sentenced to life without parole? That's -- that's what it means for an adult offender.

MR. GOWDY: Your -- Your Honor, I think the only difference here is -- between life without parole and life with parole, is that there will be a determination later, at age 30 or 40 or sometime thereafter, as to whether that is the right sentence. And the -- the parole official, just like the judge, can consider the offense as the offender, as a juvenile. We're just saying that you can't make that complete determination at such a young age, and --

CHIEF JUSTICE: One reason States --

MR. GOWDY: -- and you will have a more accurate determination later.

CHIEF JUSTICE: One reason States and the Federal government moved to abolish parole in --in recent decades was, with depressing regularity, prisoners released on parole committed crimes again. And I'm just -- is there any empirical evidence that tells us how often people, say, from 17 --17-year-olds, when released, commit crimes again, as opposed to 18- to 20-year-olds?

MR. GOWDY: Your Honor, as my brother noted, I think that the evidence shows that, as people get older, they are less likely to recommit crimes.

CHIEF JUSTICE: But isn't that -- I remember some of those studies that -- I mean, the cutoff, there's sort of a magic age at some point, where people over the age of 35, or whatever, typically don't engage in violent activity.

MR. GOWDY: It -- it decreases over time, undoubtedly, and that's -- that supports, I think, our argument here, that the -- that Terrance Graham, at age 47, will not be the person he was at age 17. I see my time is up. I'll sit down.

CHIEF JUSTICE: Thank you, counsel. We will take the case under consideration and notify you of our decision.

BAILIFF: All rise! This Court is adjourned. (Gavel once)