

# Justice for Juveniles?



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**In March 2005, the Supreme Court held that the death penalty was unconstitutional as applied to juveniles. As the Court composition changes in late 2005, how might future considerations of issues surrounding juvenile justice be viewed?**

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You and Your Rights: Juvenile Death Penalty

## An Integrated Curriculum For The Washington Post Newspaper In Education Program

**Justice for Juveniles?**

**Lesson:** Examine and evaluate what the law and press say about accused and convicted juvenile offenders.

**Level:** Low to high

**Subjects:** Government, social studies; Law, Public Safety and Security

**Related Activity:** Language arts, journalism, health

In March 2005, the Supreme Court held that the death penalty was unconstitutional as applied to juveniles. As the Court composition changes in late 2005, how might future considerations of issues surrounding juvenile justice be viewed? This online guide considers the relationships and interests of the court system, law enforcement, news media and the public when juvenile justice is addressed.

Teachers are provided with Washington Post articles from KidsPost, the Outlook section, excerpts from Metro and News sections and an ombudsman column. Melissa Starry, a Marshall Brennan Fellow at Washington College of Law of American University, provides the You and Your Rights material that focuses on *Roper v. Simmons*. Vocabulary terms that appear in the articles and background sheets of this guide are defined in the sidebars of the suggested activities section.

Before presenting the material in this guide to students, you may wish to review the March 2005 guide, *Bullies*. The guide addresses ways to confront bullies and communicates facts about bullying. Bullies are a safety and health threat to more than three million school children annually.

**Snipers on Trial**

For some students, teachers and members of your community, the presence of a sniper(s) in the D.C. area made fear and uncertainty a part of daily life. Before giving students a copy of "The Sniper Trial" (from KidsPost, Oct. 14, 2003), you may wish to review Fall 2002 in the D.C. area or students may be assigned different topics to research online using the archives of The Washington Post and other news media.

Questions to consider include:

- What do students recall about the snipers? Do they remember not being allowed to play outside during recess? Cancellation of outdoor matches and games? Did parents explain/not talk about the snipers?

- Do they remember the news media providing information about the sniper attacks? The vehicle in which the sniper may be riding? Which clues proved to be false information? Which were accurate?

- Maryland police chief Charles Moose withheld information about the case from the press. Was he right in doing this?

- When Chief Moose and other law enforcement officials wanted help from citizens, they turned to news media to broadcast their requests. What was/is the appropriate role of the press in disseminating information?

- Why/how do law enforcement, news media and the public assist each other? How/why do they sometimes seem to work against each other?

Give students "The Sniper Trial," the KidsPost article about the trial of accused snipers John Allen Muhammad and minor

**Vocabulary****Arbitrary**

Depending on individual discretion; in the juvenile death penalty context, drawing a line between the ages 15 and 16 as to when a person may be sentenced to death seems to be arbitrary.

**Capital Punishment**

The sentence of death for a serious crime; death penalty

**Clemency**

Mercy or leniency; especially the power of the president or a governor to pardon a criminal or commute a criminal sentence

**Cognitive Capacity**

The ability to reason, to solve problems, and to tell the difference between right and wrong. Some scholars have argued that children lack cognitive capacity until a certain age.

**Cruel & Unusual Punishment**

Punishment that is torturous, degrading, inhuman, grossly disproportionate to the crime in question, or otherwise shocking to the moral sense of the community

**Death Row**

The area of a prison where those who have been sentenced to death are confined

**Deterrence**

The act or process of discouraging certain behavior, particularly by fear; especially, as a goal of criminal law, the prevention of criminal behavior by fear of punishment

**Eighth Amendment**

The constitutional amendment, ratified as part of the Bill of Rights in 1791, prohibiting exces-

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Lee Boyd Malvo. What do they learn about this trial and court proceedings from this article?

You may wish to use “In the Courtroom,” photograph and captions, to explain what an actual courtroom looks like and where each participant in a trial sits. The last question relates to You and Your Rights in this guide.

### The Post Ombudsman Speaks Out

Give students copies of “Pulling the Trigger” by Michael Getler. On Nov. 17, 2002, The Post’s ombudsman addressed The Post’s decision to publish, on the front page, 17-year-old John Lee Malvo’s confession to investigators that he had pulled the trigger in several of the sniper shootings. Have students examine the issue from the perspectives of law enforcement and the investigators, defending and prosecuting attorneys, The Post’s executive editor and the local community. With whom do students agree? Why?

### Naming the Accused

This activity focuses on news media and its responsibility to the privacy and reputation of juveniles, meeting its responsibility to inform the public and report facts. To what extent should news media work with law enforcement? Give students “Naming the Accused.”

### Where Do You Stand?

The Reporters Committee for Freedom of the Press posted the decision of an Illinois judge to remove journalists from his courtroom. Read the case and discuss the questions that are provided.

As a follow-up to this activity and “Naming the Accused,” you might read articles or clip excerpts from Washington Post articles that report offenses. Did The Post do the right thing in naming/not naming juveniles or adults whose work place them in contact with minors? What if those who are named are found innocent? Does an article relating the court’s decision restore one’s reputation?

### Today’s Scarlet Letter?

Give students a copy of “Shame on You,” an essay by Jonathan Turley from the September 18, 2005, Post Outlook section. Turley presents examples of recent shaming punishments. Turley indicates that young people are the “most commonly targeted and vulnerable group” sentenced by judges to these alternative punishments.

Before reading the opinion piece, discuss *Judge Judy*, *Court TV*, *Law & Order* and other TV shows set in a courtroom. Which are most realistic and accurate in their portrayal of court proceedings? Which shows give offenders the punishment one might expect?

Questions that you might ask after reading this essay include:

- What is the historic basis of shaming punishments?
- Do you consider “creative punishments” cruel? Unusual? Acceptable?
- Do you think shame and public humiliation deter further offenses?
- If you were a police officer/offender/judge would you be in favor of “creative punishment” or consistent consequences?

## Vocabulary (continued)

sive bail, excessive fines, and cruel and unusual punishment

### Electric Chair

A chair that is wired so that electrodes can be fastened to a condemned person’s head and one leg; a lethal charge is passed through the body for the purpose of carrying out a death penalty

### Evolving Standards of Decency

Standard by which the Supreme Court examines the Eighth Amendment’s prohibition of cruel and unusual punishment; includes the examination of objective factors such as state legislation, sentencing decisions of juries, and the views of entities with relevant expertise. Additionally, the Court has considered the views of other countries.

### Execution

Carrying out of a death sentence

### Firing Squad

A group of persons assembled to carry out a capital-punishment sentence by shooting the prisoner with high-powered rifles at the same time from a short distance

### Gas Chamber

A small, sealed room in which a capital punishment is carried out by strapping the prisoner into a chair and releasing poisonous fumes

### Hanging

The act of carrying out an execution by suspending the person above the ground by a rope around the person’s neck. Death is caused by asphyxiation (by being hoisted from the ground) or by a sudden breaking of the cervical vertebrae (by being dropped from a height).

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• After reading Turley's essay, how do you think the Supreme Court should find in the Gementera case?

The Supreme Court has agreed to hear the Gementera case so you may wish to have older students research the positions that each justice has taken on other juvenile justice and crime issues. They could hypothesize the position that each justice might take, follow the case's argument before the justices and the Court's decision.

### You and Your Rights

"The Death Penalty for Juveniles" focuses on the Eighth Amendment as it applies to juveniles and the Supreme Court's 2005 decision in *Roper v. Simmons*. Consider

### Read About It

With the popularity of TV shows involving CSI departments and profilers, students may be interested in learning more. "Searching for Clues" (KidsPost archives) discusses the use of grid searches, profiling and geographic profiles. The AP Central article, "Teaching Forensic Psychology" is another starting point for teachers to introduce students to these professions.

- *Youth Justice in America*.

Ferguson, Andrew, Maryam Ahranjani and James B. Raskin. CQ Press, 2005. This recent text presents the rights of juveniles, the consequences of abusing rights and ways to protect these rights from compromise. A comprehensive work, *Youth Justice in America* uses the major court cases involving young people to stimulate discussion.

the unconstitutionality of capital punishment in *Roper*, in the D.C. sniper case and other recent cases covered by the news media.

### Talk About and View Perspectives

This activity involves pairs of students interviewing each other on the topic of the death penalty. After establishing your expectations, give students "Interview and Video Project." Please note that some of the suggested movies are rated "R" and some scenes may need to be edited out to render the movie suitable for a high school audience.

### Death Penalty Pro and Con

For older students, this research activity asks students to explore several perspectives on capital punishment, state laws and methods of execution.

- "Teaching Forensic Psychology: Psychology in the Courtroom,"

Brenda Russell, found at College Board AP Central <http://apcentral.collegeboard.com>

An associate professor and coordinator of the forensic graduate program at Castleton State College (Vt.), Russell reviews the roles of the forensic psychologist. She includes references to cases involving juveniles.

- *The Trial*. Jen Bryant. A KidsPost Book of the Week, *The Trial* is a fictional account of the kidnapping of the 20-month-old son of aviator Charles Lindbergh in 1932.

- *Sniper: Inside the Hunt for the Killers Who Terrorized the Nation*. Horwitz, Sari and Michael

## Vocabulary (continued)

### Lethal Injection

An injection of a deadly substance into a prisoner in order to carry out a sentence of capital punishment

### Prohibition

A law or order that forbids a certain action

### Retribution

Punishment imposed as repayment or revenge for the offense committed; "Just desserts" or "eye for an eye" mentality

### Sanction

Official approval or authorization, such as state-sanctioned homicide (the death penalty); penalty or coercive measure that results from failure to comply with a law, rule, or order

### Stay of Execution

The postponement or halting of a proceeding, judgment, or the like. A governor of the state may issue a stay of execution to postpone the execution of a death row inmate.

### Unconstitutional

Contrary to or in conflict with the Constitution

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# Sniper Trial

Do you remember last October? The sky was that beautiful blue it gets in early fall. The leaves were changing. The air was chilly without being too cold. A great time to be outside. But you probably weren't outside much.

There were no Saturday soccer games, no field trips to the pumpkin patch, no outdoor recess. Many people, maybe even your parents, were worried about going to the grocery store or the gas station. All of this was because of the Washington area sniper.

Over three weeks last October, 13 people were shot and 10 of them died. Then on Oct. 24, police arrested John Allen Muhammad and Lee Boyd Malvo and charged them with the shootings. Later, police would say that the man and the teenager may have been responsible for nine other shootings in five states.

Today in Virginia Beach, Muhammad goes on trial in the killing of Dean Harold Meyers, who was killed pumping gas near Manassas. It's the first trial in the sniper case. KidsPost talked to Mike Semel, who edits sniper stories for the Metro section, about how trials work and what might happen during this trial.

## **Why are we having a trial? Doesn't everybody know that Muhammad and Malvo did it?**

In the U.S. system of justice, everyone — no matter who they are or what crime they are accused of — gets to have a trial. Muhammad's trial will be in front of a judge and 12 jurors. The job of the jurors is to decide if he's guilty or not guilty based on the evidence presented in court, not based on what they've seen on TV or read in the newspaper.

## **What will the prosecution offer as evidence?**

The prosecution is the team of lawyers that is trying to convince the jury that Muhammad is guilty. These lawyers represent the government in this case. They don't have any witnesses who saw Muhammad shoot Mr. Meyers, and they don't have any witnesses who saw him at the shooting scene either right before or right after the shooting. But prosecutors say the gun that was found in the car with Muhammad and Malvo matches the gun that killed Mr. Meyers. They also have a laptop computer that had maps for several of the places where shootings happened.

## **What kind of defense will Muhammad's lawyers offer?**

It's not completely clear, but they might say that it was Malvo or somebody else entirely who pulled the trigger in the shooting of Mr. Meyers. They'll say that there is no direct evidence (witnesses, for example) linking Muhammad to the shooting of Mr. Meyers. Without that kind of evidence, defense attorneys will argue, a jury can't be sure beyond a reasonable doubt that Muhammad is guilty.

## **Why is Muhammad being tried in Virginia Beach, when most of the shootings happened much closer to Washington?**

That's called a change of venue, or place. The judge in the case decided that it would be too hard to find 12 people in the Washington area who could be fair in hearing the case because just about everyone in the Washington area was affected when the shootings were going on. So the judge decided to have the trial in Virginia Beach, where people knew about the shootings but didn't have their lives changed because of them.

## **What happens if Muhammad is found guilty?**

Well, in the state of Virginia people can be put to death for certain crimes. If Muhammad were convicted, there would be basically another trial to see if he should then be killed for this crime. The members of the jury would decide this the same way they decided guilt or innocence. The judge has the final say on what sentence Muhammad would get.

## **What happens if Muhammad is found innocent?**

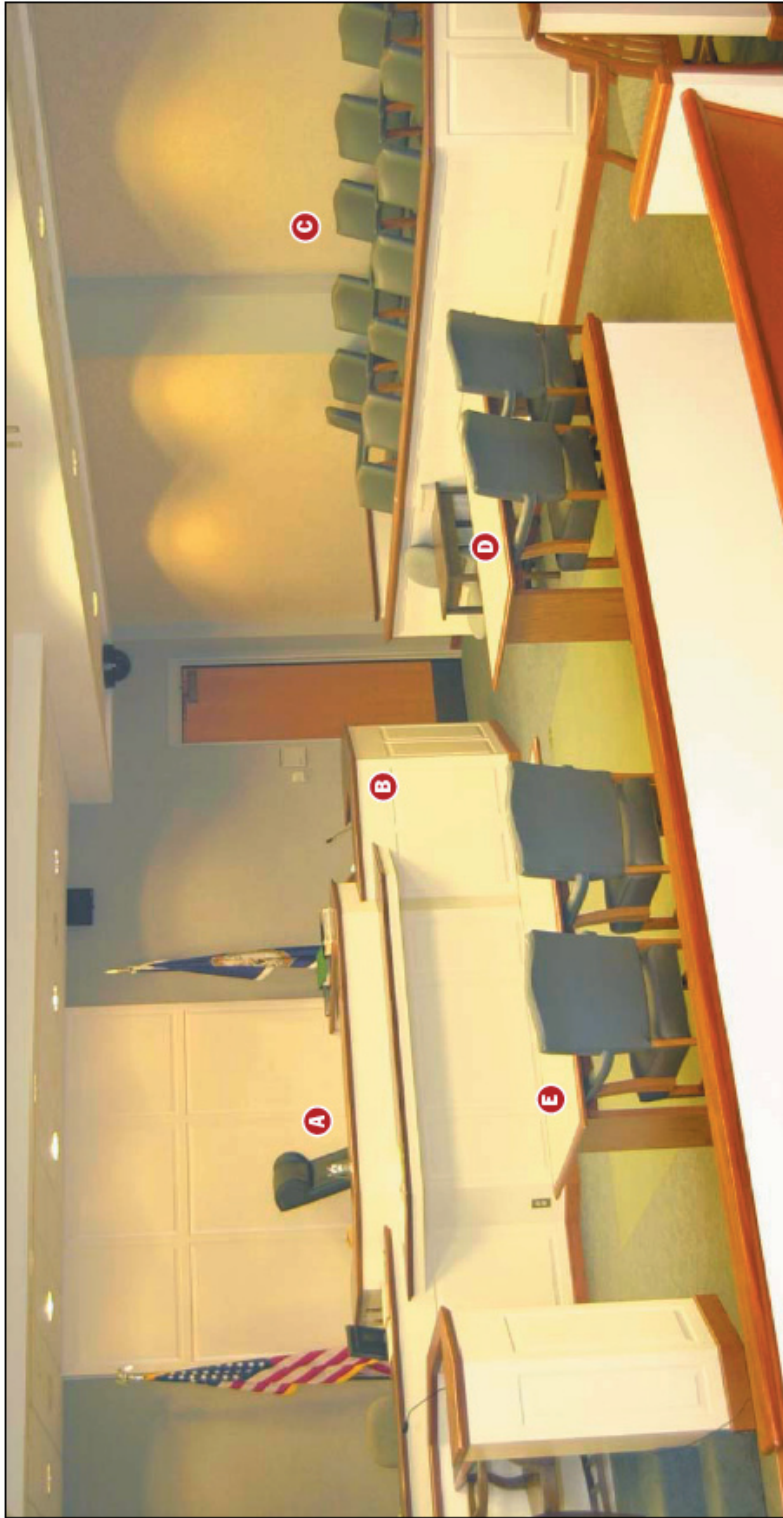
He is charged in all the shootings in the Washington area as well as many others around the country. If he were found not guilty in Mr. Meyer's death, he would stay in jail until he faced trial on another of the charges. He would not be set free.

## **What about Malvo's trial?**

That is set to start next month in Chesapeake, Virginia. John Allen Muhammad's murder trial starts today in Virginia Beach. Sniper suspects John Allen Muhammad and Lee Boyd Malvo were both in a courtroom Oct. 1, but they are being tried separately. The first case against Lee Boyd Malvo is scheduled to start next month. Dean H. Meyers was shot Oct. 2, 2002, at a gas station near Manassas.

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## In the Courtroom for the Sniper Trial



CITY OF VIRGINIA BEACH

### A JUDGE

His job is to make sure that the prosecution and the defense follow the rules of a trial. He also answers questions from the jury about the law and has the final decision on the sentence given if John Allen Muhammad is convicted.

### B WITNESS STAND

This is where witnesses in this trial (police officers, doctors, other experts) will sit when they testify. If Muhammad were to testify, which is not expected to happen, he would do that from a special witness stand shown at the far left of this picture.

### C JURY

These are 12 people who are responsible for deciding the guilt or innocence of Muhammad. They must make their decision based only on what evidence they hear or see in the courtroom. What they've seen on TV or read in the newspaper can't influence their decision. All 12 jurors must agree on the verdict (or decision of Muhammad's guilt or innocence).

### D PROSECUTION

These lawyers represent the state of Virginia or the "people" of Virginia. Their job is to present enough evidence that they convince jurors that Muhammad is guilty of killing Dean H. Meyers. They present their case first.

### E DEFENSE

Every person accused of a crime has the right to have a lawyer defend him in trial. This is guaranteed by the U.S. Constitution. The defense's job is to provide evidence that makes the jury question if Muhammad is guilty beyond a reasonable doubt. After the prosecution shows its evidence, the defense gets its chance to present evidence.



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# Pulling the Trigger

## Michael Getler

Last Sunday and Monday, The Post published fascinating stories on the front page reporting, exclusively, that John Lee Malvo, the teenager accused of participating in the sniper attacks that terrorized the Washington region last month, had told investigators he pulled the trigger in several of the shootings.

These revelations were attributed to unnamed law enforcement sources who spoke to Post reporters on the condition of anonymity. No defense lawyer was present during this police interrogation of Malvo.

In the aftermath, both the defendant's attorney and Fairfax County prosecutor Robert F. Horan Jr. were sharply critical of the unnamed officials who leaked these details. "I've heard that the defendant's attorney is outraged, and he can't be more outraged than I am," Horan said. "The right of the American people to know is not the right of the American people to know right now," he said. By that, he presumably meant that the details and evidence in this case would eventually be made public during hearings and trials. Both the 17-year-old Malvo, who is a juvenile, and 41-year-old John Allen Muhammad are incarcerated and are no longer a threat to the public, and so justice should be allowed to take its course without potentially poisoning jury selection or causing statements to be made inadmissible.

The government has the obligation to protect information that legitimately should not be made public prematurely. But what about The Post? Should it not have printed what its reporters were told? No readers complained to me about this. The sniper attacks were the biggest stories of the year, and there

is enormous public interest in them.

Reporters from many news organizations are digging for every scrap, as they should be. It would be hard to argue that this was a case where The Post should have engaged in self-censorship.

Executive Editor Leonard Downie Jr. says "the fact of Malvo's being a juvenile and the presence or absence of an attorney are not issues in decisions to publish or not; they are legal issues concerning the admissibility of his statements in court and will be adjudicated there.

Our responsibility is to report fully and fairly on that legal process and debate. As to reporting statements made by Malvo or any other accused person to police, it does not matter whether such statements are revealed formally and publicly by authorities or by unnamed sources, so long as we believe those sources to be credible and to be accurately characterizing the statements.

We clearly believe that to be so in this case. We have reported suspects' statements under those circumstances routinely in the past" and, he says, "especially in this case, our responsibility is to report as much as we reliably know about these crimes and their commission as soon as we can.

The understandable clash between this constitutional responsibility of the media and the constitutional requirement for a fair trial is the subject of the long-running 'free press-fair trial' debate between the media and lawyers that we see being revisited. I believe we have served our community well in this case."

Since the community is interested and not complaining, that's probably right. But it still seems to me to be an issue that fits into the very broad

question of what is happening to judicial procedures and defendants' rights in the more tense and toxic environment of the past year or so.

Set aside, for the moment, the obviously strong case against Malvo and Muhammad. Should the press be comfortable with letting anonymous police officers say that people have confessed to a major crime like the sniper killings? What is the motivation of those who provided this information? The stories didn't explore that.

Should The Post try to explain something about this for a case of this magnitude? Are the police taking advantage of The Post's competitive situation to saturate the public consciousness with the defendant's guilt?

No quotations from Malvo were made available, so should the press be confident of the context in which these alleged confessions were made? Was the interrogation videotaped? Does Malvo's age figure into this? Was he carefully isolated by police in terms of jurisdiction, charges and legal advice specifically so he could be more easily worked on than Muhammad?

Could there have been a deal between the two that Malvo, the juvenile, would say he did the shooting?

Stayed tuned. All of this will come out either in The Post or in court.

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## Naming the Accused

There is no law that forbids news media from identifying juveniles in stories. Most adults and news organizations like to tell about the positive accomplishments of minors. The dilemma surfaces when juveniles are accused of doing wrong.

The policies of some media companies state that juveniles should not be identified in stories. Others require conviction or commitment of a heinous crime be involved, a post-Columbine change in policy.

### Points to Consider

Al Tompkins, broadcast-online group leader at The Poynter Institute, suggests that journalists give context to a story, to “find ways to illuminate the public by telling stories that involve juveniles, even those who are accused of crimes or suffer from abuse.”

Before naming the accused under-18-year-old, news media should consider the following:

- What journalistic purpose is achieved in naming the accused?
- In what ways does the community benefit by knowing the name of the accused?
- Do many people already know who was accused? Will identifying the accused in print stop rumors and misinformation?
- Is the minor being charged as an adult or as a juvenile? If charged as an adult, does the age of the minor (under 15) enter into the decision?
- Has the incident or series of crimes been publicized so the community is waiting to learn if police have been successful in apprehending the perpetrator?
- If the juvenile is found not guilty, has identifying him in the press damaged his reputation for life?
- Who is making sure that the juvenile’s interests are not lost in getting a story?

### Identification in Print

Read today’s Washington Post front page and Metro sections.

Are young people covered in stories? Do you consider the information positive? Negative? How often do residents under the age of 18 appear in the newspaper? How often are the good deeds and accomplishments of young people reported?

Are juveniles named in the story? Do you think The Post is appropriate in naming/not naming the juveniles?

If minors are accused of a crime, are they named? Should they have been named?

Are young offenders pictured with a caption that identifies them? Did reporting “fully and fairly” require a photograph of the accused?

### Washington Post Policy

The following excerpts are from Washington Post stories. After reading them, compile a statement of The Washington Post’s policy on identifying minors. After compiling the policy statement, read today’s Post. Find examples that illustrate the policy. If you find an exception to the policy, explain the circumstances that might have affected the editor’s decision.

- Five-year-old Kristen Larche spends time with her Silver Spring, Md., relatives, but longs to return to her New Orleans home.
- A 15-year-old Sherwood High School student has been charged with second-degree murder in the case.
- The Washington Post does not identify minors who are arrested or accused by police of committing a crime.
- Police said they do not have a motive or suspects in either case and are offering a reward of up to \$25,000 for an arrest and indictment. Anyone with information is asked to call the homicide unit at 301-772-4925.
- The counselor, Lester Boysie Palmer, slapped the youth across his face with an open hand during a March 28 argument at the Alfred D. Noyes Children’s Facility in Rockville, according to court records. He was charged Tuesday with second-degree assault and child abuse and released on \$7,500 bond.



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## Where Do You Stand?

*Read the following report provided by The Reporters Committee for Freedom of the Press.*

### Judge Closes Courtroom to Reporters Who Name Juvenile Murder Accomplice

ILLINOIS (March 2, 2005)

— Three reporters were tossed from a juvenile court hearing in Rock Island County, Ill., Feb. 23 by a judge angry that the journalists named a juvenile murder defendant who was previously identified in adult court.

Judge John McClean asked reporters with The Dispatch and The Rock Island Argus, sister publications of the Small Newspaper Group, and WQAD TV and KWQC TV, to leave a juvenile court hearing as punishment for reporting that Nathan Gaudet, 16, was charged with concealing a

homicidal death in the murder and dismemberment of another teenager.

“The first time we were in court, Feb. 1, I directly said because this was a juvenile court proceeding, the name and image of the defendant were not to be used,” Judge McClean said at the Feb. 23 hearing, The Dispatch reported. “Much to my dismay, the name and photographs were used.”

Representatives of WHBF-TV, which agreed to the judge’s edict, were allowed to remain at the hearing.

Between Feb. 1 and Feb. 23, The Dispatch and The Rock Island Argus learned Gaudet’s identity “from legiti-

mate newsgathering,” Russell Scott, managing editor of The Dispatch said in an interview. Gaudet’s identity was confirmed when his name was brought up in District Court, where a 16-year-old and a 17-year-old were being charged as adults in the murder of Adrienne Reynolds.

“We feel we are on very firm legal footing to report his name and his identity,” Scott said. “We feel we have a legal right and a responsibility to report” Gaudet’s involvement.

### For Your Consideration

1. Identify the main arguments of Judge John McClean and of Managing Editor Russell Scott.

2. Is there a law that forbids media from using the names and images of minors involved in crimes? Is it ethical to name individuals under 18 who have not been convicted?

3. Many consider coverage of the Columbine High School murders and suicides to be a turning point in

how juvenile offenders are covered in the press. Do a Web search of Columbine stories. (You may wish to begin with the Rocky Mountain News.) Read them and look at the images that may be found online as archives of coverage. Was coverage fair and balanced? Should the juvenile offenders have been named? Should those under 18 who died have been named?

4. Does the public need to know the identity of those being charged? Does shielding the public from the juvenile’s identity and record have potential to harm the community?

5. If the juvenile’s family gave an interview or the police revealed the identity of those they arrested, should media report the names of young offenders?

6. Al Tompkins, broadcast/online group leader at the

Poynter Institute, suggests that “naming the juvenile [might] allow [reporters] to take the story into a deeper, more contextual level of reporting.” How might this be true? Is this sufficient reason to allow use of a minor’s name? Especially, if a presiding judge directed that names not be used?

7. Do you agree with the judge or the media members who disregarded his edict?

## An Integrated Curriculum For The Washington Post Newspaper In Education Program

# Shame On You

*Enough With the Humiliating Punishments, Judges*

## Jonathan Turley

Shawn Gementera must have known that he would face some kind of punishment after a police officer nabbed him and a friend in the act of stealing letters from mailboxes along San Francisco's Fulton Street four years ago. While jail or probation might have crossed Gementera's mind, U.S. District Judge Vaughn R. Walker had a more creative idea. Walker sentenced Gementera to stand outside a post office while wearing a sign that read: "I stole mail. This is my punishment." Where the judge saw a novel way of conveying society displeasure with mail theft, Gementera's lawyers saw a violation of the Constitution's ban on "cruel and unusual punishment." The U.S. Court of Appeals for the 9th Circuit decided, however, that while the humiliating sentence might be unusual, it wasn't cruel.

Lately it hasn't been all that unusual either. The Gementera sentence — taken last month to the Supreme Court — is one of a growing number of "creative punishments" being handed down across the country by judges who want to use shame or humiliation to deter people from committing further offenses. As clever as these punishments might seem, judges are not chosen to serve as parents trying to set consequences for wayward children. Law demands not just consequences for wrongdoing, but consistent consequences. Otherwise citizens are left wondering whether they will receive a standard punishment or one improvised to suit a judge's whim.

Shaming punishments were common in the United States before the advent of model criminal codes and the development of constitutional limitations

in sentencing. While the scarlet letter made famous by Nathaniel Hawthorne's classic novel about adultery is the best known, it was not the most common. Early sentences often required offenders to endure public displays of guilt by wearing signs or being pilloried in common areas. Adulterers were often required to carry heavy stones around a church or town.

Most shaming punishments were abandoned as either ineffective or unconstitutional. Modern law values the consistent imposition of punishment and frowns upon judges who personally tailor new forms of punishment for particular defendants. What is most dangerous about this recent trend is that, in the name of reforming citizens, judges will impose their own quirky brand of justice by ordering citizens to parade, worship or even marry. Consider a few examples, all from state or local courts:

- In Kentucky, Judge Michael Caperton recently allowed drug and alcohol offenders to skip drug counseling if they agreed to go to 10 church services. A pastor, like a divinely ordained probation officer, signs off on the completion of this obligation.

- In Texas in 2003, Judge Buddie Hahn gave an abusive father a choice between spending 30 nights in jail or 30 nights sleeping in the doghouse where prosecutors alleged the man had forced his 11-year-old stepson to sleep.

- In Georgia last year, Judge Sidney Nation suspended almost all of Brenton Jay Raffensperger's seven-year sentence for cocaine possession and driving under the influence in exchange for his promise to buy a casket and keep it in his home to remind him of the costs of drug addiction.

- In Ohio, a municipal judge, Michael Cicconetti, cut a 120-day jail sentence

down to 45 days for two teens who, on Christmas Eve 2002, had defaced a statue of Jesus they stole from a church's nativity scene. In exchange, the pair had to deliver a new statue to the church and march through town with a donkey and a sign reading "Sorry for the Jackass Offense."

- In North Carolina in 2002, Judge James Honeycutt ordered four young offenders who broke into a school and did \$60,000 in damage to wear signs around their necks in public that read "I AM A JUVENILE CRIMINAL." One, a 14-year-old girl, appealed and Honeycutt was reversed.

In a newspaper interview last year, Georgia Judge Rusty Carlisle said he often imposes shaming punishments when defendants seem insufficiently chastened. He cited an early case: a person accused of littering whom Carlisle felt was "kind of cocky." So the judge gave him a cup and a butter knife and told him to scrape the gum off the bottoms of the court benches as the judge and others watched.

There's no evidence that creative sentences work better at deterring crime than other punishments. Yet public punishments can be harshest on the most commonly targeted and vulnerable group — young people.

The recent penchant for customized punishments also undermines efforts to make criminal sentencing more uniform. Creative punishments often reflect the cultural character of a state. While an abusive father was given the choice of sleeping in a doghouse in Texas, domestic abusers were forced to attend meditation classes with herbal teas and scented candles in Santa Fe, N.M.

As elected officials, state judges know that few things please the public as much as hoisting a wretch in public.

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One Texas state judge, Ted Poe, was known as “The King of Shame” for his signature use of punishments like shoveling manure. Poe said that he liked to humiliate people because “[t]he people I see have too good a self-esteem.” Poe was so popular for what he called “Poe-tic Justice” that he literally shamed himself right into Congress and is now serving as a member of the House of Representatives.

In Memphis, Judge Joe Brown became famous for allowing victims of burglaries to go to the homes of the thieves and take something of equal value. When asked about his authority to order judicially supervised burglaries, Brown explained with a hint of amazement that “under Tennessee law it appears to be legal.” Brown eventually took his brand of justice to television as the host of his own syndicated court show.

What distinguishes the Gementera case is that it was a federal judge who imposed the shaming punishment. Federal judges have long been viewed as insulated from this trend — until now. And Judge Walker was upheld by the 9th Circuit Court of Appeals, which noted that “in comparison with the reality of the modern prison, we simply have no reason to conclude that the sanction . . . exceeds the bounds of ‘civilized standards’ or other ‘evolving standards of decency that mark the progress of a maturing society.’”

But the 9th Circuit Court’s ruling is more a devolution of standards. These novel sentences threaten the very foundation of a legal system by allowing arbitrary and impulsive decisions by judges. A judge is allowed to weigh guilt and impose sentences. Yet it is the legislature that should define the forms and range of permissible punishment for a crime. That’s why it was popular but wrong when North Carolina Judge Marcia Morey recently allowed speeders to send their fines to a charity for hurricane victims rather than to the state. Similarly, Wisconsin Judge


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**Judge Joe Brown of Memphis became famous for allowing victims of burglaries to go into the home of the thieves and take something of equal value.**

Scott Woldt recently ordered Sharon Rosenthal, who stole money from the labor union where she was treasurer, to donate her family’s Green Bay Packers seats to his preferred charity, the Make-A-Wish Foundation. Such measures turn court cases into private charity pledge drives.

As judges vie for notoriety through sentencing, citizens will be increasingly uncertain about the consequences of their actions. Will it be probation or humiliation? Once you allow judges to indulge their own punitive fantasies, defendants become their personal playthings — freaks on a leash to be paraded at the judges’ pleasure.

These cases betray a disturbing convergence of entertainment and justice in the United States. There has been an explosion of faux-court programs like *Judge Judy*, *Judge Hatchett* and *Judge Joe Brown*. For anyone who knows and values the legal system, these shows are vulgar caricatures that have no more relation to real law than TV’s *Wrestlemania* has to real wrestling. Yet it appears that some judges long for those Judge Judy moments

when they can hand out their own idiosyncratic forms of justice.

If states and Congress do not act, we may find ourselves with hundreds of Judge Browns imposing sitcom justice with real citizens as their walk-on characters. In the meantime, as shaming devices become commonplace and therefore less shameful, and as there are more people walking around wearing special signs, jurists will need to dream up new, more demeaning punishments to make an impression on defendants — leaving both citizens and justice at risk.

The Supreme Court could help reverse this shameful trend with the Gementera case. Of course, even if it does, Judge Walker is unlikely to be seen standing outside the San Francisco courthouse wearing a sandwich board proclaiming “I Was Reversed by the Supreme Court” or “I Imposed Cruel and Unusual Punishment.” In some ways, that’s a real shame.

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## An Integrated Curriculum For The Washington Post Newspaper In Education Program

# The Death Penalty for Juveniles

The Eighth Amendment to the United States Constitution protects us from the infliction of cruel and unusual punishment by the government. The Eighth Amendment, however, does not define what “cruel and unusual punishment” means. What do you think it means? Do you think the death penalty is cruel and unusual punishment? What about when it is applied to juveniles?

This issue has been hotly contested since the beginnings of our nation. The Supreme Court said in *Trop v. Dulles* (1958) that we must draw the meaning of the Eighth Amendment “from the

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evolving standards of decency that mark the progress of a maturing society.” Keeping this in mind, do you think there is any way to justify sentencing juveniles to death under our current standards of decency? What are those standards?

In 1642, Thomas Graunger became the first known juvenile to be executed in America. He was convicted of bestiality and sentenced to death by hanging at 16. Since this time, Amnesty International estimates that at least 366 juveniles have been executed in the United States. Since 1997, only four countries have executed individuals who committed crimes before they were 18 — the United States, Iran, Pakistan, and the Democratic Republic of Congo. (<http://www.juvjustic.org>, 10 June 2005). In 2004, 73 people were on death row for crimes they committed while under the age of 18. (<http://ccjr.policy.net>, 10 June 2005).

In *Thompson v. Oklahoma* (1988), the Supreme Court held that the execution of people under the age of 16 was a violation of the cruel and unusual punishment clause of the Eighth Amendment because it was inconsistent with current standards of decency. To support its decision, the Court mentioned that most other countries prohibit the execution of those who committed crimes when they were juveniles. Additionally, the Court recognized that juveniles “may have less capacity to control their conduct and to think in long-range terms than adults.” Do you agree with this argument?

One year later, the Supreme Court again used the evolving standards of decency argument, but with an opposite result. The Court, merging two cases, *Stanford v. Kentucky* and *Wilkins v. Missouri*, ruled that sentencing a sixteen- or seventeen-year-old defendant to death was not a violation of the prohibition on cruel and unusual punishment. The Court found that there is no “historical or modern societal consensus forbidding the imposition of capital punishment on any person who murders at 16 or 17 years of age.” Therefore, it did not violate the evolving standards of decency or the Eighth Amendment.

In 2002, the Supreme Court held in *Atkins v. Virginia* that the execution of people with mental retardation violated the Eighth Amendment prohibition on cruel and unusual punishment. The Court argued that certain individuals do not have the cognitive capacity to tell right from wrong. Additionally, the majority noted that a national

consensus against executing the mentally retarded had evolved.

Do you think these arguments also work for juveniles?

In October 2004, the Supreme Court reconsidered the juvenile death penalty arguments. In *Roper v. Simmons* (decided in March 2005), the Court held the death penalty unconstitutional as applied to juveniles. The defendant in *Roper*, Christopher Simmons, committed murder at age 17 when he was still in high school. He and his friends entered the home of the victim, kidnapped her, drove her to a state park, and threw her over a bridge. She drowned in the water below. Later that afternoon, Simmons was heard bragging about the murder.

In making its decision, the Court looked to the fact that 30 states had banned the execution of juveniles and only three states had executed prisoners for crimes committed as juveniles since 1995. “Our determination that the death penalty is disproportionate punishment for offenders under 18 finds confirmation in the stark reality that the United States is the only country in the world that continues to give official sanction to the juvenile death penalty.”

Do you agree with the Court’s decision?

## ABOUT THE AUTHOR

Melissa Starry, a Marshall Brennan Fellow at Washington College of Law of American University, wrote this activity.

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# The Death Penalty: Interview and Video Project

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*The death penalty is a topic of much discussion. Attitudes toward the death penalty vary according to ethical and religious convictions, personal experience, and adherence to legal opinion. Use the following questions to interview the partner assigned by your teacher. Record responses and add any necessary follow-up questions.*

1. Are you for or against the death penalty? Why?

2. In your view, what is the purpose of the death penalty?

3. Is the death penalty cruel and unusual punishment?

4. Are you in favor of the death penalty in certain situations?

5. Give an example of a situation in which you would be in favor of the death penalty.

6. Do you think that juveniles should be sentenced to death for a crime committed before they turned 18? Why or why not?

7. Do people under 18 know the difference between right and wrong?

8. You are an attorney with a client on death row. Make an argument against the death penalty.

9. You are a parent whose daughter was brutally murdered. Make an argument for the death penalty.

10. Do you think the death penalty should apply to those under 18 based on the situation rather than age? For example, it has been reported that certain gang leaders are using young people under the age of 18 to commit crimes, including murder. In return, the youth have money to help their families. If caught, the youth, who know they will not be executed, will go to jail and their families will receive a bonus payment. In this situation, would a juvenile death penalty change behavior?

After discussing these questions, watch a movie about the death penalty. Titles from which you might select include *Dead Man Walking* (1995), *The Life of David Gale* (2003), *The Chamber* (1996), *The Green Mile* (1999), *Redemption — The Stan "Tookie" Williams Story* (2004), and *Return to Paradise* (1998). Write a summary of the plot and a statement of the idea that the movie presents about the death penalty.

Review the above questions with your partner after viewing the movie. Have any answers or opinions changed? What was an influencing factor?

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## Pro, Con Death Penalty

*Put aside your existing views of the death penalty, if any. Make a list of the pros and cons of the punishment. Now do some research to investigate the reasons for and against capital punishment. Visit the following Web sites. Be prepared to share them with the class.*

<http://www.deathpenaltyinfo.org>  
<http://www.prodeathpenalty.com>  
<http://www.deathpenalty.org>  
<http://www.amnestyusa.org/abolish/index.do>  
<http://www.wesleylowe.com/cp.html>  
<http://www.deadmantalking.com/>

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PRO	CON

### Death Penalty: Who Practices It?

*What countries and states have the death penalty available as punishment to the convicted? Compile a list of those who do have the death penalty.*

### Death Penalty: Methods of Execution

*What methods of execution are practiced in states with the death penalty? Most states have only approved lethal injection as a method of execution; however, several states have retained more historical methods, although seldom used. Below are a few examples:*

- Alabama: An inmate can select electrocution, but the default method is lethal injection.
- Florida: Inmates can choose between electrocution and lethal injection.
- Idaho: Use of a firing squad is available, but only if lethal injection would be impracticable.
- Maryland: Since March 25, 1994, inmates who are sentenced may choose between lethal injection and lethal gas.
- Missouri: Lethal injection or lethal gas
- New Hampshire: Authorizes hanging if lethal injection cannot be given.
- Oklahoma: Authorizes electrocution if lethal injection is ever held to be unconstitutional and firing squad if both lethal injection and electrocution are held unconstitutional.
- South Carolina: Allows inmates to choose between lethal injection and electrocution.
- Utah: Lethal injection is the sole method of execution. Firing squad was chosen by some inmates prior to the passage of legislation banning the practice and is only available for those inmates.
- Virginia: Allows inmates to choose between lethal injection and electrocution.