

# SEIFERT & HOGAN

ATTORNEYS AT LAW

HALLS ROAD, P.O. BOX 576  
OLD LYME, CONNECTICUT 06371  
TELEPHONE (860) 434-2097  
TELECOPIER (860) 434-3657

CONRAD OST SEIFERT  
BETH A. HOGAN\*  
\*ALSO ADMITTED IN NEW YORK  
March 23, 2012

TO: The Honorable Co-Chairs of the Judiciary Committee  
Senator Eric D. Coleman  
Representative Gerald M. Fox and  
Members of the Judiciary Committee

RE: Testimony in Support of Raised Bill No. 5546, An Act Covering Sentence Modification  
for Juveniles

My name is Beth A. Hogan and I am testifying here today based on my experience as a juvenile attorney and have been a member of the Connecticut bar since 1987. Attorney Conrad Ost Seifert is past-president of the Connecticut Criminal Defense Lawyer's Association and CCDLA also supports this raised bill. Immediate past-president of the CCDLA Attorney Jennifer Zito will also be testifying in support.

The Connecticut Sentencing Commission should address this longstanding concern of youth offenders who are sentenced to lengthy sentences without the possibility of a modification or meaningful review of their sentences. Juveniles are in a special class within the adult correctional system by virtue of their youth, immaturity and brain immaturity. There is a tremendous volume of medical, social and psychological research that recognizes the critical developmental differences (emotional, psychological and neurological) between youths and adults. It is now understood that the brains and personalities of adolescents are developing and still significantly unformed. Compared to adults, there is a greater chance of rehabilitation success upon maturity.

Just two days ago the United States Supreme Court heard argument in Jackson v. Hobbs. Seventeen days after his 14<sup>th</sup> birthday, Kuntrell Jackson went to a video store that his juvenile friends planned to rob. One of his friends had a gun. When they got to the store, Jackson told his friends he would not go inside and would wait outside. He later entered the store as one of his friends pulled the gun out and shot the 28 year-old employee, killing her. Jackson thought his friend was not going to use the gun. He was tried as an adult, convicted of felony murder and sentenced to life without the possibility of parole. As a child, Jackson grew up in a violent environment in a neighborhood plagued with drugs and gang violence. Jackson did not hold the weapon, much less fire it but under Arkansas felony murder statutes, he was convicted of murder

because he was present when a life was taken during the course of another crime. Connecticut has a similar felony murder statute.

The issue before the Supreme Court is whether such a lengthy and severe sentence for a 14 year-old constitutes a cruel and unusual punishment prohibited under the Eighth Amendment. Twelve highly respected and retired juvenile law judges filed an amicus curiae brief with the Supreme Court, asking it to declare such a lengthy sentence to be unconstitutional. Their amicus curiae brief is critically important to the issue before you. I have attached it to this testimony. I urge you to read the juvenile judges' brief and will only quote a few excerpts:

Having spent decades overseeing the cases of juvenile offenders and thus having witnessed firsthand their remarkable resilience, *amici* strongly believe that the criminal justice system cannot predict what kind of person a fifteen-year-old juvenile offender will be when he is 35, or 55, or 75. Rather, *there should be some meaningful opportunity for the system to reassess whether incarceration remains necessary for these offenders after they have had the opportunity to grow, mature, and change.* (p. 1.)

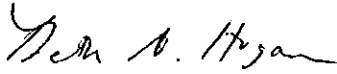
*Amici* emphasize four points. First, juveniles who commit homicide offenses are just like juveniles who commit other serious offenses. *They are less mature than adult offenders; they are more vulnerable to negative influences; and their characters and reasoning capacities are less fully formed.* They also have less control over and experience with their environment. For these reasons and other reasons, *juvenile homicide offenders, just like other juvenile offenders, are less culpable for their actions and more susceptible to change.* (p. 5.)

*Amici* recognize, of course, that not all juvenile offenders who commit homicide crimes will ultimately be reformed and rehabilitated; the same is true of juvenile offenders more broadly. *But amici firmly believe that it is impossible to tell at the time of sentencing which juveniles will prove capable of reform. Thus, juvenile homicide offenders, like all other juveniles, should be afforded a meaningful opportunity to demonstrate growth and maturity.* (p. 14.) Brief of Former Juvenile Court Judges As Amici Curiae In Support Of Petitioners Evan Miller and Kuntrell Jackson, Evan Miller v. Alabama, Kuntrell Jackson v. Hobbs, Nos. 10-9646, 10-9647. (emphasis added).

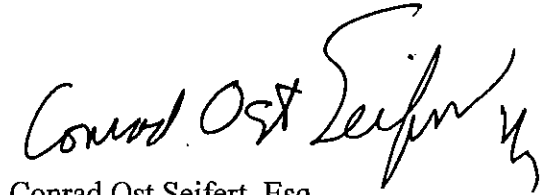
This is why passing this Bill is so very important. In Connecticut, there are currently inmates who were tried as adults for felony murder and other serious felonies committed when they were 14, 15 and 16 years old who are serving very lengthy sentences without any real

chance at receiving a substantially reduced sentence due to rehabilitation. We believe that presently there are 97 inmates convicted of such crimes when they were juveniles who are not eligible for parole. We further believe that the Connecticut Sentencing Commission will recommend that such inmates should have a meaningful opportunity for a hearing after serving a portion of their sentence, provided they can demonstrate rehabilitation and maturity. Passing Raised Bill 5546 is the necessary first step and we urge you to take it.

Respectfully submitted,



Beth A. Hogan, Esq.



Conrad Ost Seifert, Esq.

Attachment

Nos. 10-9646 & 10-9647

---

IN THE  
Supreme Court of the United States

EVAN MILLER,  
*Petitioner,*

v.

ALABAMA,  
*Respondent.*

---

KUNTRELL JACKSON,  
*Petitioner,*

v.

RAY HOBBS, DIRECTOR,  
ARKANSAS DEPARTMENT OF CORRECTION,  
*Respondent.*

---

On Writs of Certiorari to the Alabama Court of  
Criminal Appeals and the Arkansas Supreme Court

BRIEF OF FORMER JUVENILE COURT JUDGES  
AS *AMICI CURIAE* IN SUPPORT OF PETITIONERS

---

JONATHAN D. HACKER  
*(Counsel of Record)*  
BRIANNE J. GOROD  
ADAM GOLDSTEIN  
DEANNA RICE  
O'MELVENY & MYERS LLP  
1625 Eye Street, N.W.  
Washington, D.C. 20006  
(202) 383-5300  
jhacker@omm.com  
*Attorneys for Amici Curiae*

---

**TABLE OF CONTENTS**

	Page
B. Sentencing Juveniles to Life Without Parole Denies Them Opportunities To Participate In Educational and Rehabilitation Programs.....	22
CONCLUSION.....	26

**TABLE OF AUTHORITIES**  
(continued)

	Page(s)
Michael P. Hagan, <i>An Analysis of Adolescent Perpetrators of Homicide Upon Return to the Community</i> , 41 Int'l J. of Offender Therapy & Comparative Criminology 250 (1997).....	16
John Hubner, <i>Last Chance in Texas: The Redemption of Criminal Youths</i> (2005) .....	16
Human Rights Watch, <i>Against All Odds: Prison Conditions for Youth Offenders Serving Life without Parole Sentences in the United States</i> (2012), <a href="http://www.hrw.org/sites/default/files/reports/us0112ForUpload_1.pdf">http://www.hrw.org/sites/default/files/reports/us0112ForUpload_1.pdf</a> ....	23, 24, 25
Human Rights Watch, Amnesty Int'l, <i>The Rest of Their Lives: Life Without Parole for Child Offenders in the United States</i> (2005), at <a href="http://pendulumfoundation.com/TheRestofTheirLives.pdf">http://pendulumfoundation.com/TheRestofTheirLives.pdf</a> .....	14, 22, 23, 24
Human Rights Watch, "When I Die, They'll Send Me Home," <i>Youth Sentenced to Life without Parole in California</i> (Jan. 2008), <a href="http://www.hrw.org/reports/2008/us0108/us0108web.pdf">www.hrw.org/reports/2008/us0108/us0108web.pdf</a> .....	22, 23, 24
III. Coalition for the Fair Sentencing of Children, <i>Categorically Less Culpable: Children Sentenced to Life Without Possibility of Parole in Illinois</i> (2008), <a href="http://webcast-law.uchicago.edu/pdfs/00544_Juvenile_Justice_Book_3_10.pdf">http://webcast-law.uchicago.edu/pdfs/00544_Juvenile_Justice_Book_3_10.pdf</a> .....	21, 23

**TABLE OF AUTHORITIES**  
(continued)

	Page(s)
Hattie Ruttenberg, <i>The Limited Promise of Public Health Methodologies To Prevent Youth Violence</i> , 103 Yale L.J. 1885 (1994).....	21
Allan N. Schore, <i>Early Relational Trauma, Disorganized Attachment, and the Development of a Predisposition to Violence</i> , in <i>Healing Trauma: attachment, mind, body, and brain</i> 107 (Marion F. Solomon & Daniel J. Siegel, eds. 2003).....	9
Irene Sullivan, <i>Raised by the Courts: One Judge's Insight into Juvenile Justice</i> (2010) .....	21
Martin H. Teicher, <i>Wounds that Time Won't Heal: The Neurobiology of Child Abuse</i> , 2 Cerebrum 50 (2000) .....	10

Individual *amici* are as follows:

- Judge Susan E. Block (ret.) served as Administrative Judge of the Family Court of St. Louis County in Missouri from 2000-2004, after three years as the Juvenile Judge. After her retirement in 2004, she joined Paule Camazine & Blumenthal as a principal where she specializes in complex family law matters.

- Judge Michael A. Corriero (ret.) served as a judge in the criminal courts of New York State for twenty-eight years. In the last fifteen years of his tenure, he presided over Manhattan's Youth Part, a special court established within the adult criminal court system where he was responsible for resolving the cases of thirteen-, fourteen-, and fifteen-year-olds who were charged with serious offenses and who were tried as adults pursuant to New York's Juvenile Offender Law. Judge Corriero is the Founder and Executive Director of the New York Center for Juvenile Justice.

- Judge Margaret S. Fearey (ret.) served as an Associate Justice in the Juvenile Court Department of the Trial Court of the Commonwealth of Massachusetts from 1996 until January 2012. In that capacity, she heard and decided numerous felony cases involving juveniles, including those involving adult sentencing options.

- Judge Gail Garinger (ret.) served as an Associate Justice in the Juvenile Court Department of the Massachusetts Trial Court from 1995-2001 and as the First Justice of the Middlesex County Division of the Juvenile Court Department from 2001-2008. From 2008 to the present, she has served as The Child Advocate for the Commonwealth of Massachu-



charged with crimes carrying a potential jail sentence or commitment to juvenile detention.

- Judge H. Ted Rubin (ret.) served as a judge on the Denver Juvenile Court for six years and then spent twenty-two years as Director for Juvenile Justice for the Institute for Court Management, National Center for State Courts. He has also served as a private consultant for juvenile courts and is the author of six books on juvenile justice, including *Juvenile Justice: Policies, Practices, and Programs*.

- Judge Irene Sullivan (ret.) retired last year after nine years as a juvenile judge, handling abuse, neglect, and delinquency cases in Pinellas County, Florida. She teaches juvenile law at Stetson University College of Law, is the author of *Raised by the Courts: One Judge's Insight into Juvenile Justice*, and speaks around the country on juvenile justice issues.

- Judge Darlene A. Whitten (ret.) served twenty years as a Judge on the Court at Law #1, Designated Juvenile Court for Denton County, Texas. Prior to going to law school, Judge Whitten taught junior high school.

#### SUMMARY OF ARGUMENT

The decisions of the courts below in both *Miller* and *Jackson* are wrong. They fail to sufficiently appreciate the dramatic differences between juvenile offenders, including those who commit homicide, and adult offenders, and they fail to recognize that the unique characteristics of juveniles make it impossible to predict at the time of initial sentencing whether a juvenile might one day be ready to leave prison. These distinguishing features of juveniles make the

time, *viz.*, after the juvenile has had time to mature and reform. It also deprives the community of the skills and participation of the reformed offender.

Fourth, sentencing juveniles to life without parole unnecessarily hinders their otherwise unique capacities for rehabilitation. As an initial matter, it denies these youths any incentive to try to improve themselves and sends them a clear message that society has decided that they are beyond redemption. Moreover, even for those youths who want to try to better themselves, a sentence of life without parole will often make it more difficult for them to take advantage of whatever educational, vocational, and other rehabilitative programs are available.

#### ARGUMENT

#### I. JUVENILE HOMICIDE OFFENDERS, LIKE OTHER SERIOUS JUVENILE OFFENDERS, ARE CATEGORICALLY DIFFERENT FROM ADULT OFFENDERS

As former juvenile court judges, *amici* have collectively spent decades presiding over cases involving thousands of serious (often violent) juvenile offenders. Based on their experiences, *amici* strongly believe that juvenile offenders, including those who commit homicide offenses, are categorically different from adult offenders.

As this Court has repeatedly recognized and *amici* have repeatedly witnessed, the characters of juveniles are not “as well formed” as those of adults. *Roper v. Simmons*, 543 U.S. 551, 570 (2005). Juveniles also suffer from a “lack of maturity” and an “underdeveloped sense of responsibility,” and they are “more vulnerable or susceptible to negative in-

simply does not change the fundamental characteristics of the offender. This Court has repeatedly suggested as much, emphasizing the broad differences between juveniles and adults even in cases involving juvenile homicide offenders. See *Roper*, 543 U.S. at 569-70; *Johnson*, 509 U.S. at 367; *Eddings*, 455 U.S. at 115-16. Thus, *all* juvenile offenders are categorically different from adults for reasons that are almost entirely out of their control—the developmental state of their brains and their surrounding environments. This is as true for juvenile homicide offenders as it is for other serious juvenile offenders.

As a result of these distinguishing characteristics, juvenile homicide offenders, like other juvenile offenders, are both less morally culpable for their actions and “more capable of change” than their adult counterparts. *Graham*, 130 S. Ct. at 2026. As this Court has explained, because “[t]he personality traits of juveniles are more transitory [and] less fixed” than those of adults, *Roper*, 543 U.S. at 570 (2005); see *Johnson*, 509 U.S. at 368 (1993), “their actions are less likely to be evidence of ‘irretrievably depraved character’ than are the actions of adults.” *Graham*, 130 S. Ct. at 2026 (quoting *Roper*, 543 U.S. at 570); see *Thompson v. Oklahoma*, 487 U.S. 815, 835 (1988). Thus, “[f]rom a moral standpoint it would be misguided to equate the failings of a minor with those of an adult, for a greater possibility exists that a minor’s character deficiencies will be reformed.” *Roper*, 543 U.S. at 570.

*Amici* strongly believe that these essential, distinguishing characteristics of youth must be taken into account when sentencing *all* juvenile offenders, including those convicted of homicide.

father were alcoholics, and his mother was addicted to illicit drugs. *Id.* at 83-84. As a very young child, Miller emulated their behavior, drinking alcohol as early as age seven and using marijuana as early as age eight. *Id.* By the time he was thirteen, Miller was already abusing cocaine, prescription medications, and methamphetamines. *Id.*; *cf. Graham*, 130 S. Ct. at 2018 (“Graham’s parents were addicted to crack cocaine, and their drug use persisted in his early years. . . . He began drinking alcohol and using tobacco at age 9 and smoked marijuana at age 13.”).

It is impossible not to see the role that drugs, alcohol, and the negative influences of family and friends played in Miller’s participation in the underlying homicide. During the summer after he completed seventh grade, Miller became friendly with Colby Smith, a sixteen-year-old with a teardrop tat-

---

pulse control than a typical fourteen-year-old. *See, e.g.,* Allan N. Schore, *Early Relational Trauma, Disorganized Attachment, and the Development of a Predisposition to Violence*, in *Healing Trauma: attachment, mind, body, and brain* 107, 110 (Marion F. Solomon & Daniel J. Siegel, eds. 2003) (“[V]iolence in children may be a product of ‘negative experiences such as early maternal rejection and unstable family environment’ and . . . ‘child abuse, particularly that involving physical injury, may be especially damaging.” (quoting Christopher Filley, et. al, *Toward an Understanding of Violence: Neurobehavioral Aspects of Unwarranted Physical Aggression: Aspen Neurobehavioral Conference Consensus Statement*, 14 *Neuropsychiatry, Neuropsychology, & Behavioral Neurology* 1 (2001))); Martin H. Teicher, *Wounds that Time Won’t Heal: The Neurobiology of Child Abuse*, 2 *Cerebrum* 50, 60 (2000) (“[W]e now know that childhood abuse is linked with excess neuronal irritability, EEG abnormalities, and symptoms suggestive of temporal lobe epilepsy.”).

987-88.

Jackson, too, grew up in a troubled environment: his neighborhood was infested with gang violence and drug activity, Jackson Record on Appeal ("Jackson R.") 81, and the adults in his life failed to protect him from the negative influences around him. Instead, they regularly exposed him to violence. His mother and her boyfriend fought repeatedly. *Id.* at 80. His grandmother shot her own son—Jackson's uncle. *Id.* at 81. Jackson's mother shot their neighbor after a fight broke out between Jackson's older brother and the neighbor's daughter and, as a result, went to jail when Jackson was just five or six. *Id.* at 80. Jackson's older brother also owned guns and was incarcerated for a robbery involving a shooting at the time when Jackson participated in the felony underlying the sentence at issue in this case. *Id.* at 82.

Jackson's offense demonstrates how easily juveniles in certain family and social environments can become involved in criminal conduct—even very serious criminal conduct—as a result of peer pressure and negative external influences. Seventeen days after his fourteenth birthday, Jackson accompanied some friends to a video store that they planned to rob. Jackson R. 52. Although one of his friends carried a firearm, Jackson did not. And when they arrived at the store, Jackson told his friends that he did not want to go into the store, deciding to wait outside instead. *Id.* When he later entered the store, he was shocked to see that his friends had pulled out the firearm and screamed "I thought you all was playin'." *Id.* at 54. Jackson did not touch the firearm, much less actually shoot anyone. *Id.* at 56-

*Amici* recognize, of course, that not all juvenile offenders who commit homicide crimes will ultimately be reformed and rehabilitated; the same is true of juvenile offenders more broadly. But *amici* firmly believe that it is impossible to tell at the time of sentencing *which* juveniles will prove capable of reform. Thus, juvenile homicide offenders, like all other juveniles, should be afforded a meaningful opportunity to demonstrate growth and maturity.

**A. Juvenile Homicide Offenders Are Capable of Rehabilitation If Provided the Right Opportunities**

As this Court has observed, the fact that a person committed a crime as a juvenile, even a heinous crime, does not tell us who that person will be as an adult. See *supra* at 6-8. In fact, many juveniles serving life without parole sentences, including juvenile homicide offenders, come to recognize that what they did as a juvenile was deeply wrong. Many of these individuals show signs of genuine growth while in prison, taking advantage of what limited opportunities for education and personal development are available, even though they know they will be unable to make use of their new skills in the outside world. See, e.g., Human Rights Watch, Amnesty Int'l, *The Rest of Their Lives: Life Without Parole for Child Offenders in the United States* 83-84 (2005), at <http://pendulumfoundation.com/TheRestofTheirLives.pdf> [hereinafter "The Rest of Their Lives"]; see also *infra* at 22-24 (describing the limited range of programs available to juvenile prisoners sentenced to life without parole).

The most compelling proof that juvenile homicide offenders are capable of rehabilitation comes from

as a teenager. *Id.* at 58.

Oshea Israel is another example of a juvenile homicide offender who proved capable of reform as he grew into an adult. See NPR, *Forgiving Her Son's Killer: "Not An Easy Thing"* (May 20, 2011), <http://www.npr.org/2011/05/20/136463363/forgiving-her-sons-killer-not-an-easy-thing>. At the age of sixteen, Israel killed a twenty-year-old after getting into a fight with him at a party. *Id.* While in prison, Israel met his victim's mother and started changing his approach to life. *Id.* Recently released from prison, he is now pursuing his college degree and has developed a close relationship with the mother of his victim. *Id.* He has explained that he hopes to "prove himself" to her. MailOnline, *Woman shows incredible mercy as her son's killer moves in next door* (June 8, 2011), <http://www.dailymail.co.uk/news/article-2000704/Woman-shows-incredible-mercy-sons-killer-moves-door.html#ixzz1hw0jIdyb>.

Studies of juvenile homicide offenders mirror the lessons of Johnson's and Israel's stories, making clear that many youths who have committed homicide offenses are capable of rehabilitation and growth. See, e.g., Michael P. Hagan, *An Analysis of Adolescent Perpetrators of Homicide Upon Return to the Community*, 41 *Int'l J. of Offender Therapy & Comparative Criminology* 250, 254 (1997) (forty percent of youths convicted of homicide or attempted homicide and committed to juvenile correctional facility in Wisconsin in the 1970s and 1980s had not been convicted of any additional crimes five or more years after their release from the facility); John Hubner, *Last Chance in Texas: The Redemption of Criminal Youths* 20, 251 (2005) (relating, among

In fact, throughout their many years as juvenile court judges, *amici* were repeatedly surprised and encouraged by the ability of youths, including those who commit the most serious crimes, to grow and change. *Amici* were also struck by the difficulty of predicting which youths would successfully reform and which would not. See *Roper*, 543 U.S. at 573 (“It is difficult even for expert psychologists to differentiate between the juvenile offender whose crime reflects unfortunate yet transient immaturity, and the rare juvenile offender whose crime reflects irreparable corruption.”); *Naovarath v. State*, 105 Nev. 525, 530 (1989) (“We may possibly have in the child before us the beginning of an irremediably dangerous adult human being, but we certainly cannot know that fact with any degree of certainty *now*.”).

*Amici* are hopeful that Miller and Jackson may too one day mature into responsible, law-abiding

---

every convicted person as an individual and every case as a unique study in the human failings that sometimes mitigate, sometimes magnify, the crime and the punishment to ensue.” (quoting *Koon v. United States*, 518 U.S. 81, 113 (1996)); *Graham*, 130 S. Ct. at 2042 (Roberts, C.J., concurring in the judgment) (“Our system depends upon sentencing judges applying their reasoned judgment to each case that comes before them.”); cf. Michael A. Corriero, *Judging Children as Children: A Proposal for a Juvenile Justice System* 71 (2006) (“We must examine each child’s individual circumstances and social history.”). Thus, although *amici* believe that *no* juvenile should be sentenced to life without parole, *amici* are even more troubled by the fact that the petitioners in these cases were subject to *mandatory* life without parole sentences and thus were denied any individualized consideration even at their initial sentencing. See *Graham*, 130 S. Ct. at 2031 (“An offender’s age is relevant to the Eighth Amendment, and criminal procedure laws that fail to take defendants’ youthfulness into account at all would be flawed.”).



close [that]. It does forbid States from making the judgment at the outset that those offenders never will be fit to reenter society.”).

Leaving open the possibility of parole allows society to assess down the road—after the juvenile has had the time necessary to grow, mature, and change—whether it is necessary for a 25, 35, or 45-year-old to remain in prison for a crime he committed early in his formative years. Life without parole sentences, however, eliminate the possibility of such meaningful consideration of a juvenile offender’s demonstrated rehabilitation.

#### IV. A LIFE WITHOUT PAROLE SENTENCE SIGNIFICANTLY LIMITS A JUVENILE’S ABILITY TO REFORM AND CHANGE

*Amici* believe that sentencing juvenile offenders to life without parole is wrong because it meaningfully hinders a juvenile’s otherwise unique prospects for reform and rehabilitation. Juvenile homicide offenders, like all other juvenile offenders, should be given the chance to better themselves in prison and afforded a meaningful opportunity to obtain release based on a showing that they have done so.

##### A. Sentencing Juveniles to Life Without Parole Denies Them Hope and the Incentives To Try To Reform

Life without parole is, under any circumstance, a severe sentence—the most severe possible after capital punishment. But as this Court recognized in *Graham*, it is “an especially harsh punishment for a juvenile.” *Graham*, 130 S. Ct. at 2028. This is, in part, because it reflects “an irrevocable judgment about that person’s value and place in society.”

Life without parole amounts to the “denial of hope,” *Graham*, 130 S. Ct. at 2027, such that juveniles receiving the sentence often see little reason to try to educate or otherwise improve themselves. Life without parole means that “good behavior and character improvement are immaterial; it means that whatever the future might hold in store for the mind and spirit of [the convict], he will remain in prison for the rest of his days.” *Id.* (quoting *Naovarath*, 105 Nev. at 526). As one juvenile offender explained: “It makes you feel that life is not worth living because nothing you do, good or bad, matters to anyone. You have nothing to gain, nothing to lose, you are given absolutely no incentive to improve yourself as a person. It’s hopeless.” Human Rights Watch, *When I Die, They’ll Send Me Home, Youth Sentenced to Life without Parole in California* 60 (Jan. 2008), [www.hrw.org/reports/2008/us0108/us0108web.pdf](http://www.hrw.org/reports/2008/us0108/us0108web.pdf) [hereinafter, “Youth Sentenced to LWOP in California”]; see also *id.* (juvenile offender sentenced to life without parole reporting that “[t]here’s no words to describe this experience. I’d rather be dead”); *The Rest of Their Lives*, at 63 (another juvenile offender sentenced to life without parole asking “what am I supposed to hope for except for dying tomorrow maybe?”).

#### **B. Sentencing Juveniles to Life Without Parole Denies Them Opportunities To Participate In Educational and Rehabilitation Programs**

Even juvenile offenders sentenced to life without parole who want to change will often find that their sentence makes it more difficult for them to do so. Although the adult prisons where these juveniles

so reserve the already underfunded programs for those who will.”); Youth Sentenced to LWOP in California, at 56 (“[P]rison practice and regulations give persons sentenced to life without parole the lowest priority for accessing programs. Interviewees told Human Rights Watch that their sentence puts them on the lowest rung of waiting lists for GED classes and substance abuse rehabilitation groups like Alcoholics Anonymous . . . .”); The Rest of Their Lives, at 70 (“Correctional authorities in a number of states told a researcher for this report on the record that inmates serving life without parole sentences were at the ‘bottom of the list’ for getting access to vocational training. Officials cited their state’s need ‘to put our resources where the inmates who are going home can access them first.’”).

And in some states, “[s]ecurity classifications” can “limit participation in existing programs.” *Against All Odds*, at 29. Although “[m]ost prisoners can reduce their security level over time through good behavior,” it is exceedingly difficult for those serving life without parole to do so. Youth Sentenced to LWOP in California, at 57; *see id.* at 57-58 (explaining that “for those serving life without parole, a change in security classification . . . requires a decision by the Deputy Director after review by a classification committee”); *cf.* *Against All Odds*, at 28-29 (explaining how juveniles and those serving life without parole generally receive more restrictive security classifications). Thus, even if juvenile offenders exhibit exemplary behavior over the course of many years in prison, they may continue to be denied opportunities to better themselves at the ages of 35 and 55 based on a single act they committed at the age of 15.

CONCLUSION

For the foregoing reasons and those stated in petitioners' briefs, this Court should reverse the judgments below.

Respectfully submitted,

JONATHAN D. HACKER

*(Counsel of Record)*

BRIANNE J. GOROD

ADAM GOLDSTEIN

DEANNA RICE

O'MELVENY & MYERS LLP

1625 Eye Street, N.W.

Washington, D.C. 20006

(202) 383-5300

jhacker@omm.com

*Attorneys for Amici Curiae*

January 17, 2012