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U.S. Supreme Court Interprets Double Jeopardy

by Phyllis Raybin Emert

The principle of not being charged twice for the same crime, or what is referred to as double jeopardy, dates back thousands of years to ancient Greece and the Roman Republic. The Fifth Amendment to the U.S. Constitution incorporates this protection and states: "[N]or shall any person be subject for the same offence to be twice put in jeopardy of life or limb…" In other words, once a **defendant** is **acquitted** of a crime, he or she cannot be tried again for the same crime.

"No person should be subjected to multiple prosecutions and have to undergo the expense and anxiety that come from

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Eyewitness Identification— What You See Is Not Always the Truth

by Cheryl Baisden

Anyone who has watched a TV show, seen a movie or read a book where a crime has been committed knows that one of the best ways to catch the perpetrator is by finding an eyewitness. That's what these fictional accounts would lead you to believe. The truth, however, is that eyewitness testimony can be, and often is, wrong.

"An eyewitness is someone who, for example, sees a mugging across the street, or may be the victim himself,"

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Mandatory Life Sentences No Longer an Option for Juveniles

by Barbara Sheehan

In 2010, the U.S. Supreme Court ruled in *Graham v. Florida* that juveniles convicted in non-homicide cases cannot be sentenced to life in prison without parole. The Court concluded such a harsh punishment violates a young offender's Eighth Amendment protection against cruel and unusual punishment.

But what about juveniles who do kill someone, or are involved in killing someone? Is it okay to send them to prison for the rest of their lives? Should the courts grant them more **leniency** than adults who commit the same crime? These were among the questions raised in two U.S. Supreme Court cases that were decided together in June 2012. Both cases involved 14-year-old offenders.

In *Miller v. Alabama*, Evan Miller, a teen with a deeply troubled upbringing, beat a man with a bat and then set the man's trailer on fire. The man died from smoke inhalation. In *Jackson v. Hobbs*, Kuntrell Jackson accompanied two friends intending to rob a video store. One of the friends shot and killed the store clerk. Miller and Jackson were both convicted and sentenced to serve the rest of their lives in prison without the possibility of parole.

Because the sentences were "mandatory," this meant that the trial judges in the cases had no flexibility to consider the unique or **mitigating circumstances** of each case or to potentially award the juveniles the opportunity for parole. Mitigating circumstances are factors that,

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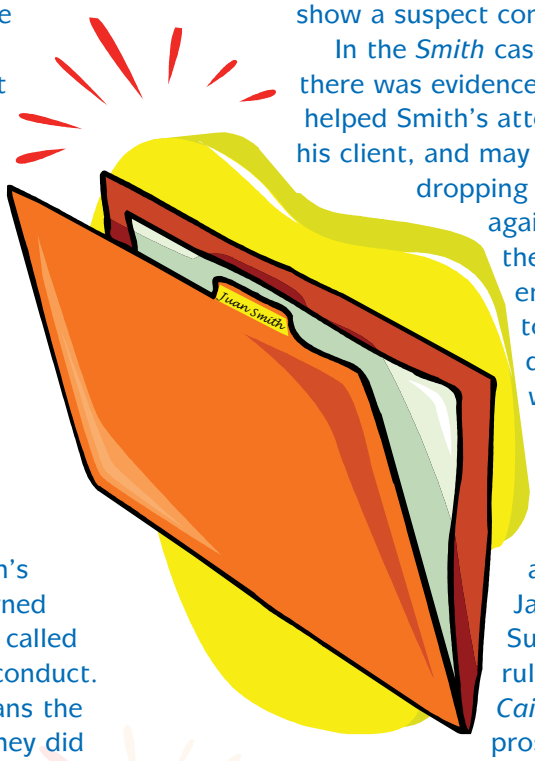
Playing Fair When Seeking Justice

by Cheryl Baisden

There was no DNA, fingerprint, or other physical evidence presented against him in the courtroom. No weapons were recovered in connection with the crime. And the lone survivor whose testimony the prosecutor built his case on told police from the start that he couldn't say for sure what the suspects looked like. Still, Juan Smith found himself convicted of the cold-blooded murder of five people in New Orleans.

"It wasn't until after Smith was found guilty of the murders that the defense found out the prosecutor's files contained statements that called into question what was presented in court," says Darren Gelber, a Woodbridge attorney who practices criminal law. "As a result, the defense took steps to get Smith's conviction overturned due to something called prosecutorial misconduct. That basically means the prosecuting attorney did something that violated the court's rules."



Criminal court basics

In criminal cases, suspects are represented by private attorneys or, if he or she can't afford an attorney, a public defender is assigned to the case. A prosecutor, who may also be called a district attorney in some states and a U.S. attorney in federal court, tries the case against the suspect.

"What is important to remember about prosecutors, however, is that by law they *do not* actually represent the victim," Gelber explains. "They represent the government—the public in general—and they are responsible for making sure that justice is done. This means using discretion when prosecuting a case. For example, if a young single mother is caught shoplifting food to feed her child, the prosecutor may choose to plea bargain rather than fight to have her go to jail for six months for a first offense. It also may mean dropping a case if there is not enough evidence to reasonably show a suspect committed a crime."

In the *Smith* case, even though there was evidence that would have helped Smith's attorney defend his client, and may have warranted dropping the charges against him because there was not enough evidence to proceed, the district attorney withheld these facts from the defense attorney and the court. The action, according to a January 2012 U.S. Supreme Court ruling in *Smith v. Cain*, was considered prosecutorial misconduct and led to Smith's conviction being **overturned** by the Court in an 8-1 ruling. The district attorney in New Orleans has pledged to retry Smith on the 1995 quintuple murder. Smith is currently on death row for his conviction in a separate, unrelated triple homicide.

There are rules

State and federal prosecutors have a constitutional obligation to turn over to the defense any evidence that may assist in a suspect's defense, a requirement that was spelled out in the 1963

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U.S. Supreme Court ruling in *Brady v. Maryland*. Under the *Brady* rule, prosecutors are asked to consider two questions when deciding if evidence must be turned over to the defense: Is evidence favorable to the defendant? And, if so, is it likely to affect a decision about guilt or punishment? Since the second question can be difficult to answer, some legal experts, including the American Bar Association, had asked the Court in *Smith* to mandate prosecutors disclose all evidence to the defense in a criminal case.

In the case against Juan Smith, the prosecutor withheld a substantial amount of evidence that raised serious doubts about the eyewitness's identification of the suspect. For example, the witness, Larry Boatner, told police just hours after the crime that he was "too scared to look at anybody." Several days later, Boatner stated that he had not seen any of the suspects' faces, and could not identify them. When faced with defending the decision to withhold this information, the district attorney contended that disclosure was not necessary.

In his majority opinion for the Court, Chief Justice John G. Roberts Jr. wrote, "Boatner's testimony was the only evidence linking Smith to the crime. And Boatner's undisclosed statements directly contradict his testimony…Boatner's undisclosed statements were plainly **material**."

Not a first-time offense

This is not the first time the New Orleans District Attorney's Office has been found guilty of prosecutorial misconduct. In fact, Smith's lawyers pointed out that four New Orleans death sentences were overturned because of *Brady* violations, as well as eight additional non-capital cases.

In one of those cases, *Connick v. Thompson*, a man spent 18 years on death row as a result of a wrongful conviction, and later won $14 million in damages after convincing a federal court that the district attorney's office had failed to properly train its prosecutors about their constitutional duty under *Brady*. Later, in a 5–4 ruling, the U.S. Supreme Court overturned the ruling and said the office could not be held liable for an individual incident of wrongdoing, and that a pattern of "deliberate indifference" to the Brady rule had not been proven.

The U.S. Supreme Court has defended the rights of individual prosecutors to protection from civil liability so they can pursue criminals without worrying about being sued, and Justice Clarence Thomas justified the Court's ruling in *Connick v. Thompson* by stating that an "attorney who violates his or her ethical obligations is subject to professional discipline, including sanctions, suspension, and disbarment."

But Gelber noted that professional discipline for attorneys who violate Brady is rare, and that discovering that important information has been withheld from the defense can be difficult, and cost a defendant considerable time and money. "These facts continue to make prosecutorial misconduct a serious concern in the criminal courts," he concluded.

Mandatory Life Sentences CONTINUED FROM PAGE 1

while not excusing a defendant from guilt, may lessen accountability. For example, Miller was a victim of extreme abuse at the hands of his stepfather and was neglected by his mother. By the age of 14, Miller had attempted suicide four times, the first time at the age of five.

What did the court say?

Given the young age of the offenders—and the fact that our justice system has long treated juveniles more leniently than adults—the Court concluded in a 5–4 decision that the mandatory sentences were unconstitutional and therefore not allowed.

As with the earlier 2010 case involving non-homicide offenders, the mandatory life-without-parole sentences were determined by the Court to be a violation of a juvenile's Eighth Amendment protection against cruel and unusual punishment. In reaching this conclusion, the Court did not strictly forbid life-without-parole sentences for juvenile offenders; but it said that these sentences should not be "mandatory" as they are for adults, and that judges should at least be given discretion to provide juvenile offenders with some hope for early release in cases where it is warranted.

A flaw of mandatory sentencing, Justice Elena Kagan wrote in her opinion for the Court, is that "every juvenile will receive the same sentence as every other—the 17-year-old and the 14-year-old, the shooter and the accomplice, the child from a stable household and the child from a chaotic and abusive one…."

Mandatory life without parole for a juvenile, Justice Kagan noted, fails to take into account a number of considerations, including:

- A juvenile's immaturity, **impetuosity**, and failure to appreciate risks and consequences

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explains Darren Gelber, a Woodbridge attorney who practices criminal law. "The theory is that this individual can identify the person who committed the crime because he was right there when it happened. But, what someone thinks they see or how they remember something may not be completely accurate."

In his book, *Convicting the Innocent: Where Criminal Prosecutions Go Wrong*, Brandon Garrett, a professor at the University of Virginia School of Law, studied the first 250 wrongful conviction cases. Garrett found that of those 250 cases where innocent people were found guilty of crimes and then **exonerated** by DNA tests later, 190 of them (76 percent) were imprisoned based on inaccurate eyewitness testimony.

There are several reasons why an eyewitness can be mistaken about who they saw commit a crime, including a poor vantage point or visual distractions; making assumptions intentionally or unintentionally; and suggestions or circumstances presented by an outside source, including the police.

In his book, Garrett advocates for the double-blind lineup, which he believes would prevent unwitting cues from law enforcement influencing a witness. This is something he says that psychologists have recommended for a long time. A double-blind lineup simply means that the officer conducting the lineup does not know which person is the suspect in the case and the eyewitness is told that the officer doesn't know so that he or she does not look to them for an indication of who should be picked.

"In the old days if you were a witness to a crime they would put you in the back of a police car and drive you around to see if you could point out the person you saw commit the crime," says Gelber. "That was considered a pretty reliable way to have a witness identify someone. Today, with police using computers to present witnesses with possible suspects, and people doing their own searches for a friend of a friend through things like Facebook, things have become kind of murky."

At the same time, according to Gelber, cases of unreliable eyewitness testimony have become easier to identify because of DNA evidence, which can confirm that even though someone swore they saw a person commit a crime, someone else actually did it.

The courts weigh in

In the past two years, both the U.S Supreme Court and the New Jersey Supreme Court have focused their attention on the reliability of eyewitness testimony. In both courts, concerns centered on protecting two constitutional rights—the Sixth Amendment right to a prompt and fair trial and the 14th Amendment right to be treated fairly by those in authority, sometimes called the right to **due process**.

In *Perry v. New Hampshire*, the U.S. Supreme Court was asked to consider whether the defendant had a constitutional right not to have unreliable eyewitness evidence introduced at his trial. The case involved a repeat criminal who was arrested late one night in an apartment parking lot carrying two car stereos. He was pointed out to police by a woman from a third-floor balcony, who identified him as the "tall black man" who was looking into cars in the lot. Later, the eyewitness was unable to recognize him in photos. As a result, Perry's attorney argued that the witness's testimony was unreliable, and should not be permitted, or admissible, in court.

The judge allowed the witness's testimony to be presented, and Perry was ultimately found guilty of the crime. But the debate over the admissibility of the eyewitness's testimony in the *Perry* matter continued, finally making its way to the U.S. Supreme Court.

What the Court said

In January 2012, the U.S. Supreme Court ruled 8-1 that the decision of whether or not an eyewitness's testimony is credible should rest with the jury, instead of being reviewed by the judge before it can be presented in court. The exception, which was established by the U.S. Supreme Court in a 1977 case, is when actions by the police may have influenced the witness in some way; for example, if the police were to arrange a lineup of possible suspects where only one person is wearing clothes that fit the description of the perpetrator.

Justice Ruth Bader Ginsburg, who wrote the opinion for the Court, acknowledged that eyewitness testimony can be unreliable, but explained that ruling in Perry's favor would require a major change in the way American criminal cases are tried. "In our system of justice, the jury, not the judge, ordinarily determines the trustworthiness of evidence," Justice Ginsburg wrote. "Where there is no improper police conduct," the law leaves it to the attorneys to debate and the jury to decide what eyewitness testimony is reliable.

The Court's opinion went on to note that safeguards against relying on bad evidence are already in place in the criminal court system. Attorneys must follow certain rules when presenting evidence to a jury, each side has a right to cross-examine witnesses in court and dispute presented evidence, and juries are given detailed instructions from

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the judge about what they can and cannot consider when deciding a case.

Perry's attorney argued that even so, witness testimony can seem so convincing and sincere that it still "has a powerful effect on the jury."

The American Psychological Association (APA) filed a friend-of-the-court brief in the *Perry* case, which warned against the power of suggestion. Nathalie Gilfoyle, the APA's general counsel, said, "a defendant should be able to question any suggestive eyewitness identification, using the body of eyewitness research as a guide for what can cause unintentional false accusations."

New Jersey goes its own way

This past summer, the New Jersey Supreme Court announced a set of new rules regarding the way juries are instructed about eyewitness testimony in criminal cases.

"These rules relate to all criminal cases that are tried in a New Jersey court," explains Gelber. "If a person is charged with a federal crime, and tried in federal court, then the New Jersey rules don't apply, even if the court is located in the state of New Jersey."

The new rules were developed as a result of the 2011 court case, *State v. Henderson*, which involved questionable police involvement in an eyewitness identification. In *Henderson*, a man was convicted of reckless manslaughter based on the testimony of one eyewitness, who had been drinking and taking drugs on the night the crime took place. He first identified the suspect 13 days after the incident, after initially saying he could not pick Henderson out of a series of photos. After encouragement from a police officer, the witness was able to identify Henderson.

Henderson appealed the conviction, and the court found that the police "consciously and deliberately intruded into the process for the purpose of assisting or influencing [the witness's] identification."

After making its way to the New Jersey Supreme Court, the *Henderson* case led to the state developing tighter rules on eyewitness evidence in criminal cases and clearer guidelines for jurors regarding the relevance of eyewitness identifications. These rules went into effect September 4, 2012. Juries in New Jersey are now told before deliberations begin, "human memory is not foolproof," and is "not like a video recording that a witness need only replay to remember what happened." They are also cautioned that they should consider the stress the eyewitness was under, the lighting and distance involved at the scene, and other factors surrounding the identification, as well as the procedures used by police during the identification and whether anything the police said or did could have swayed the witness toward a specific suspect.

With the most recent ruling on the issue, the Oregon Supreme Court, in December 2012, shifted the burden of proof to prosecutors in ensuring the reliability of eyewitness identifications. The court said, "Because of the alterations to memory that suggestiveness can cause, it is incumbent on courts and law enforcement personnel to treat eyewitness memory just as carefully as they would other forms of trace evidence, like DNA, bloodstains, or fingerprints, the evidentiary value of which can be impaired or destroyed by contamination." Going further, the court also ruled that a judge can still bar the use of eyewitness identification if the defense can establish that "suggestive police procedures" were used.

"Issues of eyewitness testimony will continue to be tested in state courts and U.S. courts," predicts Gelber. "As technology continues to change, so does how we see things, and how things are presented to us. So these cases are probably just the beginning."

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- A juvenile's family and home environment
- The circumstances of the homicide offense, including the extent of participation, as well as familial and peer pressures
- A juvenile's limited ability (due to his or her age) to deal with police officers and prosecutors

Additionally, the Court said that mandatory punishment disregards the possibility of juvenile offenders being rehabilitated and turning their lives around.

Not everyone agrees

In his **dissenting opinion**, Chief Justice John G. Roberts Jr. reflected on the Court's 2010 decision in *Graham v. Florida*, distinguishing between homicide and non-homicide juvenile offenders.

"In barring life without parole for juvenile non-homicide offenders, *Graham* stated that '[t]here is a line between homicide and other serious violent offenses against the individual,'" Chief Justice Roberts asserted. "The whole point of drawing a line between one issue and another is to say that they are different and should be treated differently."

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Double Jeopardy CONTINUED FROM PAGE 1

these trials," said Kimberly Yonta, a New Brunswick attorney and former Assistant Hudson County Prosecutor, explaining the reasoning behind double jeopardy. "The government should not get more chances to convict a person when it was unable to do it right the first time."

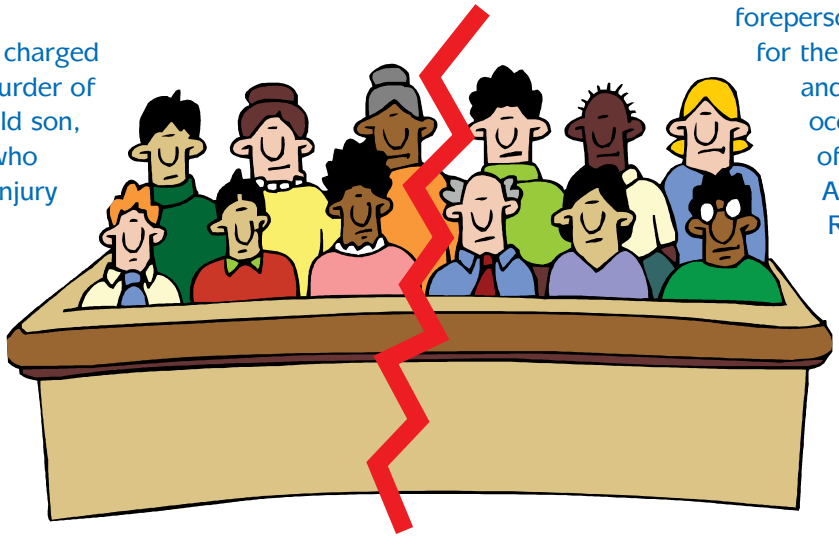
In May 2012, the U.S. Supreme Court rendered a decision in the case of *Blueford v. Arkansas*, which dealt with the issue of double jeopardy. In a 6-3 decision, the Court limited Alex Blueford's protection against double jeopardy despite the fact that a jury had initially voted to acquit him on charges of capital and first-degree murder.

The facts of the case

The State of Arkansas charged Alex Blueford with the murder of his girlfriend's one-year-old son, Matthew McFadden Jr., who died after a severe head injury while in Blueford's care. The State claimed that the child was injured intentionally, while the defendant stated the boy was accidentally knocked to the ground.

The charges against Blueford included capital murder, first-degree murder, manslaughter and negligent homicide. Before deliberations, the trial court judge instructed the jury, "If you have a reasonable doubt of the defendant's guilt on the charge of capital murder, you will consider the charge of murder in the first degree. If you have a reasonable doubt of the defendant's guilt on the charge of murder in the first degree, you will then consider the charge of manslaughter. If you have a reasonable doubt of the defendant's guilt on the charge of manslaughter, you will then consider the charge of negligent homicide." The jurors could either convict Blueford on one of the charges or acquit him of all of them.

After several hours of deliberation, the jurors reported that they could not reach a verdict. The judge called them back and asked them to try again. After more time, the jury sent a note saying they were still **deadlocked** and they went back to the courtroom. The judge asked the jury foreperson to relate the count on capital murder, and the foreperson replied, "That was unanimous against that." The judge asked for the count on murder in the first degree and the foreperson replied, "That was unanimous against that." The judge then asked for the count on manslaughter and the foreperson replied, "nine for, three against." When the judge asked about negligent homicide, the foreperson said, "We did not vote on that, sir. We couldn't get past the manslaughter." The jurors were then sent back to the jury room one more time to deliberate further.



Blueford's attorney asked for a partial verdict on the two most serious charges, but the judge denied the request. When the jury still could not reach a verdict 30 minutes later, the judge declared a mistrial. When the State of Arkansas attempted to retry Blueford, his attorney "moved to dismiss the capital and first-degree murder charges on double jeopardy grounds, citing the foreperson's report that the jurors had voted unanimously against guilt on those offenses." The motion was denied. The Arkansas Supreme Court affirmed the trial court's decision in the case. Blueford then **appealed** to the U.S. Supreme Court.

Twenty-three states joined together in a friend-of-the-court brief supporting the State of Arkansas against Blueford. The brief argued against instituting "a single, uniform rule that negates the different – and fair – state processes currently in place for determining when a state jury verdict is final."

The majority

Chief Justice Roberts explained in the **majority opinion** that the foreperson's declaration of acquittal for the offenses of capital murder and first-degree murder occurred before the end of the jury's deliberations. According to Chief Justice Roberts, there was a "lack of finality necessary to amount to an acquittal on those offenses…Blueford's argument assumes… that the votes reported by the foreperson did not change even though the jury deliberated further after that report…That assumption is unjustified, because the reported votes were…not final…"

Chief Justice Roberts continued, "As permitted under Arkansas law, the jury's options in this case were limited to two: either convict on one of the offenses or acquit on all…There were separate [verdict] forms to convict on each of the possible offenses, but there was only one form to acquit, and it was to acquit on all of them… When the jury was unable to return a verdict, the trial court properly declared a mistrial and discharged the jury. As a consequence, the Double Jeopardy Clause does not stand in the way of a second trial on the same offenses."

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The dissent

In her **dissenting opinion**, Justice Sonya Sotomayor first described Arkansas' jury instructions in which a jury must "first determine that the proof is insufficient to convict on the greater offense." Justice Sotomayor then wrote, "Thus, the jury must, in essence, acquit the defendant of the greater offense before considering his or her guilt on the lesser-included offense." She declared, "the forewoman's announcement in open court that the jury was 'unanimous against' conviction on capital and first-degree murder…was an acquittal for double jeopardy purposes. Per Arkansas law, the jury's determination of reasonable doubt as to those offenses was an acquittal 'in essence.' That acquittal cannot be reconsidered without putting Blueford twice in jeopardy."

Justice Sotomayor noted, "Courts in several acquittal-first jurisdictions have held that a jury's deadlock on a lesser included offense justifies the assumption that the jury acquitted on any greater offenses… Nothing indicates that the jury's announced decisions were tentative, compromises, or mere steps en route to a final verdict, and the Double Jeopardy Clause demands that ambiguity [doubt] be resolved in favor of the defendant." Justice Sotomayor concluded, "In short, the Double Jeopardy Clause demands an inquiry into the substance of the jury's actions. Blueford's jury had the option to convict him of capital and first-degree murder, but expressly declined to do so. That ought to be the end of the matter."

It should be noted that Justice Sotomayor is the only former trial court judge on the U.S. Supreme Court and would be the most familiar with trial procedures. She explained in her opinion that the judge should have asked the jury if it was still unanimous against conviction on capital and first-degree murder charges before it was discharged and believed there was an abuse of discretion because the judge failed to do so. Blueford could be retried on manslaughter and negligent homicide, according to the dissent, but the top two murder charges had already been decided in his favor.

Reactions to *Blueford*

Yonta, who served as an assistant prosecutor for 10 years, disagreed with the majority in *Blueford*. "The trial judge made a mistake by initiating information about the deliberations from the jury foreman and included a specific request for votes regarding each charge. Since the trial judge made this mistake and essentially requested a partial verdict on his own, it follows that the defendant's rights under the Double Jeopardy Clause of the U.S. Constitution were violated… Even though the jury was sent back to deliberate further, at that point the trial judge should have known that he had just taken a partial verdict in this case."

Lincoln Caplan, who writes about the U.S. Supreme Court for the editorial pages of *The New York Times*, wrote in his column that retrying Blueford on capital and first-degree murder charges "would unfairly allow Arkansas to use the first proceeding as a trial run, exposing him a second time to grave consequences despite the jury's unequivocal (unmistakable) votes." Caplan, a Yale Law School professor for nearly a decade, wrote, "Supreme Court cases going back to the early 19th century have made clear that jeopardy must end when a jury reaches a judgment, as it did on the murder charges against Mr. Blueford."

In an article for *The Atlantic*, Andre Cohen, a legal analyst for *60 Minutes*, wrote, "Now that the Supreme Court has allowed state prosecutors to go after Blueford again on all of the initial charges, it's possible that a second jury will see what the first did and acquit him. But it is also possible, especially since prosecutors will be able to buttress the holes in their case this time out, that Blueford will be convicted of capital murder and sentenced to life in prison. For someone who heard the jury acquit him of that charge in open court, that's an astonishing possibility."

The concept of double jeopardy is part of the foundation of America's democracy. However, according to Yonta, "There is no hard and fast rule regarding the interpretation of the Double Jeopardy Clause. The circumstances of each case should always be taken into consideration and the ruling should not be based only upon form and procedure, but upon the substance of what is a just outcome."

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He also observed that the Supreme Court's latest decision concerning homicide offenders "invalidates the laws of dozens of legislatures and Congress."

"In recent years," Chief Justice Roberts wrote, "our society has moved toward requiring that the murderer, his age notwithstanding, be imprisoned for the remainder of his life. Members of this Court may disagree with that choice. Perhaps science and policy suggest society should show greater mercy to young killers, giving them a greater chance to reform themselves at the risk that they will kill again. … But that is not our decision to make."

Impact of the ruling

According to the National Conference of State Legislatures, in the 29 states that impose this type of sentence, there are approximately 2,000 convicts serving mandatory life-without-parole sentences for crimes committed

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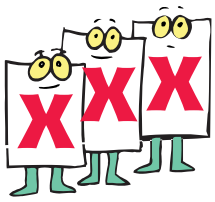
as juveniles. Because of the Court's latest ruling, these offenders could be considered for parole, but would need to petition the court for re-sentencing. Some state legislatures have already addressed the Court's ruling with alternative sentences to mandatory life in prison.

The Pennsylvania Legislature passed a law providing that juveniles 15 years of age or older who are convicted of first-degree murder can be sentenced to 35 years or life in prison. For juveniles under the age of 15 who are convicted of murder, the sentence available to judges is 25 years to life in prison. The North Carolina Legislature replaced mandatory life-without-parole sentences with a minimum of 25 years in prison for juvenile offenders. In Iowa, 38 convicts serving life-without-parole sentences for murders committed when they were juveniles had their sentences **commuted** to the possibility of parole in 60 years.

Juveniles and the Garden State

Not every state imposes mandatory life-without-parole sentences. For example, here in New Jersey, these sentences were not mandated even before the Supreme Court's ruling, according to Lon Taylor, an assistant deputy public defender in New Jersey.

Taylor noted that in New Jersey this harsh mandatory life-without-parole sentence is reserved only for offenders convicted under the "Three Strikes" law—in other words, someone who is convicted on three separate occasions of a first-degree crime. And, it is important to note that in order for a juvenile to receive an adult sentence in New Jersey, he or she would need to be tried in an adult court. A juvenile in New Jersey can only be tried as an adult if he or she is 14 years of age or older when the crime is committed.



THREE STRIKES

In September 2012, the New Jersey Supreme Court made it tougher for juveniles to be treated as adults in New Jersey courts and therefore receive adult sentences. In accordance with the law, there are a number of attorney general guidelines that prosecutors must consider in requesting juvenile transfers to adult court, such as the nature of the offense and deterrence (preventing future violations), Taylor said. In the past, juveniles who wished to dispute (or fight) a prosecutor's transfer request to move their case to adult court had to prove that the prosecutor exercised a "patent and gross abuse of discretion" in seeking the transfer. In accordance with the new ruling, juveniles now have to show just an "abuse of discretion," which is a lesser burden.

Pendulum swinging

As Chief Justice Roberts referenced in his opinion, many state legislatures (around the 1990s) began changing their laws to provide for stricter punishment of criminals, including juveniles. Still, our society and various studies have continued to recognize that children and adolescents are different from adults and their capacity for judgment, decision-making and understanding of consequences is not as developed.

This reasoning has clearly contributed to recent U.S. Supreme Court decisions that, in effect, seem to be pulling back on how harshly states are allowed to punish young offenders. In addition to the Court's recent ruling, those decisions include a pivotal 2005 U.S. Supreme Court decision that barred sentencing juvenile offenders to the death penalty.

All of these cases suggest that while the worst juvenile offenders may face harsh consequences, there is a limit on how extreme those consequences can be. That's not to say that juveniles convicted of serious offenses are just going to walk out of the prison doors, observed Taylor. But the tide is turning, he said. The pendulum is going back.

acquitted — cleared from a charge.

appealed — when a decision from a lower court is reviewed by a higher court.

commuted — to change to something less severe.

deadlocked — when a jury is unable to reach agreement on a verdict.

defendant — in a legal case, the person accused of civil wrongdoing or a criminal act.

dissenting opinion — a statement written by a judge or justice that disagrees with the opinion reached by the majority of his or her colleagues.

due process rights — constitutional rights of fairness against government actions which threaten a person's right to life, liberty or property.

exonerate — to acquit or free from blame.

impetuous—impulsive.

leniency—to show mercy.

majority opinion — a statement written by a judge or justice that reflects the opinion reached by the majority of his or her colleagues.

material—important or necessary.

mitigating circumstances — factors that may lessen accountability, but do not excuse a defendant from guilt. Examples of mitigating factors could be the age of the defendant or the state of the defendant's mental health.

overturned —in the law, to void a prior legal precedent.