

Cellblocks To Mountaintops Podcast
Episode 6:
STANDARDS OF DECENCY
Transcript

Media Clip NPR: Do Juvenile Killers Deserve Life Behind Bars

Today, the court faces the question of life without parole in homicide cases.

PBS CLIP - Newshour Weighing Life Without Parole for Juvenile Murder

Should a 14-year-old convicted of murder be required to spend life
in prison without parole?

Host: In 2003, in the small town of Moulton, Alabama, two teenagers murdered their neighbor by beating him up and setting his trailer on fire. Evan Miller was one of them. He was 14 years old at the time and was sentenced to life without parole.

His attorneys challenged the constitutionality of a sentence in a case that slowly made its way to the Supreme Court. The question before the justices, whether sentencing a minor to spend the rest of his or her life in prison amounts to cruel and unusual punishment. Lawyer and social justice advocate Bryan Stevenson represented Miller before the court.

Bryan Stevenson: It is unusual, and it's our judgment that it would be cruel to declare these children fit only to die in prison. We're not arguing that life without parole is disproportionate to the crime of aggravated murder. We're arguing that the status of children, with all of the deficits that childhood status creates, makes that kind of judgment cruel.

Host: The state's lawyer, Kent Holt, argued that the real moral question is how the state conveys respect for lives that are violently taken.

Kent Holt: The punishment for this crime reinforces the sanctity of human life, and it expresses the state's moral outrage that something like this could happen.

Ruth Bader Ginsburg: You say the sanctity of human life, but you're dealing with a 14-year-old being sentenced to life in prison, so he would die in prison without any hope.

Host: That's the late Justice Ruth Bader Ginsburg.

Ruth: I mean, essentially, you're making a 14-year-old a throwaway person.

Host: The Eighth Amendment of the US Constitution prohibits cruel and unusual punishment. But these words, these concepts, they're not static. They shift over time to reflect societal norms, shared ideas about what is ethical and right.

Just think of how the death penalty has been applied over the years, from public hangings to the electric chair to today's lethal injections and now nitrogen gas, all of which are being used less and less frequently. The court calls these "standards of decency," and they are constantly evolving.

Bryan Stevenson: Are these sentences that are -- that are consistent with evolving standards of decency, or are they now beyond a maturing society?

Host: Bryan Stevenson again.

Bryan: I don't think it would be consistent with the constitutional obligation this Court has to protect people who are vulnerable from excessive punishment. And this is a cohort that we contend is the most vulnerable and should be shielded from this excessive punishment.

Host: In this episode of *Cellblocks to Mountaintops*, evolving standards of decency for how we punish kids who commit murder, and how they'd come to affect Sterling Cunio's chances of ever leaving prison alive.

Host: I'm Phil Stockton. Stay with us.

Host: When Sterling Cunio was sentenced, the state of Oregon was right in the middle of a shift from one set of sentencing guidelines for juveniles charged with murder to another. There were five kids found guilty of aggravated murder during this gap in sentencing guidelines, and they came to be known as the Oregon Five. Sterling was one of them.

Ryan O'Connor: And it was just it was an oversight. Honestly, I think like it's just a mistake.

Host: That's Ryan O'Connor, Sterling's lawyer. He says the gap left a lot open to interpretation.

Ryan: This gap in the law meant that they had no way to obtain release. There was no process like parole process in the law that allowed them a hearing or anything.

Host: There were two white kids in the Oregon Five and three Black kids. The white kids were given parole hearings in 2012 and 2014 and subsequently released. But that was not the case for Sterling and the other two Black kids. Part of this can be explained by their actual charges. The Black juveniles had two victims, and the white juveniles each had one, so they had fewer murder counts.

But part of it can also be explained by the way the sentences were applied. The judges made the white kids sentences run concurrently or at the same time, while the Black kids' sentences were stacked or added up. The research shows this was nothing new during this time, and where this kind of ambiguity and sentencing guidelines existed, Oregon judges were much more likely to give Black kids stacked sentences, and that amounted to much more time in prison and a longer wait until they had any meaningful opportunity to be released.

Chloe Williams: And when we are looking at who is given opportunities or second chances, race is playing out right there.

Host: Chloe Williams is a defense attorney who works with Aliza Kaplan on Sterling's case. She says Oregon is often perceived as a very progressive state, but when it comes to race, that isn't quite accurate. Oregon has a long history of racist laws that have discouraged Black migration. Today, Black people represent less than 2% of the state population, but more than 8% of the people in prison.

Chloe: Sterling's case. That was an uphill battle, in my opinion, because there was two white victims and he was a Black male.

Host: Add to that the lack of sentencing guidelines and where he was tried, and it amounts to what Chloe says were clear racial discrepancies.

Chloe: You have laws in place, and you have judges who are all very different people, different experiences in different counties trying to enforce the law. They are not doing it uniformly. And maybe some of that is due to us just being humans. But also, Sterling was sentenced in Benton County, which is a not very great county in terms of him being a Black man, that also is a very tough-on-crime county and overcharges a lot.

Host: Sterling remained in legal limbo for years, with his attorneys filing one appeal after another, challenging past and current laws. Here's Aliza Kaplan, one of Sterling's attorneys and the head of the Criminal Justice Reform Clinic at the Lewis and Clark Law School.

Aliza Kaplan: If he was convicted today, for example, he would without question have had an opportunity at 15 years to prove rehabilitation. But because he was convicted prior and the laws aren't retroactive, he's been in this crazy legal battle.

Host: During all that time, the matter of how to punish teen violence was left to the states. But it didn't take long for key questions to reach the nation's highest court. In 2005, the Supreme Court deemed capital punishment unconstitutional for all minors. Five years later, the court ruled that life without parole was unconstitutional for juvenile offenders convicted of any crime other than homicide. Even though that ruling wouldn't affect Sterling, the basis of that decision caught his attention.

Sterling: The foundation for that decision was the lessened culpability of adolescents because what came out in those court hearings was the adolescent development, the principles.

Host: In other words, the Court gave one very important reason for its decision: adolescence. Specifically, developments in brain science that laid out how and why teens are less culpable than adults. (1) Immaturity, juveniles can have an underdeveloped sense of consequences, which can result in poor decisions. (2) Vulnerability, they're more susceptible to peer pressure, and (3) Greater potential for change.

Sterling: But you know how court battles are, right like especially with Supreme Court stuff, they can make a decision on one thing that points to or threatens something that they won't get back to for ten terms.

Host: Except in this case, it would take only two years for the Court to weigh in on the question with even more direct implications for Sterling: juvenile life without parole for murder.

Host: Here's attorney and activist Bryan Stevenson again, arguing before the court:

Bryan Stevenson: And this court acknowledged that these differences between children and adults exist even in the cases involving the most aggravated murders. These deficits, these differences are even more pronounced in young children.

Host: Stevenson also drew upon studies showing that life without parole sentences have no effect on public safety.

Bryan Stevenson: And what they found is that life without parole has not had any measurable deterrent effect.

Host: Then, in the summer of 2012, the Supreme Court announced they'd made a decision on the *Miller* case, and it would be monumental.

Host: That's after the break.

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Host: On June 25th, 2012, the Supreme Court convened to announce they'd reached a decision in *Miller v. Alabama*. Justice Elena Kagan read the court's majority opinion.

Elena Kagan: We hold today that mandatory sentences of life without the possibility of parole for juveniles violate the Eighth Amendment's prohibition of cruel and unusual punishment. That clause of the Eighth Amendment guarantees individuals...

Host: In a 5 to 4 decision. The court ruled that mandatory life without parole for juveniles was unconstitutional, but that it could still be used just on a case-by-case basis under certain circumstances. In order for judges to hand out such a sentence, they needed to find that a youth was, quote, "permanently incorrigible" or incapable of change.

Sterling: It gave us an argument. It gave us some roadmaps. They established some principles, but it wasn't a slam dunk.

Host: But it was the legal foundation that his lawyers, including Aliza Kaplan, were looking for.

Aliza: It was something I could hold in my hand to say, we've gotten this wrong, and there's evidence and proof. And even the Supreme Court acknowledges that we need to treat youth differently. But all of that understanding of the mistakes that we had made, especially with regard to youth over the years, mattered a lot in us telling Sterling's story because he is someone who, you know, as he grew up and developed, everything changed.

Host: It was a sharp turn in the American judicial system's evolving standards of decency in how they view juvenile felons. No longer irredeemable predators, but rather as children still developing, and was a real potential for change. Then, in 2016, Sterling was 22 years into his sentence when the Supreme Court ruled that the *Miller* decision should apply retroactively. This opened the door for thousands of people to have their sentences reduced if they could show evidence of their rehabilitation. But this was only for people who received a mandatory sentence of life without parole.

Host: A few years later, Oregon lawmakers passed Senate Bill 1008, requiring a so-called *Miller* hearing before the Parole Board for any person convicted of committing a crime as a juvenile who had already served at least 15 years in prison, regardless of the crime.

Ryan: Sterling Cunio tragically was denied the benefit of Measure 1008 because it applied only going forward.

Host: That's Sterling's lawyer, Ryan O'Connor, again.

Ryan: It did not apply going backward to people who were convicted prior to 2019 like Sterling. And one reason that's so tragic is because Sterling's incredible rehabilitation was one of the inspirations for the legislature to enact Measure 1008 in the first place.

Host: But Ryan and his team leaned on the reasoning behind the *Miller* ruling to argue for a new hearing for Sterling. You see, Sterling wasn't technically sentenced to mandatory life without parole, but they argued that two consecutive life sentences would have the same effect. Sterling would not be getting out until he was 88, and having spent most of his life behind bars, his chances of living that long were slim to none.

After years of legal battles, Sterling finally got some good news. Here he is telling a group of inmates in a meeting outside of Professor Buis' class.

Sterling: So, on Thursday, the Federal Court ordered the state of Oregon to give me a miller hearing, a release hearing.

Anthony Pickens: That's gigantic.

Sterling: You know, you have to allow yourself to celebrate because you don't never want to not allow yourself to feel happiness. But you also have to be cautious because you know, the state has the ability to appeal. But as of right now, it looks like I might have a chance to get out of prison.

Host: The state of Oregon appealed the federal ruling. However, it did prompt them to schedule a prison term hearing. Aliza, Ryan and the rest of the team began preparing. They wanted to prove Sterling had been rehabilitated, but the parameters of the hearing weren't quite clear, as this was a prison term hearing, not a *Miller* hearing.

Ryan: This is just the continuation of the legal, you know, no man's land that Sterling's been in since he was convicted.

Aliza: A prison term hearing has a very specific purpose, which is to calculate this formula that that is used in every case. And it's not a traditional rehabilitation hearing. However, it's our understanding that the board is going to be open to hearing about his rehabilitation as they make a determination of how to calculate the formula.

Host: That was the hearing that you heard in the very beginning of this series.

Professor Melissa Buis: He deserves, and I believe justice demands, that he be given a chance of life beyond prison walls.

Sterling: By the time he was going into that, and there was plenty of reason to believe that I was going to have a realistic chance of being released within a few years. You know, so I was optimistic for that. Only that.

Host: Only that, because he knew that it would be difficult, stressful and exhausting, particularly for his victims who would have to listen to speaker after speaker talk about all the good, he'd done in OSP.

Sterling: You never feel good going in there. The DA comes in and relives the details of the horrificness of the murders and it's devastating. You got to face the crime survivors again. You know, there was times when I didn't even know if I wanted to go through with it, just because I'd have to see all that pain again.

Host: Also, now he had people who genuinely cared about him, and he hated dragging them into the process.

Sterling: And then it's in the papers and it's on the news. I had somebody tell me I knew what he was in prison for, but it was just so hard for me to associate with how I know you now and then they had to deal with the brutality of it.

Host: Still, this gave Sterling something he hadn't had for a long time. Hope.

Sterling: I had seen so much momentum starting to build. That's when I got hope. And I was getting to the sense of, this is gonna happen.

Host: The parole board took an unusually long time to look over the materials, the 80-plus letters supporting his release. The psychological evaluations. And on December the 2nd, 2020, they announced they'd finally reached a decision.

Sterling: I hope to one day know the freedom to walk among the tree-lined landscapes, viewed in the distance, to sleep in a comfortable bed, in a quiet room, and most importantly, the freedom to create a legacy defined by more than my worst failures.

Host: That's next time, on Cellblocks to Mountaintops.

But first, Oregon State Penitentiary becomes overwhelmed as wildfires sweep across the state.

Chaplain Karuna Thompson: Just living in that red haze, the impact that the environment has on you, nobody was thinking right. Nobody was doing things well.

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