

Nos. 08-7412 and 08-7621

IN THE
Supreme Court of the United States

TERRANCE JAMAR GRAHAM
Petitioner,

v.

FLORIDA
Respondent.

JOE HARRIS SULLIVAN
Petitioner,

v.

FLORIDA
Respondent.

On Writs of Certiorari from the District Court of Appeal of
Florida, First District

BRIEF OF FORMER JUVENILE OFFENDERS
CHARLES S. DUTTON, FORMER SEN. ALAN K. SIMPSON,
R. DWAYNE BETTS, LUIS RODRIGUEZ, TERRY K. RAY,
T.J. PARSELL, AND ISHMAEL BEAH AS
AMICI CURIAE IN SUPPORT OF PETITIONERS

DAVID W. DEBRUIN*
Counsel of Record
JONATHAN F. OLIN
ERIC R. HAREN
NICHOLAS O. STEPHANOPOULOS
JENNER & BLOCK LLP
1099 New York Avenue, NW
Suite 900
Washington, DC 20001
(202) 639-6000

July 23, 2009

Attorneys for Amici Curiae

TABLE OF CONTENTS

TABLE OF AUTHORITIES.....ii

INTEREST OF *AMICI CURIAE*..... 1

SUMMARY OF ARGUMENT 3

ARGUMENT 4

I. THIS COURT HAS RECOGNIZED THAT YOUTHFUL OFFENDERS ARE INHERENTLY DIFFERENT 4

II. THE LIFE STORIES OF THE *AMICI* SHOW THAT YOUTHFUL OFFENDERS ARE INHERENTLY DIFFERENT AND THAT INCARCERATING A YOUTHFUL OFFENDER FOR LIFE WITHOUT PAROLE CAN BE A TREMENDOUS LOSS TO SOCIETY..... 7

 A. Charles S. Dutton..... 7

 B. Senator Alan K. Simpson..... 11

 C. R. Dwayne Betts 15

 D. Luis Rodriguez..... 19

 E. Terry K. Ray 21

 F. T.J. Parsell..... 23

 G. Ishmael Beah..... 27

CONCLUSION 32

TABLE OF AUTHORITIES

CASES

<i>Kennedy v. Louisiana</i> , 128 S. Ct. 2641 (2008), <i>modified on denial of reh'g</i> , 129 S. Ct. 1 (2008)	5
<i>Roper v. Simmons</i> , 543 U.S. 551 (2005)	3, 4, 5, 6
<i>Thompson v. Oklahoma</i> , 487 U.S. 815 (1988).....	5
<i>Trop v. Dulles</i> , 356 U.S. 86 (1958).....	32

STATUTES

18 U.S.C. § 844(f)(1)	12
18 U.S.C. § 844(f)(3)	12
Mich. Comp. Laws § 750.356	24
Mich. Comp. Laws § 750.529	24

OTHER AUTHORITIES

Ishmael Beah, <i>A Long Way Gone</i> (2007)	8
Ernest Hooper, <i>After Jail, Arts Pave Way Back Into Life</i> , St. Petersburg Times, Sept. 14, 2007, <i>available at</i> http://www.sptimes.com/2007/09/14/Colu mns/After_jail_arts_pave.shtml	8

Lonnae O’Neal Parker, *From Inmate to Mentor, Through Power of Books*, Wash. Post, Oct. 2, 2006, at A01, available at <http://www.washingtonpost.com/wp-dyn/content/article/2006/10/01/AR2006100101160.html> 8

T.J. Parsell, *FISH: A Memoir of a Boy in a Man’s Prison* (2006) 8

Second Chances: 100 Years of the Children’s Court: Giving Kids a Chance To Make a Better Choice (Justice Policy Inst. & Children & Family Law Ctr., 1999), available at <http://www.cjcj.org/files/secondchances.pdf>..... 8, 31

Mike Sonksen, *The Redeemer Speaks*, O.C. Weekly, Dec. 1, 2005, available at <http://www.ocweekly.com/2005-12-01/culture/the-redeemer-speaks/> 8

INTEREST OF *AMICI CURIAE*¹

The *Amici* who submit this brief are former juvenile offenders who were able to become productive, law-abiding adults and make meaningful contributions to society. *Amici* believe that their experiences may assist the Court in resolving the difficult issues presented by these cases by providing insight into the unique capacity of children to rehabilitate themselves.

As juveniles, *Amici* in many ways resembled Joe Harris Sullivan and Terrance Jamar Graham, the petitioners in this case. Each of them engaged in serious criminal conduct. Some of them were convicted of crimes that, in Florida and elsewhere, are punishable today by life sentences. Others committed acts that quite easily could have led to such a conviction had circumstances been different or had a prosecutor taken a harder line.

Yet because *Amici* were not sentenced to life imprisonment – because they ultimately were given another chance, in part because of the young age at which they had committed criminal offenses – they were able to make significant contributions to their communities and even, in some cases, the nation and the world. The life stories of the *Amici* show how much could have been lost by concluding too quickly

¹ The parties have consented to the filing of this brief. No counsel for a party authored this brief in whole or in part, and no counsel or party made a monetary contribution intended to fund the preparation or submission of this brief. No person other than *amici curiae* or their counsel made a monetary contribution to its preparation or submission.

that they were beyond hope. *Amici* seek to share their individual stories with the Court.

Charles S. Dutton attended Yale University's School of Drama. He made his Broadway debut in 1984 and has received two Tony nominations. He also has starred in several major motion pictures and a television series, and won an Emmy for directing the HBO mini-series "The Corner."

Alan K. Simpson served in the United States Senate from 1979 to 1997, serving, among other positions, as Republican Whip and Chairman of the Veterans Affairs Committee. He has also served several terms in the Wyoming legislature, directed Harvard University's Institute of Politics, and participated in the Iraq Study Group.

R. Dwayne Betts is a published author and poet. He recently graduated from the University of Maryland, College Park, where he was selected for the honor of delivering a commencement address.

Luis Rodriguez is an acclaimed writer, activist, and poet. He has published fourteen books, including his memoir, *Always Running: La Vida Loca, Gang Days in L.A.*, which has won numerous awards. He has also published articles in leading newspapers, and he founded Youth Struggling for Survival, a community organization for troubled youths in Chicago.

Terry K. Ray attended Luther College and the Northwestern University School of Law. He has served as a trial attorney for the Department of Justice Tax Division and as an Assistant United States Attorney, prosecuting tax crimes. Today he is a white-collar defense attorney in Dallas. He has participated in and initiated mock trials at inner city

schools and received a grant from the State of Illinois to teach youngsters in the Venice School District how to resolve conflicts without resorting to violence.

T.J. Parsell is a successful software executive and one of the country's leading advocates against prison rape. He authored a book about his experiences in prison, *FISH: A Memoir of a Boy in a Man's Prison*, which was published in 2006. This fall he will enter the graduate film school at New York University.

Ishmael Beah is a United Nations Children's Fund (UNICEF) Advocate for Children Affected by War. He speaks at conferences on children's welfare around the world. A graduate of Oberlin College, he has written a memoir, *A Long Way Gone*, which has become an international best-seller.

Although they are now successful adults, *Amici* made terrible mistakes as teenagers. They are living, breathing testaments to the resiliency, adaptability, and rehabilitative potential of juvenile offenders.

SUMMARY OF ARGUMENT

As the experiences of *Amici* show, it is fundamentally inhumane to give up on a youthful offender. The same distinctive characteristics of youth that render capital punishment unconstitutional for juvenile offenders make it equally improper to sentence them to life in prison without the possibility of parole. As this Court recognized in *Roper v. Simmons*, 543 U.S. 551 (2005), children are less susceptible to deterrence, less deserving of retribution, and, crucially, much more capable of rehabilitation. Like a death sentence, a

sentence of life in prison without the possibility of parole ignores these important differences between adults and children.

As individuals who committed serious criminal offenses as juveniles but who subsequently have realized their mistakes, atoned for them, and rehabilitated themselves, *Amici* are uniquely situated to provide insight into the difficult issues presented in these cases. One of the *Amici* has helped to enforce the laws of the United States; another helped to write them. Others have made important national and even international contributions to social justice, culture and the arts, and business. Their stories, and the stories of others like them, prove that no matter how broken their spirit, nor how violent their actions, juveniles can be redeemed and can make contributions to society that would be tragic to lose. It is impossible to know what any juvenile offender will grow up to become. But it is also impossible to conclude that any juvenile offender has no redeeming potential, and therefore should be locked away for life with no possibility of parole. Although *Amici* come from a variety of backgrounds, each of them understands firsthand and proves the limitless potential of young people to change. They speak today with one voice and urge this Court to rule in Petitioners' favor in these cases.

ARGUMENT

I. THIS COURT HAS RECOGNIZED THAT YOUTHFUL OFFENDERS ARE INHERENTLY DIFFERENT.

This Court has repeatedly endorsed the view that juveniles are “categorically less culpable than

the average criminal.” *Roper*, 543 U.S. at 567 (quoting *Atkins v. Virginia*, 536 U.S. 304, 316 (2002)); *Thompson v. Oklahoma*, 487 U.S. 815, 835 (1988) (plurality opinion). In *Roper*, the Court pointed to three “general differences” between juveniles and adults that “demonstrate that juvenile offenders cannot with reliability be classified among the worst offenders.” 543 U.S. at 569-70. First, juveniles’ immaturity and susceptibility to irresponsible behavior makes their irresponsible conduct less morally reprehensible than that of adults. *Id.* Second, juveniles are more vulnerable to negative environmental influences and pressures, including peer pressure. *Id.* at 569. This vulnerability, combined with a relative lack of control over their immediate surroundings, allows greater forgiveness to juveniles for bad behavior. *Id.* at 570. Finally, juvenile personalities are not fully developed. The signature qualities of youth are transient, leaving open the possibility of maturity and personal growth. *Id.* at 569-70.

This Court has also explained that punishments are justified under one or more of three principal rationales: retribution, deterrence, and rehabilitation. *Kennedy v. Louisiana*, 128 S. Ct. 2641, 2649 (2008), *modified on denial of reh’g*, 129 S. Ct. 1 (2008). In *Roper*, this Court recognized that the first two of these justifications apply to juveniles “with lesser force” than to adults. 543 U.S. at 571. The case for retribution is less strong for a minor because the culpability and blameworthiness of juveniles is significantly diminished by their youth and immaturity. *Id.* These same characteristics also

suggest that juveniles will be “less susceptible to deterrence.” *Id.*

The third justification for punishment – rehabilitation – is of course not applicable to a sentence of life imprisonment without parole, just as it does not apply to the death penalty. Yet the same characteristics that decrease the culpability of juveniles and make them less susceptible to deterrence increase their prospects for rehabilitation. As the Court noted in *Roper*, the reality that juveniles are still in the process of defining their identity diminishes the presumption that a heinous crime is evidence of irretrievably depraved character. *Id.* at 570. 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.” *Id.* The incredible potential for such reformation is the focus of this brief.

When a juvenile offender commits a serious criminal offense, the State retains authority to take basic liberties away from that offender. *Id.* at 573-74. What the State cannot do, however, is to “extinguish his life and his potential to attain a mature understanding of his own humanity.” *Id.* This brief provides examples of the important contributions that can be made by youth when they are given a second chance – the chance to attain a mature understanding of their own humanity, and to share it.

These examples are necessarily anecdotal. Undoubtedly there are many more former juvenile offenders with stories like those of the *Amici*, just as there are others who do *not* go on to become

Senators, authors, and human rights activists. However, the examples set forth in this Brief do dramatically illustrate that the goals of rehabilitation, deterrence, and retribution are *not* served by sentencing juveniles to life in prison without parole. Had the *Amici* received such sentences, they never would have had the opportunity to discover and cultivate their impressive talents, and society never would have benefited from their undeniable contributions.²

II. THE LIFE STORIES OF THE *AMICI* SHOW THAT YOUTHFUL OFFENDERS ARE INHERENTLY DIFFERENT AND THAT INCARCERATING A YOUTHFUL OFFENDER FOR LIFE WITHOUT PAROLE CAN BE A TREMENDOUS LOSS TO SOCIETY.

A. Charles S. Dutton

Charles S. Dutton is one of the nation's most respected actors and directors. He has received two Tony Award nominations for his performances on the Broadway stage and has been honored with Emmy Awards for his acting and directing on television.

² *Amici* do not condone in any way the crimes committed by the petitioners in the cases before the Court. Nor are *Amici* in a position to evaluate the appropriate criminal sanctions that these particular defendants, or any other defendants convicted of serious offenses, should receive for their crimes. Strong criminal sanctions, including lengthy periods of incarceration, often are appropriate for individuals who have committed serious criminal offenses. However, *Amici* also strongly believe that when a juvenile commits a crime, even a serious offense, a constitutional system of justice cannot conclude that no possibility of rehabilitation exists and that the only recourse is a term of life imprisonment without the possibility of parole.

Yet his path to success did not begin at the Yale School of Drama, from which he earned his Masters of Fine Arts degree, but years earlier, during his third and final stint in Maryland State Prison.

Dutton grew up in the Latrobe Homes housing projects in Baltimore. His childhood bedroom overlooked the Maryland Penitentiary, an imposing and dark gothic structure built in the early 1800s. Dutton saw that prison every day and night from birth. “We all expected to end up there,” he says, “because all the older guys we knew were there. It was as if I was born for it.”³

Dutton was first sent to a juvenile reform school when he was thirteen, and he bounced around the juvenile system for several years. “I thought there

³ *Amici* speak directly to the Court in this Brief, and each adopts the statements attributed to him herein as his own. However, the stories of the *Amici* have been told before in a wide spectrum of public media. See, e.g., Ishmael Beah, *A Long Way Gone* (2007) (Ishmael Beah); Ernest Hooper, *After Jail, Arts Pave Way Back Into Life*, St. Petersburg Times, Sept. 14, 2007, available at http://www.sptimes.com/2007/09/14/Columns/After_jail_arts_pave.shtml (Charles Dutton); *Second Chances: 100 Years of the Children's Court: Giving Kids a Chance to Make a Better Choice* at 35, 41 (Justice Policy Institute & Children and Family Justice Center, 1999), available at <http://www.cjcj.org/files/secondchances.pdf> (Alan Simpson and Terry Ray); T.J. Parsell, *FISH: A Memoir of a Boy in a Man's Prison* (2006) (T.J. Parsell); Lonnae O'Neal Parker, *From Inmate to Mentor, Through Power of Books*, Wash. Post, Oct. 2, 2006, at A01, available at <http://www.washingtonpost.com/wp-dyn/content/article/2006/10/01/AR2006100101160.html> (Dwayne Betts); Mike Sonksen, *The Redeemer Speaks*, O.C. Weekly, Dec. 1, 2005, available at <http://www.ocweekly.com/2005-12-01/culture/the-redeemer-speaks/> (Luis Rodriguez).

was more going on in the street corner than in the classroom.” In order to look “tough” to his cohorts, Dutton felt the need to be imprisoned in more and more severe establishments, in what he describes as a “morbid rite of passage.” “You gained ‘rep’ by being tough. If you were in City Jail, people would say, ‘you ain’t tough. You need to go to the Farm, or the Cut,” slang for other Maryland detention facilities. “You ain’t done nothin’.”

When he was seventeen, Dutton was involved in a street fight that escalated into a knife fight. He and his assailant stabbed each other. Only Dutton survived. He was convicted of manslaughter and sentenced to five years of imprisonment. Dutton was out on parole for only a few months when he returned to prison for possession of a deadly weapon (a handgun). When a prison riot broke out, Dutton participated and punched a guard. He was sentenced to an additional eight years of imprisonment. “I knew what I was doing,” he says. “For a long time I didn’t want to hear anything positive. I just wanted to know when we were going to burn down the prison.”

In 1974, during his last prison stint, Dutton was put in the “hole” – solitary confinement – for refusing to clean toilets. He was fed only every seventy-two hours. “The only thing you were allowed to bring with you into the hole was one book. I brought in an anthology of plays that my girlfriend sent me from the outside. I had meant to grab a different book, actually, but took the plays by mistake,” he says. “For the first three days, I couldn’t read it. The hunger hurt too badly. But after that, by the light that shone through the two inches between the door

and the floor, I lay flat on my stomach and read for days.” One play in the anthology was *A Day of Absence* by the famous African-American playwright Douglas Turner Ward. “Reading that play sparked me in a way that allowed me to rediscover my own humanity,” Dutton recalls.

When Dutton left “the hole,” he convinced the warden and a prison teacher, who was also a local actress, to start a prison drama program. Preparing for the group’s weekly meetings and rehearsals gave him purpose. While in prison, he received his G.E.D. and then an Associate’s Degree in theater. After his release, he earned a Bachelor’s Degree in theater from Towson State University and acted for two years in Baltimore. He applied and was accepted to Yale University’s School of Drama – one of the top drama schools in the country. “When I used to wander the campus at night, looking at the buildings and statues, I used to think, ‘wow, I don’t believe this.’ I have that same feeling today when I shoot a film or perform on a Broadway stage.”

Dutton made his Broadway debut in 1984 in August Wilson’s “Ma Rainey’s Black Bottom,” a performance that earned him a Theater World award and the first of his two Tony nominations. In 1991, Towson State University bestowed him with an honorary doctorate degree. Dutton has co-starred in several major motion pictures, and from 1991-1994 starred in the television series “Roc.” In 2000, Dutton earned an Emmy Award for directing the acclaimed HBO mini-series “The Corner.”

Dutton emphasizes that his redemption is not unusual. “I have buddies who are plumbers and brick masons and carpenters who’ve been out as long

as I've been out and been as productive with their lives," he says. He firmly believes the chance for a productive life is at its height with juvenile offenders. "I just can't fathom sentencing juveniles to life without parole," Dutton says. "I just talked in Florida to some kids with that sentence. It was just dawning on them after ten or twelve years that their lives were over. They were kids and now they're finished. There's a heart-wrenching sadness on their faces, and you can see the fight is out of them. If they were given a second chance, they'd be changed human beings."

"As long as it's a young mind," he says, "they're salvageable. At those tender ages, the mind is still pliable and can be shaped. It's not too late."

B. Senator Alan K. Simpson

Alan K. Simpson is an accomplished former Member of the United States Senate and a leader of the Republican Party. He served in the Senate for eighteen years, from 1979 to 1997, rising to become the Republican Whip. When Simpson announced his candidacy for the Senate in 1977, one man stood out in the crowd: J.B. Mosley, Simpson's probation officer. When Simpson was a juvenile – long before he finished college, law school, and eventually became a candidate for the Senate – Simpson was convicted of a serious federal offense and engaged in other conduct that could have led to other serious criminal offenses and, under certain regimes, a potential life sentence. In Simpson's words to this Court, "I was a monster."

One day in Cody, Wyoming, when Simpson was in high school, he and some friends "went out to do

damage.” They went to an abandoned war relocation structure and decided to “torch” it. They committed arson on federal property, a crime now punishable by up to twenty years in prison if no one is hurt, *see* 18 U.S.C. § 844(f)(1), and punishable by up to life in prison if the arson causes a person’s death, *see id.* § 844(f)(3). Luckily for Simpson, no one was injured in the blaze.

Simpson not only played with fire, but also with guns. He played a game with his friends in which they shot at rocks close to one another, at times using bullets they stole from the local hardware store. The goal of the game was to come as close as possible to striking someone without actually doing so. Again, Simpson was lucky: no one was killed or seriously injured.

Simpson and his friends went shooting throughout their community. They fired their rifles at mailboxes, blowing holes in several and killing a cow. They fired their weapons at a road grader. “We just raised hell,” Simpson says. Federal authorities charged Simpson with destroying government property and Simpson pleaded guilty. He received two years of probation and was required to make restitution from his own funds – funds that he was supposed to obtain by holding down a job.

J.B. Mosley became Simpson’s probation officer. Simpson resisted Mosley’s efforts, earning money at the local pool hall and reporting to Mosley (sarcastically) that he was going to “choir practice.” One late night in Laramie, Simpson arrived at a bar popular with African-Americans. He saw a man leaving the bar who had just been in a knife fight inside. Simpson asked what happened. The man

uttered racial slurs, and Simpson responded that, with that attitude, the man was at the wrong bar. The man attacked Simpson and Simpson shoved the man down – just as the police arrived.

The police separated the men and, believing Simpson was responsible for the man's knife wounds, attempted to arrest Simpson. In his words, Simpson then "belted the cop" who was holding him. The officer responded by striking Simpson in the head with a billy club. As Simpson reports, "I still carry a lovely little crescent above my eyebrow as a reminder of how stupid one can get." The officers arrested Simpson and locked him up. His girlfriend (and now wife of fifty-five years) refused to bail him out. Simpson spent the night in a "sea of puke and urine."

For Simpson, that night triggered what he describes as "creeping maturity" – a resolve that he would avoid further trouble with the law and become a productive member of society. As he has described it, "The older you get, the more you realize . . . your own attitude is stupefying, and arrogant, and cocky, and a miserable way to live." With the help of Probation Officer Mosley, Simpson began to redeem himself.

Simpson went on to graduate from the University of Wyoming with a Bachelor of Science degree in 1954 and a law degree in 1958. He served in the United States Army from 1954 to 1956, in various state-level attorney positions from 1958 to 1959, as a United States Commissioner from 1959 to 1969, as a private attorney for many years, and as a member of the Wyoming House of Representatives from 1965 to 1977. He and his wife Ann also raised three children.

Simpson was elected to the United States Senate in 1978. During his tenure, he served as Republican Whip from 1984 to 1994, and he was considered as a potential candidate for Vice President in 1988. He served principally as Chairman of the Senate Veterans Affairs Committee, and also held many other posts in the Senate.

Simpson declined to run for reelection in 1996 and went on to teach at and later to direct the Institute of Politics at Harvard University's John F. Kennedy School of Government. In 2006, he was a member of the Iraq Study Group. He has been an outspoken advocate for equality for all persons regardless of race, color, creed, gender, or sexual orientation. Among many other honors, Simpson has received Honorary Doctor of Laws degrees from the University of Wyoming, Notre Dame, and American University, as well as the Thomas Jefferson Award in Law at the University of Virginia.

Alan Simpson was involved in activities as a youth that could have led to a lengthy prison term. He engaged in felonious and violent conduct that posed a serious risk to life and property. Had circumstances been different – had he not been fortunate regarding where his stolen bullets struck or what was damaged by his arson – he might have been jailed for the rest of his life. But the system did not treat him so harshly. It gave him a second chance, including the help of a probation officer who, in Simpson's view, had a great influence on his life and helped him make it to the moment where he stood before a crowd in Wyoming, asking to be elected to the United States Senate.

C. R. Dwayne Betts

On May 21, 2009, Reginald Dwayne Betts became his family's first college graduate when he received his bachelor's degree in English from the University of Maryland. He had the honor of being chosen to give a commencement address at graduation. Standing before thousands of spectators and his fellow graduates, Betts recalled a day twelve years earlier when he stood as a teenager in a Virginia courtroom and was sentenced to prison. "My journey," Betts said, "began the moment my life became a derailed train headed toward the state penitentiary."

In 1997, sixteen-year-old Betts and a friend took a joyride in a stolen car. They came across a man asleep in his car near a Northern Virginia shopping mall and decided to carjack the man. Betts had a gun. He pointed it at the car window, stole the man's wallet, and drove off with the car. Betts was arrested the next day. Asked later about his motivations, Betts said, "I did it for all kinds of reasons I can't clearly reason out. At that moment I wanted to do it, and I had no idea that it would define me for the rest of my life."

Betts was convicted of carjacking, use of a firearm during a felony, and attempted robbery. Although he had never before been arrested, he was certified as an adult. He faced a possible life sentence, but was sentenced to fifteen years for carjacking, five years for attempted robbery and three years for the use of a firearm in the commission of a felony. After the judge suspended all but six years of the fifteen-year sentence, and ran

it concurrently with the five-year robbery sentence, Betts was left facing a nine-year prison sentence. He recalls the judge saying, "I'm under no illusions that sending you to prison will help you."

Prior to his arrest, Betts had drifted between his school life and his social life. An avid reader, he qualified for his school's gifted program, made the honor roll, and was elected class treasurer. But Betts was restless and, as his mother noted, thought he could talk his way out of anything. His group of friends consisted of boys who were mainly failing, so Betts hid his college potential and aspirations. Although he remained on the honor roll and excelled in his honors classes, Betts began to get into trouble. He started getting high with the boys in his neighborhood after school. Over time, his drug use increased and he began cutting classes. Nevertheless, his mother and teachers did not notice his downward spiral, because he continued to excel in class. Looking back, Betts says, "I guess I didn't set off any alarms in anybody's head."

After his arrest, Betts "closed my eyes hoping it would go away." But of course it did not, and he soon realized he would remain locked up for a long time. He spent the rest of his adolescent years trying to maintain his sanity and sense of self, living in a prison environment ruled by violence. In that world, Betts learned, "you are either predator or prey." During his first two years in prison, Betts spent almost a full year in solitary confinement for what he calls "incidental contact with correctional officers." Although solitary protected Betts from the danger of always being the youngest person in the room, his constant fears of violence gave way to a worry that

prison would harden him, would turn him into someone he knew he was not.

As he had done as a child, Betts escaped into books. He began writing as well to pass the time. He wrote to his mother every week, and he started writing essays and poetry. Betts knew that one day he would be released back into society, and he did not want to have wasted the years he was incarcerated. He knew he needed a skill once he was released from prison, and he focused on writing. "I took everything seriously because I knew I had a release date," he says. "I wrote my way out of that world."

Betts says that "if I had gotten life without parole, I would never have written those poems and essays." There is an "absolute loss of hope" for juveniles sentenced to life in prison, and "no push to do anything at all." Betts met several such inmates while in jail, and none of them tried to develop skills or improve themselves. Instead they became "part of that world, predator or prey," uninterested in doing anything constructive with their lives.

Betts now has been out of prison for four years. He is making the most of his second chance. "Prison gave me a skill to market, and a story to tell," he says. "I had seventeen hours a day for nine years just to read, study, and exercise – all to prepare for my release." Since his release, Betts has proved he can be a productive member of society. He is, indeed, "not the person I was when I was locked up."

After his release, Betts enrolled at Prince George's Community College. He served in the student government, was the Phi Theta Kappa honor society president, and edited the college's literary

journal. His grades earned him a spot in the school's Honors Academy and a full tuition scholarship to attend the University of Maryland. "The reason why I'm here today is because there were a number of people willing to give me a chance, who were willing to say 'no' to the voices that said I wasn't good enough," Betts has said. "To say 'no' to the voices that said I didn't deserve a chance."

His poetry has been published in several national magazines and journals, and he has won a number of writing contests and scholarships, including the Breadloaf Writer's Conference scholarship and a Holden Fellowship to attend the graduate program at Warren Wilson College. Later this year, Betts will publish a memoir, "A Question of Freedom," as well as a book of poetry. He is married and has a child.

Betts also has worked to give back to his community. At Karibu Books in Bowie, Maryland, Betts started a book club for young boys, to provide a space where the boys could read and share their thoughts about literature and life. Betts wanted to provide the boys with the kind of role model that he never had, so that they could avoid the mistakes he made. Betts also teaches poetry workshops for middle school students in Washington, D.C., as part of the D.C. Creative Writing Workshop.

Betts is remorseful for his actions and grateful for the opportunity to prove that he is not a criminal at heart, not a menace to society. "I made one mistake," he says. "It was not the sum total of who I was." He knows how fortunate he is to have this second chance. "It's difficult to see, right after trouble, that someone is deserving of an

opportunity,” he says. “People are dying from the lack of opportunity every day. I’m very blessed.”

Knowing that he would have another chance – that he had a release date – is what motivated Betts to work hard to prepare for life after prison. “I always knew I’d have this day, standing on a porch, looking outside,” he muses. “Without that, there would just be no reason to think about life beyond a jail cell.”

D. Luis Rodriguez

Luis Rodriguez was stealing things by the time he was seven years old, and at the age of eleven, he joined Las Lomas, a Los Angeles gang. As a teenager, Rodriguez says, “I was destructive and self-destructive. I was willing to shoot, stab and even kill for the gang – and I was willing to die for the gang as well. My world was extremely limited and I ended up becoming small to fit in this world.”

Beginning when he was thirteen years old, Rodriguez repeatedly was arrested for stealing, fighting and disturbing the peace. He also became addicted to drugs. By age fifteen, Rodriguez had been expelled from school and thrown out of his house by his mother.

When Rodriguez was seventeen, a member of his gang was assaulted by a neighborhood club of white bikers. Rodriguez, deeply ensconced in gang culture, addicted to heroin, and seeking retaliation, shot one of the bikers. He was arrested as he fled the scene and was charged with assault with the intent to commit murder. Although those charges were dropped, a year later Rodriguez faced a six-year prison sentence for assaulting a police officer and

resisting arrest. Instead of giving up on him, the criminal justice system – based partly on letters of support from community members – gave him another chance, directing him to a county jail based on a lesser conviction.

Rodriguez has spent his life paying back the second chance he was given and doing so in spades. At nineteen, Rodriguez broke free of his drug addiction and took a series of low-skill jobs. Over the next four years he worked at Bethlehem Steel, with various periods spent as a carpenter, mechanic, foundry smelter, paper mill worker, and truck and school bus driver. He went back to complete high school, and after taking night classes at East L.A. Community College worked as a reporter and photographer for local weekly newspapers. He subsequently was accepted into a summer program for minority journalists at Berkeley, and at the age of twenty-six was hired as a daily reporter for the *San Bernardino Sun*.

Today, Rodriguez is an acclaimed writer, activist, and poet. He has published fourteen books of fiction, nonfiction, literature, and poetry. In 1993, Rodriguez wrote his memoir and signature work *Always Running: La Vida Loca, Gang Days in L.A.*, which he dedicated to twenty-five close friends who died during his gang days. The book, intended to steer Rodriguez's son away from gang life, has sold more than 300,000 copies, and received numerous accolades, including being named a *New York Times* Notable Book, and receiving the Carl Sandburg Literary Award and a *Chicago Sun-Times* Book Award. His freelance journalism has appeared in *U.S. News & World Report*, *The Chicago Tribune*,

The L.A. Times, and *The New York Times*. Rodriguez also has appeared on National Public Radio, the Oprah Winfrey Show, Good Morning America, CNN, BBC, Fox TV News, and Jim Lehrer's NewsHour.

Returning full circle, in 1994 Rodriguez helped found Youth Struggling for Survival, a community organization that works with gang and non-gang youth in Chicago. He believes that "if properly seen, mentored, assisted, guided, and initiated, young people have immense capacities for change and transcendence. I have seen this in the work I do with gang and other troubled youth, as well as in my own teen years when I left the gang and drugs, including heroin." Today, he testifies as a gang expert and has filed affidavits and appeared in over fifty cases. Rodriguez also spends time speaking in juvenile facilities, prisons, homeless shelters, and detention centers. He says, "Adults today give up on youth when the going gets rough. Youth is youth for a good reason. Youth are very malleable and it is society's obligation to try to change them. I am living proof of the capacity for change."

E. Terry K. Ray

In 1961, eleven-year-old Terry Ray entered Chicago's primary juvenile detention center, the Audy Home, after injuring a friend during a neighborhood rock fight. Ray had regularly been abused at home. Over the years that followed, Ray's anger swelled and he committed a series of increasingly violent offenses.

As a youth, Ray bore all the hallmarks of an incorrigible, recidivist violent criminal. He

repeatedly fought with other students, at times responding with extreme violence to the slightest provocation. At age eleven, he stabbed a classmate in the leg with scissors, and then stabbed the teacher who tried to break up the fight. He attached a combination lock to a metal chain and then pummeled another student with it. One day when he was sixteen, he marched toward his school with a gun, intending to attack a teacher. An alert police officer intercepted Ray, beating him severely. "I was a very violent young man," Ray says. "I was a very angry young man."

Ray spent his teen years drifting in and out of the juvenile justice system. For Ray, incarceration meant stability and safety. It meant protection from the abuse he faced at home. He explains, "I felt much, much better locked up than on the streets. The food was better. The living conditions were better. I had friends."

After his final release from juvenile detention, Ray enrolled in a junior college and took a job as an orderly at a local hospital. One counselor at the college recognized that he had significant academic potential and encouraged him to avoid further trouble by leaving Chicago to complete his education. Ray listened, transferring to and eventually graduating with honors from Iowa's Luther College. He then attended Northwestern University School of Law. After graduating, Ray earned a Master of Legal Letters degree in taxation from Washington University School of Law.

Despite these degrees, Ray initially had trouble finding a job. After he had worked for fourteen months for an insurance company, two law school

professors helped him arrange for an interview with the Department of Justice Tax Division in Washington, D.C. Ray – who at one point had seemed destined to spend his adult life in and out of prison – became a trial attorney for the United States. He later became an Assistant United States Attorney, prosecuting street crime cases in Washington, D.C., and eventually was hired to lead the Tax Fraud Prosecution Unit in the U.S. Attorney’s Office in Dallas, Texas. When he left that post in 1987, the Internal Revenue Service thanked him for his service by making him an honorary special agent.

Ray is now an attorney in private practice in Dallas. Throughout his career, he has reached out to juvenile offenders and at-risk youths, teaching them to resolve conflicts without resorting to violence. “Sometimes we don’t take the time to look at someone as an individual,” Ray says. “We look at something a person did in one second, five seconds, or ten minutes and say that the person has no possibility of ever overcoming that moment. But those people who make it out – they have an extra gear, and they can do remarkable things.”

F. T.J. Parsell

T.J. Parsell is a successful software executive, author, and human rights activist. But after convictions for larceny and armed robbery as a juvenile, his life might have been quite different.

Parsell grew up in Michigan, raised by a family with a “long history of trouble.” As he relates, “my grandfather, father, uncle, brother, and stepbrother all served time in a juvenile reform school or went to

prison.” Parsell describes a family with “twisted ethics” – where it was almost expected that he would end up behind bars.

In 1978, Parsell was seventeen and worked at a hotel, and so he had keys to all of the guest rooms. He often invited friends to drink alcohol, party, and stay the night in the empty rooms. He even stole items from occupied rooms. He was caught and agreed to plead guilty in exchange for probation. The larceny charge could have carried a ten-year prison sentence. *See Mich. Comp. Laws § 750.356.* While out on bail for that offense, Parsell held up a Photo Mat with an imitation gun and stole money from the proprietor. Parsell was arrested the following day and charged with armed robbery, a crime for which he could have spent the rest of his life in prison. *See Mich. Comp. Laws § 750.529.*

The state courts sentenced Parsell as an adult to two-and-a-half to four years of imprisonment on the larceny charge (because Parsell already had violated any probation he might have been granted) and delayed sentencing on the armed robbery for several months. While in the county jail, awaiting assignment to a state prison, Parsell met with the prison psychologist who informed him that because he had not yet been sentenced for armed robbery, and because armed robbery could subject him to a life sentence, Parsell would be “going inside” – meaning “inside the walls of maximum security.” After the psychologist noted that Parsell was “dangerous,” Parsell was transferred to the Riverside Correctional Facility – “a close-custody prison for inmates serving long sentences, usually ten or more years.”

Parsell was terrified. When he arrived at Riverside, he “felt a sudden urge to scream,” but kept it hidden. “I could not let the other inmates see how the sight of the prison’s massive walls hit me like I was entering a slaughterhouse.” On his first day in the general population, an inmate spiked Parsell’s drink with Thorazine, a powerful sedative. Parsell was dragged to a cell, where four inmates gang-raped him. They flipped a coin to see who would “own” him for the rest of his prison time. Only a few weeks earlier, Parsell was reading comic books at home. Now, after stealing property from a Photo Mat, Parsell was the property of another person: an inmate nicknamed Slide Step, who won the coin toss.

Parsell was then transferred back to county jail for sentencing on his armed-robbery charge. Here, outside of Slide Step’s “protection,” Parsell was gang-raped even more brutally than he had been at Riverside. When the probation officer preparing his presentence report made a sexual advance, Parsell rebuffed it. He then received a harsh sentencing recommendation, and the judge sentenced him to four-and-a-half to fifteen years in prison.

Parsell was transferred to a medium-security facility called the Michigan Training Unit, which stressed rehabilitation. It helped Parsell turn his life around. “The school and the library became my sanctuaries,” he reports. A woman named Miss Burt, the classification director, was starting a prison newspaper. “She brought her passion for making a difference to the position, and so she stood out,” he recounts. “She was like an angel.” Simply by calling Parsell by his first name (Tim), she made him “believe that I was human again.” As he recalls,

“what a difference it made to be treated with dignity in a place that didn’t seem to value it much.”

Parsell wrote for the prison newspaper – called the *Oracle*, because the inmates on the paper analogized Miss Burt to a priestess “through whom a deity is believed to speak.” Recounting Miss Burt’s impact, Parsell says: “Here was this woman, a black woman in a man’s world, who was better educated than anyone I’d ever known. She stuck up for me as my mother never had. Now that I was getting an education I was starting to understand what it meant not to have one.” Finally, Parsell says, “I could see that through education there was possibility.” Parsell completed his G.E.D. and twenty months of his college education in prison.

Parsell left prison in 1982. He took a typing job – “it was my only marketable skill” – and put himself through night school to complete his undergraduate degree. He graduated with honors from St. Francis College and went on to work in the software industry. “I got therapy, I got sober, and I started to do well.” He went on to become a top executive at several technology firms, ultimately rising to become vice president of sales at a major publicly traded software company.

Following his brother’s death and the September 11, 2001 terrorist attacks, Parsell made a decision to confront issues he long had repressed. “I felt extremely fortunate to have been able to transcend the mistakes of my earlier life.” He decided to write and talk about his experiences in prison. His memoir, *FISH: A Memoir of a Boy in a Man’s Prison* (Carrol & Graf), was published in 2006 and won the Pass Award for Literature by The National Council

on Crime and Delinquency. Since then, Parsell has become one of the nation's leading advocates against prison rape. He is president of the human rights group Stop Prisoner Rape. He worked with the Justice Department to set up the National Prison Rape Elimination Commission and with the Bureau of Justice Statistics and the National Institute of Corrections on various ways of quantifying and preventing prison rape. He helped produce an inmate orientation video, which is shown to all new incoming prisoners in the United States, outlining ways in which inmates can avoid prisoner rape.

This fall, Parsell will enter the graduate film school at New York University. He plans to turn his memoir into a feature film. Unsurprisingly, "being a poster child for prisoner rape was not high on my list of ambitions," Parsell says. "I'm taking back the voice that was stolen from me when I was seventeen years old. And I know that others, no matter how far down a wrong path they may have gone, or how far they've fallen, can do the same."

G. Ishmael Beah

Like the other *Amici*, Ishmael Beah is today a highly accomplished individual who is making the world a better place. His background is very different from the others, however, and far more extreme. In a foreign country, as a literal child-soldier in a militia army, Beah engaged in the atrocities of murder and torture. But his story equally illustrates the potential of youth to grow and change.

Today Beah is a best-selling author, a United Nations Children's Fund (UNICEF) Advocate for

Children Affected by War, and a member of the Human Rights Watch Children's Rights Division. He has devoted his adult life to advocating rehabilitation for children who have committed brutal acts, focusing on the amazing capacity of young people to transform their lives.

Beah grew up in Sierra Leone, and his home region was engulfed in warfare in his early teenage years. After the death of his family, he tried to flee to safety until he was forced to join the government army, as this became the only way to ensure his survival. He was initially reluctant to be a soldier, but rapidly became accustomed to the extreme violence that surrounded him. At age thirteen, he learned to fire a gun, to handle a bayonet, and to find motivation by focusing on his hatred for the rebel army, which had killed his family.

In the years after he enlisted, Beah aspired to be a fierce and deadly soldier, modeling himself after the Rambo movies. He practiced beheading rebels with a bayonet; he shot prisoners in their feet and kept them living for hours in excruciating pain before finally killing them; he led small bands of soldiers in massacring entire villages. When Beah was fifteen, UNICEF workers managed to get him out of the army – entirely against his will – and into a refugee camp. On his first night in the camp, as the UNICEF workers looked on in horror, Beah and other former child soldiers started a pitched battle of fists, grenades, and bayonets that eventually left six boys dead. As the UNICEF workers struggled to bring the boys back to some semblance of normalcy, the boys ripped apart furniture, walls, windows, and

anything else they could find, so inured had they become to a lifestyle of violence and ruin.

Looking back on that time now, Beah recognizes that the violence was a way to keep himself from thinking about what he and his family had suffered. But it was only the opportunity given to him by the UNICEF workers that allowed him to “discover himself” and realize that he could be more than a mindless agent of destruction. At the camp, UNICEF workers constantly told Beah that he had been just a boy when he committed his crimes, and that it wasn’t his fault. After being given “time and space” to heal, Beah began to come to terms with what he had done as a teenager. He moved to the United States in 1998 and finished his last two years of high school at the United Nations International School in New York. In 2004, he graduated from Oberlin College with a Bachelor of Arts degree in political science. Within a few years, he was speaking at conferences on children’s welfare all around the world. In 2007, he published the memoir *A Long Way Gone*, which has become an international best-seller.

Beah’s time spent immersed in fighting and acts of criminality gives him a deep sympathy for other children trapped in a similar cycle of violence. Although the circumstances in America are very different from those in Africa, he believes that the forces that push people to criminal activity are fundamentally the same in both places. “Not every child who fights wants to be a child soldier,” he explains. “Many have bad home lives and can fall victim to those who would pull them into a life of violence as a solution from their abuse or suffering.”

Whether in Florida or Sierra Leone, violence or theft “becomes normalized because it becomes the only way to live.” What children see, he believes, is what they will do.

Beah knows that there is no easy solution for juvenile crime, and that different methods are effective for different people. Still, he is certain that a lifetime in prison is not the answer: “There’s more trauma in prison than what I’d been put through. Punitive measures for kids just don’t help.” If Beah had been in an American-style prison, he believes, he would have been left to “push myself into despair, wallowing in the trauma of what happened” instead of getting a chance to discover his own potential and eventually educating the world about African wars and the rehabilitation of child soldiers.

Beah has seen some of the worst things that teenagers can do, if pushed far enough, and he grasps the fundamental similarity between his own life and some of the excruciating histories of juveniles serving life sentences in America. His goal now is to prevent such sentences from being imposed, so that young people like him “can tell others, instead of being locked away.”

“Children who commit crimes lack the moral and psychological underpinnings of adults,” he says, “but they’re also more resilient, so it is very possible to change. And it is only through rehabilitating such children and youth that we are able to learn how to prevent a similar situation from happening to others.” Beah’s own story illustrates that a youth who has committed even the most horrific crimes can, given another chance, build a joyful and meaningful life. Because he was not judged solely on

who he was as a fifteen-year-old, he says, “I discovered my own potential and have become a productive member of society.”

* * * * *

The stories of the *Amici* are only a handful of countless more that exist, many of which properly are confidential under existing juvenile court rules. Not every juvenile offender goes on to become an acclaimed actor, a United States Senator, a poet, or a software executive. Indeed, not every juvenile offender will be rehabilitated. But because no child is a finished product, every child has the potential to be redeemed, and if given the opportunity many will accomplish great things.

A sentence of life in prison without the possibility of parole, like a death sentence, extinguishes all hope that a juvenile offender might one day contribute to his or her community as have Charles Dutton, Senator Alan Simpson, Dwayne Betts, Luis Rodriguez, Terry Ray, T.J. Parsell, Ishmael Beah, and others like them.⁴ “When you get a life sentence, you have no reason to think about the future. You only think about the day to day,” says Betts. “If I know I can never get out of prison, that’s as good as dead to me,” says Dutton. “I would prefer the death penalty to a life sentence without the possibility of parole.”

This Court found in *Roper* that juveniles are less culpable than adults, that their minds are not fully developed, and that they are more subject to peer pressure and other environmental factors. *Amici*

⁴ See *Second Chances*, *supra*.

know from their experiences that, upon attaining adulthood, juvenile offenders often can overcome their troubled pasts.

The Eighth Amendment's Cruel and Unusual Punishment Clause "draw[s] its meaning from the evolving standards of decency that mark the progress of a maturing society." *Trop v. Dulles*, 356 U.S. 86, 101 (1958) (plurality opinion). *Amici* submit that evolving standards of decency compel the conclusion that a juvenile offender may not be sentenced to life in prison without parole as punishment for a non-homicide offense. The personality of such an offender is still too unformed, and the potential for productive contributions to society simply too great, to allow such a result. In Senator Simpson's characteristically blunt and common-sense words, "Anybody in our society – unless they are totally out to lunch – can understand that a guy of twenty-five or thirty-five is not the same guy of seventeen. You can't just throw a kid in the clink forever."

CONCLUSION

For the foregoing reasons, the decisions of the District Court of Appeal of Florida, First District, should be reversed.

Respectfully submitted,

DAVID W. DEBRUIN*

Counsel of Record

JONATHAN F. OLIN

ERIC R. HAREN

NICHOLAS O. STEPHANOPOULOS

JENNER & BLOCK LLP

1099 New York Avenue, NW

Suite 900

Washington, DC 20001

(202) 639-6000

July 23, 2009

Attorneys for Amici Curiae