

MOOT COURT EXERCISE

This semester, we will, as a class, simulate the Court conference and opinion-writing phase of *Sullivan v Florida*. In your role as a justice hearing this case, you will be expected to conduct research and to interact with your colleagues to produce the strongest court opinion possible. This will involve conducting quality research, writing and revising drafts of your opinion and engaging in constructive discussion with your colleagues.

In addition to conducting substantial research into your own justice's jurisprudential approach and philosophy, you will be responsible for uncovering, reading, disseminating, and organizing as much material as possible related to the issues raised in *Sullivan v Florida*, court precedents related to it, and the arguments for and against the constitutionality of the sentence at issue in this case. In the absence of such research, you will find it difficult to weigh the merits of the briefs presented to them and to write their own opinions.

SULLIVAN V FLORIDA

Does imposition of a life without parole sentence on a thirteen-year-old for a non-homicide violate the prohibition on cruel and unusual punishments under the Eighth and Fourteenth Amendments, where the freakishly rare imposition of such a sentence reflects a national consensus on the reduced criminal culpability of children?

RESPONSIBILITIES OF SUPREME COURT JUSTICES

On (or before) **Friday, March 26th**, you will submit a memo (7-8 pages) that outlines the research you have conducted in relation to your justice, his/her general judicial philosophy and theory of interpretation, his/her usual allies on the court, and his/her specific approach to the Eighth Amendment.

On (or before) **Friday, April 23rd**, you will submit a memo (7-8 pages) that outlines the research you have conducted in relation to the legal issues and questions of *Sullivan v Florida*. (Although we will only consider *Sullivan v Florida*, it is well worth your while to look at coverage of *Graham v Florida* (also heard by the Court this fall) as well. It raises similar issues and questions to *Sullivan* and may offer additional insight into the approach your justice is likely to take.) This memo should include a summary and evaluation of legal precedents relevant to the case and the lines of argument your justice is likely to find most persuasive in them. This will require you to pay particular attention to how your justice has voted in relevant Eighth Amendment cases and the reasoning he/she has articulated for those votes. Where your justice has not participated in many such decisions, you will have to extrapolate his/her likely positions based on the evidence you have and the research you have completed. **Note: think of this second research memo as a draft of the opinion of the Court written by your justice. In fact, it's a good idea to write it as such an opinion. Doing so will help you clarify your justice's views and give you a jump on the actual opinion-writing process following the moot court session.**

On (or before) **May 3rd**, you will submit a brief memo (3-4 pages) that summarizes the oral arguments from the U.S. Supreme Court hearing of *Sullivan v Florida* with specific emphasis on the lines of questioning and argument that your justice would be likely to find most persuasive and least persuasive, additional questions you'd be inclined to ask or follow up, and aspects of the oral arguments likely to be of particular importance to your justice.

The actual Court Conference will take place on **May 3rd**. At that session, presided over by Chief Justice Roberts, you will discuss the two sides' oral arguments and briefs and take a poll on the question of whether you will overturn or affirm the lower court's decision. You will then draft your opinions, with each justice circulating his/her own opinion to the others, attempting to win converts. This will be

an intensive time, with lots of writing, reading and negotiating. You will be attempting to win as many people to your side as possible and to frame the strongest opinion that supports your perspective, either in the majority, in concurrence, or in dissent. Keep copies of all drafts that you circulate, as well as a record of the changes that you make or cause others to make in their drafts. In pursuing the court's opinion in this case, you are expected pull your fair share of work – i.e., conducting research, offering arguments, participating in meetings, writing, reading and revising drafts.

On **May 12th**, the court must issue its opinion. There must be a majority opinion, but there may also be concurrence or dissents, depending on how your negotiations proceed. All opinions should follow the style and protocol of the court opinions that we have read throughout the semester, using law, legal precedent, history, social science data, common sense and logic (or some combination thereof) to support the ruling presented – or the concurrence with or dissent from it. **The Court's decision should be 1 document that follows the style of U.S. Supreme Court opinions.** (You need not include the syllabus found at the beginning of Court decisions since this is added by the Court reporter and not written by the Court.) This means that the document should be consistently formatted throughout the majority opinion, concurrences, and dissents. **Justices must work together to accomplish this task, regardless of who joins which opinions – this will require the actual opinions to be completed early enough that those in charge of formatting the full decision have time to do so.** Grades will be based upon how well the opinion you write (or join) reflects and advances the views and approach of your justice.

AN ADDITIONAL NOTE:

- I am aware that group work often presents a particular set of challenges for students. I will meet with all groups and encourage you to come to me *immediately* if your group is encountering problems. (More details to follow, if necessary.)

On **May 17th**, you will submit a written evaluation of the moot court process and your participation in it. This evaluation should address the court's negotiations, how you collaborated (or didn't) with other justices, what you contributed to its project and the success of the project overall. You should present as complete an account and evaluation of the legal proceeding and your participation in it as possible. This evaluation should be no less than 3 pages in length.

NO EXTENSIONS WILL BE GRANTED IN RELATION TO OPINIONS.
ANY LATE OPINIONS WILL RECEIVE AN AUTOMATIC ZERO.

Research Beginnings

Justices

- Some justices are prolific writers and speakers (Breyer and Scalia, for example) and you can learn an enormous amount about their approach to judicial interpretation by reading their books, articles, and speeches.
- The Gustavus Library contains several books examining the judicial approach of individual justices (e.g. Clarence Thomas, David Souter, and Sandra Day O'Connor) or of all the justices on a particular Court.
- A search of the Lexis-Nexis database coverage of law reviews will unearth literally hundreds of articles about the jurisprudence of all of the justices on the Court.
- It's also worth reading the transcripts of the confirmation hearings for your justice but keep in mind – particularly with those nominated in the last 15 years or so – that these are fundamentally *political* exercises in which the goal of the nominee is to be as vague and non-specific as humanly possible. So there's not usually a lot there and what is there should be taken with a grain of salt.
- **One essential source: the opinions written by (and, to a lesser degree, joined) by your justice. For the first memo, do not simply look for what they've said about**

the 8th Amendment. You want to identify their theory of interpretation more generally – what sorts of authority do they tend to cite, what weight do they give to precedent, how consistent are they in their approach, etc.

The Eighth Amendment and *Sullivan v Florida*

- Search Lexis-Nexus for law review articles pertaining to the Eighth Amendment and the specific issues raised in *Sullivan v Florida*.
- The best collection of *Sullivan v Florida*-related resources is available at: http://www.scotuswiki.com/index.php?title=Sullivan_v._Florida. It is essential that you be familiar with the arguments raised by both the petitioner and the respondent in their merits briefs, with the transcript of the oral argument in the case, and with the arguments in the *amicus curiae* briefs submitted in this case.

Chief Justice John G. Roberts	Bekka Steinwand
Associate Justice William H. Rehnquist	Karin Lund
Associate Justice John Paul Stevens	Luke Strom
Associate Justice Antonin Scalia	Brian Krahulec
Associate Justice Sandra Day O'Connor	Brett Stanek
Associate Justice Anthony M. Kennedy	Linda Evans
Associate Justice David H. Souter	Haylie Neitzell
Associate Justice Clarence Thomas	Hans Lodge
Associate Justice Ruth Bader Ginsburg	Danielle Forsman-Earl
Associate Justice Stephen B. Breyer	Allie Birdseye
Associate Justice Samuel A. Alito	Nolan Nimps
Associate Justice Sonia Sotomayor	Phil Cleary