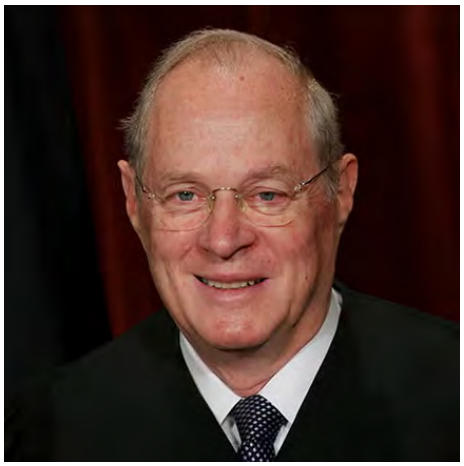
Justice Anthony M. Kennedy and His Contributions to Juvenile Law

Justice Anthony Kennedy recently wrote a story about his life. The book, *Life, Law & Liberty* (Simon & Schuster, 2026) describes his life as a Sacramento native, one of the few Westerners who has served on the U.S. Supreme Court. He also is one of the few Supreme Court Justices who was unanimously approved by the U.S. Senate. This may be true because the Senate had just rejected two of President Reagan's choices, Judges Robert Bork and Douglas Ginsburg.

His book was reviewed recently by Linda Greenhouse, a journalist specializing in Supreme Court matters. Ms. Greenhouse points out that Justice Kennedy was a member of the court during a period when he was the fifth vote in "fifteen of the seventeen cases that were decided by votes of five-four." The word around Washington was, "It's Justice Kennedy's world, and we're just living in it," writes Ms. Greenhouse.

Those cases included many significant changes in the law. There were First Amendment cases regarding flag burning, hate speech, and protests. He was the 5th and deciding vote in the case of *Masterpiece Cakeshop, Ltd. v. Colorado Civil Rights Commission* in which the Supreme Court found that the Commission acted with hostility towards the cakeshop



that refused to make a wedding cake for a same-sex couple. He also cast the deciding 5th vote in the *Obergfell v. Hodges* case which upheld the legality of same-sex marriage. This opinion enraged his colleague, Justice Scalia, and created a rift between two friends that was barely healed when Justice Scalia died shortly thereafter.

For those of us who work in the juvenile court, Justice Kennedy was the fifth and deciding vote in two landmark cases, *Roper v Simmons and Graham v Florida.* Roper decided that youths could not constitutionally be executed while Graham held that the sentence of life without possibility of parole was likewise unconstitutional. Roper was remarkable because a long line of Supreme Court cases had held that it was legal to execute youths less than 18 years of age. During Justice Kennedy's early years on the court, he was in the majority in the case of *Stanford v Kentucky,* which found that it was constitutional to execute a 17-year-old, an opinion authored by Justice Scalia. He admits that he changed his mind in the Roper case and found that the death penalty for minors was inconsistent with "evolving standards of decency that mark the progress of a maturing society." He concludes that his vote in the Stanford case "was simply wrong."

He went further in *Graham v Florida.* This was a case in which a 17-year-old murdered a person and was sentenced to life in prison without possibility of parole. Again, Justice Kennedy's opinion relied on the "cruel and unusual" clause of the Eighth Amendment. Justice Kennedy relied on the experience in some states and scientific studies that juveniles have a greater capacity to change and to see ways to make at least some positive contributions to mitigate their earlier crimes. His book completes the story of Terrance Graham, who while in jail obtained an education and found religion and founded a nonprofit that advocates against the imprisonment of children.

Children are different than adults. That is the foundation of the juvenile court and Justice Kennedy's two opinions confirm this difference in the law. I believe this book and Justice Kennedy's discussion of the law regarding serious juvenile offenders should be read by all juvenile judges and attorneys who hear cases involving juvenile law breakers.

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