

**SENTENCING AND PUNISHMENT—NEW JERSEY’S THREE STRIKES LAW—NEW JERSEY’S PERPETUAL OFFENDOR ACCOUNTABILITY ACT DOES NOT VIOLATE CONSTITUTIONAL PROTECTIONS AGAINST DOUBLE JEOPARDY AND EX POST FACTO, AND IS CONSISTENT WITH EQUAL PROTECTION, DUE PROCESS, AND SEPARATION OF POWERS PROVISIONS IN STATE AND FEDERAL CONSTITUTION - *STATE V. OLIVER*, 162 N.J. 580 (2000).**

The New Jersey Supreme Court recently upheld the constitutionality of legislation mandating life sentences for persons convicted on three separate occasions of certain violent crimes, including murder, manslaughter, aggravated assault, kidnapping, sexual assault, robbery, and illegal possession of a firearm or explosive. *State v. Oliver*, 162 N.J. 580 (2000). In so holding, the court reasoned that since the law provided sufficient procedural safeguards and furthered a legitimate penological objective, it was within the legislature’s power to implement. *Id.* Notwithstanding the court’s reasoning, New Jersey’s “three strikes” law is nothing more than a manifestation of current political pressures which does nothing to alleviate the problems posed by repeat offenders.

On December 10, 1995, while his companion engaged the victim in conversation, defendant Gregory Oliver struck Leon Johnson over the head from behind with a blunt object in order to steal one hundred dollars and crack cocaine from him. *State v. Oliver*, 162 N.J. 580, 584 (N.J. 2000). Oliver and his cohort subsequently shared the stolen items. *Id.* The strike to Johnson’s head caused a blood clot in his brain, fractures of his skull, and eventually lead to permanent brain damage. *Id.*

Over the course of his life, the defendant accumulated a lengthy criminal record, usually consisting of robbery charges and other violent offenses. *Id.* Prior to the incident that led to the present case, defendant’s record included one robbery conviction in 1973, convictions for robbery and atrocious assault and battery in 1979, and three separate first-degree robbery convictions in 1986. *Id.* at 584. As a result of this prior record and after a jury convicted Oliver of robbery and first-degree aggravated assault in 1999, the prosecution moved to impose a life sentence pursuant to New Jersey’s “three-strikes” law. *Id.*

“Three-strikes” is a colloquial phrase describing a law that mandates a life sentence for third time criminal defendants convicted of certain crimes. *Id.* at 583. The laws get their origin from the outrage surrounding the 1991 murder of California teenager Kimberly Reynolds by a repeat offender. *Id.* A year and a half later, a six-time offender on parole for a sexual assault broke into the home of Polly Klass, a twelve-year girl hosting a slumber party. *Id.* at 583. The perpetrator kidnapped, raped and killed the girl. *Id.* These two incidents compelled the victims’ fathers to rally support for legislative efforts aimed at preventing premature release of currently imprisoned “dangerous criminals.” *Id.* The California legislature responded rapidly with several proposals directed at combating crimes by repeat offenders. *Id.* The most notable proposal became known as the

“three strikes” law. A year later, President Clinton signed into law the Violent Crime Control and Law Enforcement Act of 1994, which contained a federal version of the three strikes law. *Id.* The next year, New Jersey passed the Persistent Offender Accountability Act (“three strikes” law or the Act). *Id.* at 583 (citing N.J.S.A. 2C:43-7.1a). New Jersey’s version provides for a life sentence—without the possibility of parole—for any person convicted on three distinct occasions of specific violent crimes, including aggravated assault and robbery. *Id.*

Based on Oliver’s prior record, the trial court sentenced him to life imprisonment without the possibility of parole. *Id.* (citing 298 N.J. Super. 538 (N.J. Super. Ct. Law Div.1996)). After citing the pre-New Jersey Criminal Code 1973 conviction for robbery, the trial court found that the conviction constituted the first strike because the imposed sentence was similar to that of first-degree robbery. *Id.* The trial court further opined that defendant’s robbery conviction in 1979 under N.J.S.A. 2A:141-1, as well as his adverse judgment on counts of atrocious assault and battery under N.J.S.A. 2A:90-1, constituted strike two for purposes of New Jersey’s Three Strikes Law. *Id.* The defendant’s three separate first-degree robbery convictions in 1986 constituted the final strikes against him. *Id.*

The Appellate Division upheld both the constitutionality of the “three-strikes” law and Oliver’s life sentence. *Id.* The court, however, reversed the trial court’s finding that Oliver’s 1973 conviction counted as a strike. *Id.* The Appellate Division determined that the 1973 conviction did not include the use of force or involve a deadly weapon, nor was it “substantially equivalent” to a first-degree conviction. *Id.* As a result, the court held that Oliver’s 1973 conviction should not be counted as a strike. *Id.* at 584. However, the Appellate Division left the remainder of the trial court’s opinion untouched. *Id.*

Oliver petitioned for certification, challenging New Jersey’s “three strikes” law on numerous constitutional grounds including double jeopardy, separation of powers, ex post facto prohibition, prohibition against cruel and unusual punishment, and the guarantees of equal protection under the law. *Id.* at 585. Oliver also claimed that the lower courts’ erred when it found that his 1979 conviction constituted a strike. *Id.* The New Jersey Supreme Court granted Oliver’s petition for certification. *Id.*

Writing for a unanimous court, Justice O’Hern began by refuting Oliver’s general constitutional challenges, recounting the relevant section of the Persistent Offender Accountability Act and upholding its constitutionality. *Id.* (citing N.J.S.A. 2C:43-7.1a). The Justice explained that the Act requires courts to administer a sentence of life imprisonment, without the possibility of parole, to any person convicted of a crime under certain specifically cited sections of the code if the defendant has previously been convicted under any of those statutes (or any similar statute, or similar crime) on two prior, separate occasions. *Id.* Because the trial court published a full and legally accurate opinion, the Justice stated that the court would only offer a truncated discussion of Oliver’s forego-

ing challenges. *Id.* at 585-6. (referring to *State v. Oliver*, 298 N.J. Super 538 (1996)).

Justice O'Hern opened the court's opinion by acknowledging that the double jeopardy clauses of both the state and federal constitutions prohibit multiple punishments for the same offense. *Id.* at 586. While reiterating that the double jeopardy clause is meant to prevent the infliction of two punitive actions for the same offense, the court easily dismissed Oliver's double jeopardy argument by citing to two Supreme Court decisions explicitly holding that recidivist statutes increasing the applicable sentence as a result of a prior conviction are constitutional. *Id.* (citing *Witte v. United States*, 515 U.S. 389, 400 (1995); *Gryger v. Burke*, 334 U.S. 728, 732 (1948)). Justice O'Hern then quoted the Supreme Court, reasoning that recidivist statutes should be viewed as augmenting the latest crime, not as a "new jeopardy" or an enriched penalty for an earlier crime. *Id.* Dismissing out of hand Oliver's double jeopardy claim, the court concluded that Oliver's sentence did not circumvent the protection of the double jeopardy clause. *Id.*

The court next addressed Oliver's contention that the "three-strikes" law deprives the judiciary of all discretion to designate sentences and greatly expands the discretionary power of prosecutors, thus violating the well established principle of separation of powers. *Id.* The court dismissed the claim, quoting a United States Supreme Court case that stated "Congress has the power to define criminal punishments without giving the courts any sentencing discretion." *Id.* (citing *Chapman v. United States*, 111 S.Ct. 1919, 1928 (1991) (quoting *Ex Parte United States*, 37 S.Ct. 72 (1916))). The court opined that the legislative authority to prohibit judicial discretion in suspending sentences is actually encompassed in the original power to enact mandatory sentencing laws in the first place. *Id.* The court concluded that without the ability to limit judicial discretion, the power of the legislature to enact sentencing provisions would be illusory. *Id.* In a footnote, the majority noted that the California Supreme Court did read discretion into its "three-strikes" law and permitted lower courts to exclude a prior strikes. *Id.* at 587 n.3. Justice O'Hern, however, reasoned that the California statute is distinct from the New Jersey law in that the California statute allows for an enhanced sentence for numerous other violent and non-violent offenses not included in New Jersey's Act. *Id.*

The court then flatly rejected Oliver's claim that the "three-strikes" law contravenes the Ex Post Facto Clause in the United States Constitution and the New Jersey Constitution by enhancing the legal consequences of his previous illegal behavior. *Id.* at 587. To buttress its rejection of that claim, the court cited a United States Supreme Court case holding that habitual criminal sentencing laws transform the present crime into an aggravated offense because it is a repetitive one. *Id.* (citing *Gryger v. Burke*, 68 S.Ct. 1256, 1258 (1948)). Faithfully adhering to the United States Supreme Court, the majority reasoned that recidivist statutes do not violate the Ex Post Facto Clause provided they were enacted be-

fore the crime that led to the current conviction was committed. *Id.* Applying the stated rule to the current case, Justice O'Hern reasoned that since the New Jersey "three strikes" law was enacted in June 1995 and Oliver committed the illegal act in December of the same year, he had fair warning of the consequences of his action and none of his constitutional rights were violated. *Id.* at 587.

The court next turned its attention to the defendant's claim that the "three-strikes" law violates the Eighth Amendment of the United States Constitution and Article I, paragraph 12 of the New Jersey Constitution. *Id.* at 588. Justice O'Hern first reiterated the court's intention not to become entangled in the debate revolving around the Eighth Amendment's prohibition of cruel and unusual punishment. *Id.* Citing a 1991 Supreme Court case, the court reasoned that a precise constitutional interpretation of "cruel and unusual" has not yet been deciphered. *Id.* (citing *Harmelin v. Michigan*, 111 S.Ct. 2680 (1991) (a splintered court resulting in five separate opinions—only two Justices joined in the opinion—upheld as not cruel and unusual a life sentence without the possibility of parole for possession of cocaine)). Without engaging in the current debate between the several Supreme Court Justices, the court proffered that both the state and federal constitutions mandate a three-part inquiry to determine whether punishment is "cruel and unusual" as proscribed by the Eighth Amendment. *Id.* The court went on to explain the separate prongs. *Id.* The first prong, the court explained, seeks to decide whether the punishment for the crime follows contemporaneous standards of decency. *Id.* The second prong, Justice O'Hern continued, asks whether the punishment is "grossly disproportionate" to the offense. *Id.* at 588. And final prong, the justice enunciated, examines whether the punishment is more than necessary to achieve any legitimate penological objective. *Id.*

The court undertook a multi-state comparison of "three-strikes" laws and determined that New Jersey's Act is similar to other state's statutes and therefore in line with contemporary standards of decency. *Id.* Justice O'Hern explained that both the federal government and at least twenty-four other jurisdictions require lifetime sentences for persons convicted of violent crimes on three separate occasions. *Id.* The court then explained that, because New Jersey limits the type of violent offences covered under the act, the scope of its "three-strikes" law is narrowed and that in turn bolsters arguments for its constitutionality. *Id.* For example, a unanimous court continued, under the New Jersey law it would be impossible for a person convicted of stealing a loaf of bread or writing a bad check to be sentenced to life imprisonment. *Id.*

Next, Justice O'Hern opined that Oliver's sentence passed constitutional muster under the second prong of the "cruel and unusual" test. *Oliver*, 162 N.J. at 589. The justice reasoned that Oliver's punishment is not "grossly disproportionate" to the crime he was convicted of because Oliver could have been punished under New Jersey's Habitual Offender Act, N.J.S.A. 2C:43-7. *Id.* Under the Habitual Offender Act, the court established, Oliver faced a life sentence

with a twenty-five year parole ineligibility bar for the first-degree robbery offense by itself. *Id.* The court further reported that under N.J.S.A. 2C:43-7 a court is often authorized to impose a consecutive sentence for other un-merged offenses. *Id.*

The court next confronted the issue of whether Oliver's punishment was disproportionate to the state's penological objective. *Id.* Justice O'Hern found that the harshness of Oliver's sentence is necessary to achieve a legitimate penological objective and the degree of punishment that the trial court imposed does not surpass that objective. *Id.* The court began by enunciating the State's justification for the sentence, pointing to the statute's stated rationale which is to protect society from the unique danger repeat offenders pose. *Id.* at 589. The court further posited that, without the "three-strikes" law, society could not be protected from repeat offenders. *Id.* However, the court also stressed its opinion that the punishment imposed under the statute does not continue after the unique danger passes. *Id.* To further illustrate this point, the court pointed to a provision in the statute that grants parole eligibility to all prisoners having served thirty-five years or attaining the age of seventy provided the person does not continue to pose a risk to society. *Id.*

After concluding that his sentence was not disproportionate to the state's interest, the court analyzed Oliver's equal protection argument. *Id.* The court initially noted that the Persistent Offender Accountability Act is not subject to attack on the grounds that it gives prosecutors too much discretion in which defendants to charge as "three-strike" defendants. *Id.* In fact, Justice O'Hern definitively emphasized the fact that imposition of the penalties contained within the New Jersey "three-strikes" statute is mandatory once the defendant falls within its scope. *Id.* Next, the Supreme Court agreed with the trial court's conclusion that prosecutorial guidelines are not required to ensure a defendant's equal protection under this law because the legislature saw fit to use its constitutionally granted power to establish the mandatory penalty and refused to grant any prosecutorial veto power over the trial judge's decision. *Id.* at 589. The court ended the discussion of Oliver's equal protection argument by reporting that no proof existed that the "three-strikes" law disparately effects minorities. *Id.*

After holding the Act to be constitutional, the court addressed Oliver's two assertions specific to his case: first, that he has only two "strikes" against him and second, that he was not afforded sufficient procedural protections required by due process of law. *Id.* at 590. Justice O'Hern began the discussion by stating that in order to be sentenced under the New Jersey "three-strikes" law, a defendant must be given notice at a separate sentencing proceeding that his situation falls under the purview of the statute. *Id.* The court explained that the sentencing proceeding is both distinct from and similar to the criminal trial in that it must fulfill due process requirements. *Id.* Specifically, the justice continued, the United States Supreme Court case, *McMillan v. Pennsylvania*, generally

mandates that any factor that increases a sentence must be proved by a preponderance of the evidence. *Id.* (citing *McMillan v. Pennsylvania*, 477 U.S. 79 (1986)). Justice O'Hern stated that, in the court's opinion, the *McMillian* decision suggests that the preponderance standard may not satisfy constitutional requirements if the sentencing enhancement is far greater than the punishment for the underlying offense; or in more metaphorical language, the sentencing process is the "tail which wags the dog" of the substantive offense. *Id.* As a result, the court concluded, due process demands a higher standard than a preponderance of evidence when the enhancing factor, such as "three-strikes," has a disproportionate effect on the sentence in relation to the offense of conviction. *Id.*

Next, the majority explained, the function the standard of proof plays in the sentencing process. *Id.* According to the court, the standard of proof is meant to instruct the fact finder as to the requisite degree of confidence in the veracity of his or her factual conclusions that society deems necessary to reach a legitimate decision in a particular type of adjudication. *Id.* at 590. As way of illustration, the court cited to a Third Circuit case that found that the clear and convincing evidence standard was a sufficient standard of proof to use when court's considered whether a particular defendant fell under the purvey of sex offender notification laws. *Id.* at 590-1 (discussing *E.B. v. Verniero*, 119 F.3d 1077 (3rd Cir. 1997)). The court continued, opining that the New Jersey "three-strikes" law necessitates that the burden of proof required to prove a fact that is not considered an element of the offense be placed on the party whose interest will be furthered. *Id.* Moreover, the court decided that the required standard of proof that must be overcome is "to the satisfaction of the court." *Id.* at 592 (citing N.J.S.A. 2C-13d (West XX)).

The justice took caution to repeat that this subsection only effects the proof of those facts that are independent of the basis criminal case. *Id.* Consequently, the court determined, the appropriate standard of proof to be employed in determining whether Oliver is subject to the "three-strikes" law during the sentencing proceeding is "to the satisfaction of the court." *Id.* While admitting this standard is vague and malleable, Justice O'Hern stated that so long as the court's "satisfaction" is a higher standard of proof than a preponderance of the evidence, the decisions of the lower courts will not be second-guessed. *Id.* Justice O'Hern then reiterated the trial court's opinion in the current case that the defendant was granted all essential constitutional requirements of procedure. *Id.* at 591.

The court conceded that the sentencing enhancing factors in Oliver's case are not "within the case context" so as to be readily ascertainable. *Id.* The court continued, stating that the current situation differed greatly with the situation in *McMillian* because the issue in that case was whether the defendant possessed a visible firearm in the commission of the charged crime. *Id.* The court, however, reasoned that looking at prior sentencing records is as "readily ascertainable" as those factors "within the case context" in *McMillian*. *Id.*

While Oliver's 1986 conviction conclusively established one strike against

him, the court maintained that the difficulty in this case results from the fact that two of Oliver's prior convictions are not listed in the act as crimes susceptible to being counted as strikes. *Id.* at 592. The court quickly dismissed the argument, first commenting that Oliver now has a total of six robbery convictions against him. *Id.* The Justice then explained that while Oliver's "2A" convictions were not per se strikes, there existed ample evidence to satisfy the court that those convictions were "substantially equivalent" to the present offense. *Id.* The New Jersey Supreme Court agreed with the trial court's conclusion that Oliver's 1973 and 1979 pre-code robbery convictions were "substantially equivalent" to the present first-degree robbery conviction and therefore may be counted as strikes under the Persistent Offender Accountability Act. *Id.* The Court first noted that Oliver's sentence of nine to twelve years for his 1979 conviction was within the code's first-degree sentencing range. *Id.* Furthermore, in full agreement with the trial court, Justice O'Hern highlighted the similarities between the defendant's 1979 and present conviction. *Id.* at 593. In both instances, the Court reported, the defendant approached his victim from behind, struck the victim in the head with hard object, and took the victim's money. *Id.*

Oliver argued that because the "2A" statute that formed the basis of his 1979 robbery conviction did not mandate that the use of force accompany the criminal action, his guilty plea to a "2A" robbery can not be considered equivalent to a "2C" robbery conviction because that statute requires the actor to "purposefully inflict or attempt to inflict serious bodily injury, or [be] armed with, or use[] or threaten[] the immediate use of a deadly weapon," *Id.* at 593 (citing N.J.S.A. 2C:15-1b). The court dismissed the defendant's argument by first illustrating that the statute that was the basis for both defendant's 1973 and 1979 robbery convictions permitted a sentence of up to fifteen years (substantially equivalent to a first degree conviction) if the defendant is found to have "forcibly take[n]" from another money or personal goods while also putting him in fear for his safety. *Id.* at 593 (citing N.J.S.A. 2A:141-1 (West XX)). Furthermore, the court took notice of another recidivist sentencing statute which permits for sentences ranging from one to ten years for the first conviction and progressing up to a sentence range of twenty years to life for a fourth conviction for persons convicted on multiple occasions of various offenses, including robbery, when committed armed with a dangerous instrument of any kind. *Id.* (citing N.J.S.A. 2A:151-5 (West XX)). Justice O'Hern then contrasted these statutes with the current requirements for a first-degree robbery conviction which calls for an attempt to kill or inflict serious bodily injury or the involvement of a deadly weapon. *Id.* at 593 (citing N.J.S.A. 2C:15-1b). The Justice proceeded to define "serious bodily injury" as a bodily injury which creates a "substantial risk" of death or results in serious permanent disfigurement or the loss or impairment of the function of any bodily "member or organ." *Id.* at 594.

Oliver claimed that the requisite first-degree circumstances were not proven in his 1979 conviction and furthermore, had he used a weapon during the 1979

robbery, the government would have charged him under N.J.S.A. 2A:151-5 which, *inter alia*, the state did not do. *Id.* Furthermore, Oliver argued that his 1979 conviction under 2A:141-1 only established that he forcibly took property by “violence” or at least by “fear,” but proof of these factors fall far short of establishing robbery while armed or under circumstances creating a possibility of death or serious bodily injury, and without proof of risk of death or serious bodily injury. *Id.* Therefore, Oliver’s argument continued, the state failed to prove the 1979 robbery is “substantially equivalent” to a first-degree robbery conviction, and can not be counted as a strike. *Id.*

The court, however, disagreed. *Id.* The majority reasoned that although the “deadly weapon” used by Oliver is not encompassed within the definition of a “dangerous instrument” as defined in N.J.S.A. 2A:151-5, such a finding is not necessary to secure a first-degree robbery conviction. *Id.* The court then explained that simply the use of a “deadly weapon” is sufficient to obtain a first-degree conviction. *Id.* Furthermore, the court elucidated a deadly weapon is defined as any object used which is capable of causing death or serious bodily injury, or any object which would lead the victim to reasonably believe the object could cause such results. *Id.* Justice O’Hern referred to the transcript of the 1979 victim’s statements in front of the grand jury to prove that the victim subjectively believed the object could have caused death or serious bodily injury. *Id.* at 595. Because the code explicitly allows for the subjective perception of the victim to determine whether the object was indeed a “deadly weapon,” the trial court was within its discretion to find that the 1979 robbery falls within the ambit of first-degree robbery under 2C:1-1b. *Id.* (citing N.J.S.A. 2C:1-1b (West XX)). Therefore, the Supreme Court affirmed the judgment of the Appellate Division.

## ANALYSIS

If one were to ask Justice O’Hern (or indeed any of the Supreme Court Justices) if they had been reading the Constitution, the certain response would be “No. But I have been reading the papers.” By first setting out the terrifying facts of two different high profile crimes committed by two infamous people not on trial in this case, Justice O’Hern illustrated the court’s willingness to act as a loyal foot-soldier in legislature’s tough on crime policies, regardless of their constitutionality, effectiveness or unknown side-effects. The “three-strikes” law phenomenon, (indeed most tough-on-crime statutes) were enacted not only following these two brutal murders in California, but also in the midst of a nationwide media onslaught of crime—and particularly murder—coverage which has led to a disproportionate relationship between American’s fear of, and the actual risk of victimization. PAT MAYHEW & JAN J.M. VAN DIJK, *CRIMINAL VICTIMISATION IN ELEVEN INDUSTRIALIZED COUNTRIES 6* (The Netherlands: Ministry of Justice, 1997). As the court noted, following these widely publicized



murders (which coincided with state elections), the politicians of California quickly moved to enact the three strikes law without first undertaking any empirical research as to the law's potential effectiveness. Whatever the constitutionality, such as stance has been proved politically expedient, as Governor Wilson's successful reelection campaign based on a "three-strikes-and-you're-in" platform demonstrates. Several studies have emerged since the enactment of numerous three strikes laws six years ago, however, no evidence has suggested that these laws have either led to a decrease in crime rates or deterred violent criminals

. As a result, the Court may have to concede that the three strikes law may be more effective in alleviating the fears of New Jersey residents than actually offering the most productive means of physical protection from persons with violent tendencies.

This concession should not be quickly overlooked as it begins the argument to discredit the court's Eighth Amendment analysis. The third and final prong of the test first set out in *State v. Ramseur*, 106 N.J. 123 (1987), to determine whether a defendant's sentence is cruel and unusual hinges upon a finding that the punishment does not go beyond what is necessary to accomplish any legitimate penological objective. *Oliver*, 162 N.J. at 588. The penological objective that the court enunciated was to protect society from violent repeat offenders. *Id.* If, as these studies suggest, the Perpetual Offender Accountability Act is neither deterring nor decreasing crime rates than it is not necessary to protect society from repeat offenders. As a result, a life sentence goes beyond that which is necessary. Furthermore, the court's assertion that the provision permits the release of those sentenced under the Act after thirty-five years or at the age of seventy, provided they are not deemed to be a threat to society, does not save it from constitutional infirmity. An acceptable provision would allow for the release of anyone convicted under the Act at any time the imprisoned is no longer a threat to society, provided they have finished serving the statutorily required sentence for the underlying crime.

In addition, the court's conclusion that the Act satisfies the second prong of the *Ramseur* test is also flawed. The Eighth Amendment requires that the punishment not be grossly disproportionate to the offense. *Id.* at 588-89. Although the question of what constitutes a proportional sentence remains a riddle wrapped in an enigma, the Supreme Court remains polarized to offer a satisfying solution and in this case, Justice O'Hern failed to offer any legitimate defense to the proportionality question. The sole response offered by Justice O'Hern to satisfy this prong is that *Oliver* could have been sentenced under New Jersey's Habitual Offender Act. *Id.* Such a rationale begs the question of whether the Habitual Offender Act is constitutional. Moreover, as the Supreme Court noted in *Apprendi v. New Jersey*, the constitutional question is whether the sentence handed down is permissible; the possibility of other sentences have no relevance to the case at bar. See *Apprendi v. New Jersey*, 120 S. Ct. 2348, 2354 (2000)

(Justice Stevens responding to the State's contention that *Apprendi* could have been sentenced under another sentencing scheme for an equal amount of time).

As Justice Jackson once stated, certain rights are so fundamental that the framers of the constitution took them out of the hands of those who may be swayed by public opinion or a sensationalist media. He knew that the framers especially intended to take those rights out of the hands of legislators who are apt to act out of political ambitions, even if their ambitions fall outside the bounds of the constitution. Among the rights held most dear to the framers were the right to life and right to liberty. Although most scholars agree that in extraordinary circumstances those rights may be taken away if done so in accordance with due process of law, the question today is: what happens when that due process is determined by real politic and not by a real notion of justice or any legitimate penological objective. In upholding the constitutionality of New Jersey's three strikes law, the court bowed to political pressure and upheld a law that in no way furthers its stated interest of protecting the public from repeat offenders.

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