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Christopher J. Menihan* **

In 1987, thirteen-year-old Craig Price crept out of his parents' house in Warwick, Rhode Island, into the night, and through the back door of Becky Spencer's home two houses away.[1] Price found the twenty-seven-year-old single mother asleep on her living room floor. He also found a ten-inch kitchen knife.[2] "A strange sense of awareness settled upon me," Price later explained, "and with this awareness came this raw and savage sense of outrage that completely consumed me. It was time (to) kill."[3] Price stabbed Spencer with ferocity, nearly burying the ten-inch blade.[4] Fifty-eight thrusts later, when Spencer finally stopped moving, when he knew she was dead, Price subsided.[5] The knife had punctured Spencer's heart, lungs and liver, and also penetrated her face and head.[6] Spencer's

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1. Mark Arsenault, *'Into Another World'—Craig Price's Story*, THE PROVIDENCE J., Mar. 7, 2004, at A-01 [hereinafter *Into Another World*].

2. *Id.*

3. *Id.*

4. *Id.*

5. *Id.*

6. Mark Arsenault, *'This Dark Deed'—Craig Price's Story*, THE

murder went unsolved, and Price was smug: "I truly felt like getting away with it was my fate and destiny. I really felt clever and supreme. I acted just like everybody else who thought a killer walked their neighborhood streets."[7]

Two years later in 1989, fifteen-year-old Price murdered again.[8] This time, however, his crime was exponentially more brutal. Price again crept surreptitiously from his parents' house and through the neighborhood, this time towards Joan Heaton's home one street away.[9] Price cut the window screen with a steak knife he was carrying.[10] Thirty-nine-year-old Heaton's body exhibited eleven stab wounds to the chest, face and neck, rib and skull fractures, and numerous injuries from blunt trauma.[11] The body of her daughter, fifth-grader Mellissa Heaton, displayed seven stab wounds and evidence of having been similarly beaten.[12] Jennifer Heaton, two years younger than her sister Melissa, was also found dead. She had been stabbed sixty-two times and her skull had been fractured.[13]

Price suffered a heightened perception of the prejudices that others projected towards his African-American heritage.[14] Shortly before Spencer's murder, Price and some friends had been playing manhunt in the neighborhood.[15] The killer recalls a man bellowing racial epithets from Spencer's property, which weighed on Price so acutely that it culminated in "the strongest desire to murder."[16] Two weeks before murdering them, Price met Heaton and her daughters for the first time.[17] As he walked through their Warwick neighborhood, Price noticed the family out for a bike ride.[18] He offered to fix a chain that had slipped

PROVIDENCE J., Mar. 8, 2004, at A-01 [hereinafter *This Dark Deed*].

7. *Id.*
8. *This Dark Deed*, *supra* note 6.
9. *Id.*
10. *Id.*
11. *Into Another World, supra* note 1.
12. *Id.*
13. *Id.*
14. *This Dark Deed, supra* note 6.
15. *Id.*
16. *Id.*
17. *Id.*
18. *Id.*

off one of the girls' bikes.[19] As he fixed the chain, Price sensed an aura of racial bigotry emanating from Heaton, and interpreted the girls' giggling as similarly rooted in the same perceived racism.[20] A few days later, Price claims to have noticed Heaton eyeing him from her window as he was walking home.[21] What Price perceived as Heaton's contemptuous racism spun him into "an absolute dark rage."[22] Then, "a solution came to him. Kill her. . . . I knew the act of killing Joan Heaton was the answer."[23]

Found at the Heaton residence were a bloody handprint, blood stains in areas away from the bodies, and band-aid wrappers on the floor.[24] Investigators deduced that the killer had been cut during scuffles that undoubtedly accompanied the murders.[25] Warwick police officers and FBI agents began investigating the Heaton murders, keeping their eyes open for suspects with lacerations to the hand.[26] While patrolling Metropolitan Drive in Warwick, two police officers observed a group of teenagers walking down the street.[27] Price was among them.[28] The officers stopped the teens and one of them noticed gauze on Price's finger.[29] Price maintained that he had cut his finger while breaking into a car, but there was no police report to corroborate his story.[30] Price was subjected to and failed a polygraph test, and a search of a tool shed in his parents' yard uncovered the weapons used to murder Spencer and the Heatons.[31]

Price's case was adjudicated in Rhode Island Family Court, where he was found guilty of two counts of burglary and four

19. *Id.*
20. *Id.*
21. *Id.*
22. *Id.*
23. *Id.*
24. *Id.*
25. *Id.*
26. *Id.*
27. *Id.*
28. *Id.*
29. *Id.*
30. *Id.*
31. *Id.*

counts of murder.[32] The court ordered the fifteen-year-old quadruple murderer—who would later become known as "The Warwick Slasher"—to be held at the Rhode Island Training School until he reached age twenty-one, a sentence of less than six years.[33] The Family Court judge's hands were tied: "Pursuant to the statutes then in effect. . .[t]his was the maximum penalty that the Family Court could impose."[34]

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I. Introduction

This Comment provides an historical analysis of the principles, understandings and laws that have formed and altered the American juvenile correction system.[35] Part I offers an historical synopsis of the societal understanding that juvenile offenders are less culpable than their adult counterparts and explains the process by which this concept came to permeate early American common law. By discussing the early nineteenth-century juvenile correction reformation movement and the cases that followed, Part I also illustrates the development and early failures of the American juvenile correction system. Part II explains the history of juvenile waiver laws, from their early presence in the American juvenile correction system to their stringent nationwide alteration during the 1980s and 90s. In Part III, this Comment discusses the unconstitutional results of increased juvenile waiver legislation and examines the United States Supreme Court's judicial correction of such effects. Part IV concludes that despite the roadblocks to effectuating necessary changes within the juvenile correction system, the interaction among various omnipresent and undeniable forces requires that the States and their judiciaries do so.

32. *See* State v. Price, 820 A.2d 956, 959 (R.I. 2003).

33. *Id.*

34. *Id.*

35. This Comment uses "correction system," "correctional officer" and other like terms for their colloquial value only, and does not intend to suggest that such entities live up to their titles, titles which imply that such entities partake in the active correction of criminals.

II. History, Development, and Early Failures of the American Juvenile Correction System

A. *Historical Treatment of Juvenile Malefactors*

The understanding that juvenile offenders deserve different penal treatment than their adult counterparts has been recognized since the jurisprudence of antiquity. Early Muslim law disallowed capital punishment of offenders under the age of seventeen and required more merciful penalties for all children.[36] Early Jewish law also recognized "conditions under which immaturity was to be considered in imposing punishment."[37] Then came early Roman civil law, which differentiated juveniles from adults by observing an "age of responsibility."[38] By the fifth century, Roman law had developed a tender-years doctrine that exempted all children under seven from criminal liability.[39] Children that had reached puberty were viewed differently, however, as this developmental milestone—age fourteen for boys, twelve for girls—established a presupposition that pubescent "youth were assumed to know the difference between right and wrong. . . ."[40] These Roman civil law principles later permeated eleventh- and twelfth-century Anglo-Saxon common law, eventually making their way into English common law.[41]

In the late eighteenth century, English common law, in determining the appropriate punishment of juvenile offenders, considered the age at which children were capable of conceptualizing the nefariousness of their acts.[42] Considered "infants," children younger than seven were not held liable for

36. RICHARD LAWRENCE & MARIO HESSE, JUVENILE JUSTICE: THE ESSENTIALS 12 (Jerry Westby et al. eds., 2010).

37. *Id.*

38. *Id.*

39. *Id.*

40. AM. BAR ASS'N DIV. FOR PUB. EDUC., THE HISTORY OF JUVENILE JUSTICE PART 1, at 4 [hereinafter THE HISTORY OF JUVENILE JUSTICE PART 1], *available at* http://www.americanbar.org/content/dam/aba/migrated/publiced/features/DYJpart1.authcheckdam.pdf (last visited May 21, 2015).

41. LAWRENCE & HESSE, *supra* note 36, at 12.

42. *Id.* ("Blackstone and his contemporaries drew the line between 'infant' and 'adult' at the point where one could understood [sic] one's actions.").

committing felonies.[43] Children over age fourteen were considered "adults" and as such were susceptible to unrestricted criminal punishment,[44] yet children much younger could potentially face the harshest penalties:

> Between the ages of seven and fourteen was a gray zone. A child in this age range would be presumed incapable of crime. If, however, it appeared that the child understood the difference between right and wrong, the child could be convicted and suffer the full consequences of the crime. These consequences could include death in a capital crime.[45]

The understanding that juvenile wrongdoers are less culpable than their adult counterparts then made its way to the Americas.[46] As English common law formed the basis of United States common law, the former's practices regarding the treatment of juvenile offenders, as well as the associated "gray zone[s,]" took root in the United States.[47]

B. *Development and Early Failures of the American Juvenile Correction System*

At the time of America's independence, all criminal offenses committed by juveniles in the United States were adjudicated in adult criminal courts.[48] By the time the Bill of Rights was adopted in 1789, United States common law had established a

43. *Id.*
44. *Id.*
45. *Id.*
46. THE HISTORY OF JUVENILE JUSTICE PART 1, *supra* note 40, at 4.
47. *Id.* ("Early in United States history, the law was heavily influenced by the common law of England, which governed the American colonies. One of the most important English lawyers of the time was William Blackstone. Blackstone's *Commentaries on the Laws of England*, first published in the late 1760s, were widely read and admired by our nation's founders.").
48. Leslie Patrice Wallace, *"And I Don't Know Why It Is That You Threw Your Life Away": Abolishing Life Without Parole, the Supreme Court In Graham v. Florida Now Requires States to Give Juveniles Hope For a Second Chance*, 20 B.U. PUB. INT. L.J. 35, 40 (2010).

rebuttable presumption that children under fourteen lacked "capacity" to commit capital offenses.[49] "By the nineteenth century, many child welfare advocates reformed the country's view of children. . . ."[50] With goals of rehabilitating young malefactors and safeguarding them from the inherent dangers of incarceration in adult correctional institutions, "[s]ocial reformers began to create special facilities for troubled juveniles. . . ."[51] In 1825, the New York House of Refuge was built to accommodate juvenile criminals.[52] A similar facility, the Chicago Reform School, opened in Illinois in 1855.[53] In 1899, Cook County, Illinois established the United States' first juvenile court.[54] "The idea quickly caught on, and within twenty-five years, most states had set up juvenile court systems."[55] Like the juvenile correctional facilities, the principal objective of early juvenile courts was to rehabilitate young wrongdoers, hoping to deter them from continuing lives of crime.[56]

By the mid-twentieth century, flaws in the juvenile court system had come to light. In 1959, after an attempted purse-snatching and a number of home break-ins, fourteen-year-old Morris Kent, Jr. was placed on probation by the District of Columbia Juvenile Court.[57] Two years later, while still on probation, Kent entered a woman's apartment, raped her, and stole her wallet.[58] After being caught, Kent volunteered information regarding additional crimes he had committed, which left him facing eight criminal charges—"two instances of housebreaking, robbery, and rape, and one of housebreaking and robbery."[59] On these facts, it is more than evident that the District of Columbia Juvenile Court system had not performed

49. Stanford v. Kentucky, 492 U.S. 361, 361-62 (1989).
50. Wallace, *supra* note 48, at 40.
51. THE HISTORY OF JUVENILE JUSTICE PART 1, *supra* note 40, at 5.
52. *Id.*
53. *Id.*
54. *Id.*
55. *Id.*
56. *Id.* ("[T]he ultimate goal was to guide a juvenile offender toward life as a responsible, law-abiding adult.").
57. *See* Kent v. United States, 383 U.S. 541, 543 (1966).
58. *Id.*
59. *Id.* at 549.

its principal role of rehabilitating Kent, of deterring him from a continued life of crime, of "guid[ing] [this] juvenile offender toward life as a responsible, law-abiding adult."[60] Following his initial arrest at age fourteen, the juvenile court's oversight of Kent during his probationary period consisted of releasing him to his mother's custody and interviewing him "from time to time. . . ."[61] Under the less than watchful eye of the District of Columbia Juvenile Court, Kent had not only continued robbing and breaking-and-entering, but had also become a repeated rapist.

Yet Kent's behavior alone does not fully elucidate the juvenile court system's failures. His case had been transferred to adult criminal court and ultimately made its way to the United States Supreme Court.[62] Supreme Court Justice Fortas noted, "There is much evidence that some juvenile courts, including that of the District of Columbia, lack the personnel, facilities and techniques to perform adequately as representatives of the State. . .at least with respect to children charged with law violation."[63] Justice Fortas also explained that since juvenile courts adjudicate juvenile crime on "the premise that the proceedings are 'civil' in nature. . .[,]" juvenile offenders are often not afforded the same rights as criminal defendants in adult court, sometimes being deprived of prerogatives such as "entitle[ment] to bail; to indictment by grand jury; to a speedy and public trial; to trial by jury; to immunity against self-incrimination; to confrontation of his accusers; and in some jurisdictions. . .entitle[ment] to counsel."[64] Justice Fortas concluded that the failure of the juvenile court system to achieve

60. THE HISTORY OF JUVENILE JUSTICE PART 1, *supra* note 40, at 5.

61. *Kent*, 383 U.S. at 543.

62. *Id.* at 541. (The Supreme Court in *Kent* quoted "[t]he provision of the Juvenile Court Act governing waiver…'If a child sixteen years of age or older is charged with an offense which would amount to a felony in the case of an adult, or any child charged with an offense which if committed by an adult is punishable by death or life imprisonment, the judge may, after full investigation, waive jurisdiction and order such child held for trial under the regular procedure of the court which would have jurisdiction of such offense if committed by an adult; or such other court may exercise the powers conferred upon the juvenile court in this subchapter in conducting and disposing of such cases.'" *Id.* at 547-48.) *See also* discussion of waiver *infra* Part II.

63. *Kent*, 383 U.S.at 555-56.

64. *Id.* at 555.

its principal goal of rehabilitating young wrongdoers raised serious reservations as to the justifiability of depriving youths of such momentous rights[65]: "There is evidence, in fact, that there may be grounds for concern that the child receives the worst of both worlds: that he gets neither the protections accorded to adults nor the solicitous care and regenerative treatment postulated for children."[66]

Justice Fortas also revealed the District of Columbia Juvenile Court's failure to follow mandatory protocol in waiving jurisdiction over Kent.[67] Kent's counsel motioned for a hearing on the issue of waiver, armed with "an affidavit of a psychiatrist certifying that petitioner 'is a victim of servere [sic] psychopathology' and recommending hospitalization for psychiatric observation[,]" and prepared to argue that Kent was therefore a select candidate for institutional rehabilitation under the supervision of the Juvenile Court.[68] The Juvenile Court judge, however, simply disregarded the motion. "The Juvenile Court judge did not rule on these motions. He held no hearing. He entered an order reciting that after 'full investigation, I do hereby waive' jurisdiction of petitioner. . . ."[69] Although the Juvenile Court had "presumably" reviewed reports and suggestions from the Juvenile Probation Section and the Juvenile Court staff, and had considered a social service file kept on Kent throughout his probation, the Supreme Court held that the Juvenile Court judge had not adhered to "the statutory requirement of a 'full investigation.'"[70] The Supreme Court held that Kent's counsel had a right to actively take part in the waiver decision and that the Juvenile Court judge was not permitted to make such a consequential ruling "without any hearing or statement or reasons. . .[,]" especially when the defendant's counsel had specifically motioned for a hearing on

65. *Id.* ("While there can be no doubt of the original laudable purpose of juvenile courts, studies and critiques in recent years raise serious questions as to whether actual performance measures well enough against theoretical purpose to make tolerable the immunity of the process from the reach of constitutional guaranties applicable to adults.").

66. *Id.* at 556.

67. *Id.*

68. *Id.* at 545.

69. *Id.* at 546.

70. *Id.* at 553.

the issue of waiver.[71]

In 1971, the Supreme Court again voiced its concern with the inadequacies of the juvenile court system.[72] The Supreme Court granted certiorari to appellants in *McKeiver v. Pennsylvania* to consider whether juveniles had a constitutional right to a jury trial in state juvenile court delinquency hearings.[73] Appellants included Joseph McKeiver, who had been charged in 1968 at age sixteen with larceny, robbery and receiving stolen goods; juvenile Edward Terry, who in 1969 had been charged with conspiracy and assaulting a police officer; and more than forty-five African American juveniles ranging in age from eleven to fifteen, who had been charged with willfully impeding traffic while "protesting school assignments and a school consolidation plan."[74] McKeiver and Terry had both been denied jury trials by the Juvenile Branch of the Philadelphia Court of Common Pleas. The African-American youth had been denied the same by a North Carolina juvenile court.[75]

Writing for the plurality, Justice Blackmun discussed the numerous and continuous constitutional dilemmas that the Supreme Court had tackled concerning the protections—or lack thereof—that the juvenile court systems have, since their inception, afforded youthful offenders.[76] The plurality held that

71. *Id.* at 553-54. ("The statute does not permit the Juvenile Court to determine in isolation and without the participation or any representation of the child the 'critically important' question whether a child will be deprived of the special protections and provisions of the Juvenile Court Act. It does not authorize the Juvenile Court, in total disregard of a motion for hearing filed by counsel, and without any hearing or statement or reasons, to decide—as in this case—that the child will be…transferred to jail along with adults, and that he will be exposed to the possibility of a death sentence instead of treatment for a maximum, in Kent's case, of five years, until he is 21.").

72. *See* McKeiver v. Pennsylvania, 403 U.S. 528 (1971) (plurality opinion).

73. The Court was divided on the issue: "Mr. Justice BLACKMUN, joined by THE CHIEF JUSTICE, Mr. Justice STEWART, and Mr. Justice WHITE, concluded that: 1. The applicable due process standard in juvenile proceedings is fundamental fairness…which emphasized factfinding procedures, but in our legal system the jury is not a necessary component of accurate factfinding." (internal citations omitted).

74. *McKeiver,* 403 U.S. at 534-36.

75. *Id.*

76. *Id.* at 531-34 (discussing United States Supreme Court cases, including *In re* Winship, 397 U.S. 358 (1970); DeBacker v. Brainard, 396 U.S. 28 (1969); *In re* Gault, 387 U.S. 1 (1967); *Kent*, 383 U.S. 541; Haley v. Ohio, 332 U.S. 596 (1948)).

"a jury trial is not constitutionally required in a juvenile court's adjudicative stage. . .[d]espite disappointments, failures, and shortcomings in the juvenile court procedure. . . ."[77] Justice Blackmun noted the Court's "disturbed concern about the [juvenile court] judge who is untrained and less than fully imbued with an understanding approach to the complex problems of childhood and adolescence."[78] He further opined, "Too often the juvenile court judge falls far short of that stalwart, protective, and communicating figure the [juvenile court] system envisaged."[79] But Justice Blackmun addressed more than just juvenile court judges, also noting a profusion of severe flaws in juvenile court systems generally:

> The community's unwillingness to provide people and facilities and to be concerned, the insufficiency of time devoted, the scarcity of professional help, the inadequacy of dispositional alternatives, and our general lack of knowledge all contribute to dissatisfaction with the [juvenile court] experiment.[80]

Summing up this train of thought, Justice Blackmun wrote, "the fond and idealistic hopes of the juvenile court proponents and early reformers. . .have not been realized."[81] The Supreme Court's succinct and concerned presentation of the juvenile court system's many failures renders nearly irrefutable the conclusion that juvenile offenders did not receive the protections and assistance that the founders of the juvenile court system had deemed necessary.[82] It becomes easier, too, to comprehend why juvenile offenders like Kent were not being properly rehabilitated nor deterred from continuing lives of crime.[83]

77. *Id.* at 528.

78. *Id.* at 534. (Justice Blackmun made clear, however, that such insufficiency of juvenile court judges is not always the case, expressing that there is "at…the same time…an appreciation for the juvenile court judge who is devoted, sympathetic, and conscientious….").

79. *Id.* at 544.

80. *Id.*

81. *Id.*

82. *See* Wallace, *supra* note 48.

83. *See* Kent v. United States, 383 U.S. 541 (1966).

III. History of Juvenile Waiver

Juvenile waiver laws similar to that which landed sixteen-year-old Morris Kent, Jr. in adult criminal court in the 1960s had been in effect in the United States since the earliest days of the juvenile court system.[84] Despite widespread sentiment that crimes committed by juvenile offenders should be adjudicated by particularized juvenile courts, some of the earliest of these tribunals had the ability to transfer matters to adult criminal courts.[85] Such transfers only occurred in "hard cases[,]" those involving the most serious crimes, and were usually exercised through judicial waiver, which "left transfer decisions to the discretion of juvenile court judges."[86]

By the mid-twentieth century, juvenile court judges in many states possessed the discretionary power to waive jurisdiction over such cases.[87] By the early 1970s, nearly every states' juvenile code conferred this power upon juvenile court judges.[88] "Automatic transfer laws," which mandated judicial waiver in cases involving juveniles charged with crimes such as murder and other capital offenses, were less common, as were "exclusion laws," which required that matters involving juveniles similarly charged bypass juvenile court entirely.[89] Even more rare were laws granting prosecutors discretion to charge serious juvenile offenders in adult criminal court.[90] Throughout the 1970s and 1980s, however, there was a heavy increase in automatic transfer laws, as well as "prosecutor-controlled forms of transfer. . . ."[91]

84. AM. BAR ASS'N DIV. FOR PUB. EDUC., THE HISTORY OF JUVENILE JUSTICE PART 2, 10 [hereinafter THE HISTORY OF JUVENILE JUSTICE PART 2]. *See also* Patrick Griffin et al., *Trying Juveniles as Adults: An Analysis of State Transfer Laws and Reporting*, U.S. DEP'T OF JUSTICE NAT'L REPORT SERIES BULLETIN 8 (2011) ("Laws allowing juvenile courts to waive jurisdiction over individual youth, sending "hard cases" to criminal courts for adult prosecution, could be found in some of the earliest juvenile codes and have always been relatively common.").

85. Griffin et al., *supra* note 84, at 2, 9.

86. *Id.*

87. *Id.* at 8.

88. *Id.*

89. *Id.*

90. *Id.* (Only Georgia and Florida had such laws before 1970).

91. *Id.* ("[A]utomatic and prosecutor-controlled forms of transfer

Yet, in Rhode Island in 1989, fifteen-year-old Craig Price was sentenced to less than six years for two counts of burglary and four counts of murder.[92] This seems an odd result considering Rhode Island has continuously allowed judicial waiver since 1915[93]: "With the enactment of P.L.1915, ch. 1185 . . . juveniles, defined by said Act as children under the age of 16, were, except for murder and manslaughter, exempt from [adult] prosecutions."[94] The statute was amended in 1944, changing the definition of "juveniles" to children under eighteen.[95] However, the 1944 amendment contained a more notable alteration, at least vis-à-vis situations such as Price's. The amendment granted juvenile courts jurisdiction over murder and manslaughter charges, but the "juvenile court was authorized . . . to waive its jurisdiction as to juveniles 16 or 17 years of age."[96] At age fifteen, Price did not make the cut. Thus, although Arsenault's assertion that "Rhode Island law in 1989 did not permit the State to hold *minors* past their 21st birthday, no matter what their crime[]"[97] is not fully accurate, the Family Court (successor to the Rhode Island Juvenile Court) could not waive jurisdiction over a fifteen-year-old quadruple murderer.[98]

From the mid-1980s through the end of the 1990s, concern over increases in violent crimes committed by youths prompted an intense nationwide stiffening of juvenile waiver laws.[99] Sparked by "media focus on the rise in violent youth crime that began in 1987 and peaked in 1994. . ." and outcries from the subsequently perturbed public, "legislatures in nearly every state revised or rewrote their laws to lower thresholds and

proliferated steadily. In the 1970s alone, five states enacted new prosecutorial discretion laws, and seven more states adopted some form of automatic transfer. By the mid-1980s, nearly all states had judicial waiver laws, 20 states had automatic transfer laws, and 7 states had prosecutorial discretion laws.").

92. *See* State v. Price, 820 A.2d 956, 959 (R.I. 2003).

93. 1915 R.I. Pub. Laws ch. 1185.

94. *In re* McCloud, 293 A.2d 512, 515 (R.I. 1972).

95. 1944 R.I. Pub. Laws ch. 1441; *see id.* n.5.

96. *McCloud*, 293 A.2d at 515 n.5 (explaining 1944 R.I. Pub. Laws ch. 1441).

97. *Into Another World*, *supra* note 1, at 6 (emphasis added).

98. Rhode Island dissolved its Juvenile Court system in 1961, vesting all of its powers and jurisdiction in the Family Court. *See* 1961 R.I. Pub. Laws ch. 73. *See also McCloud*, 293 A.2d at 515 n.5.

99. Griffin et al., *supra* note 84, at 9.

broaden eligibility for transfer. . . ."[100] Additionally, waiver decision-making power once vested in juvenile court judges was assigned to prosecutors, and the "individualized discretion" that juvenile court judges once possessed was superseded by "automatic and categorical mechanisms."[101] Exclusion laws, for example, that had previously required that juvenile murder cases be adjudicated in adult criminal court, were expanded to include a wide array of violent crimes.[102]

The instant reaction of Warwick, Rhode Island residents to the Heaton triple murder exemplifies the terror and apprehensiveness that result from an increase in violent crime. As Arsenault explained, "The Heaton murders drove Rhode Island into a state of fear and paranoia. . . . Home owners nailed windows shut, cancelled evening walks, cuddled baseball bats in their sleep . . . and adopted watchdogs from the pounds."[103] Although fervent public concern with increasing crime is understandable, the fortified legislation was undoubtedly stringent. In fact, the Supreme Court would later rule that many of the results obtained by the intense increases in juvenile waiver legislation violated the United States Constitution.

IV. Unconstitutional Effects of Increased Juvenile Waiver Legislation

In 1986, William Thompson was convicted by jury verdict of first-degree murder in the District Court of Grady County, Oklahoma.[104] Thompson, along with three co-defendants, received the death penalty for participating in the 1983 "brutal murder" of his former brother-in-law.[105] The victim had been shot, slashed and beaten, chained to a block of concrete, and

100. *Id.*

101. *Id.*

102. *Id.*

103. *This Dark Deed*, *supra* note 6, at 7 (Not surprisingly, gun sales also soared in Warwick: "One Warwick gun dealer sold five shotguns to…women the week after the killings. Another reported selling six semiautomatic handguns. 'They're scared, scared to hell,' he said.").

104. *See* Thompson v. State, 724 P.2d 780 (Okla. Crim. App. 1986), *rev'd*, Thompson v. Oklahoma, 487 U.S. 815 (1988).

105. Thompson v. Oklahoma, 487 U.S. 815, 815 (1988).

thrown into a river.[106] Thompson was fifteen at the time of the murder.[107] Despite the gruesome details of Thompson's crime, the United States Supreme Court vacated the verdict in 1988, holding that the "'cruel and unusual punishments' prohibition of the Eighth Amendment. . .prohibits the execution of a person who was under 16 years of age at the time of his or her offense."[108] In her concurring opinion, Justice O'Connor cast aspersions on the Oklahoma legislation that led to Thompson's sentence:

> [I]n enacting a statute authorizing capital punishment for murder without setting any minimum age, and in separately providing that juvenile defendants may be treated as adults in some circumstances, the Oklahoma Legislature either did not realize that its actions would effectively render 15-year-olds death eligible or did not give the question the serious consideration that would have been reflected in the explicit choice of a particular minimum age.[109]

The *Thompson* Court also noted the conventional concepts apparently disavowed by the Oklahoma Legislature.[110] In the plurality opinion's Eighth Amendment discussion, Justice Stevens alluded to many of the same principles regarding juvenile culpability considered significant by our societies since antiquity:

> Less culpability should attach to a crime committed by a juvenile. . .since inexperience, less education, and less intelligence make the teenager less able to evaluate the consequences of his or her conduct. . . . [H]e or she is much more

106. *Thompson*, 724 P.2d at 781.

107. *Id.*

108. *Thompson*, 487 U.S. at 815; *see* U.S. CONST. amend. VIII ("Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.")

109. *Thompson*, 487 U.S. at 817 (O'Connor, J., concurring).

110. *See id.*

> apt to be motivated by mere emotion or peer pressure than is an adult. . . .[111]

Justice Stevens continued, "Given this lesser culpability, as well as the teenager's capacity for growth and society's fiduciary obligations to its children, the retributive purpose underlying the death penalty is simply inapplicable to the execution of a 15-year-old offender."[112]

Justice Stevens' stance in *Thompson*, which mirrors our societal viewpoints since antiquity in regards to juveniles' limited decision-making and judgment capabilities, is today supported by more than mere social understanding.[113] The fields of physiology and psychosociology soundly explain the differences between adolescents and adults, which account for juveniles' restricted ability to make principled judgments.[114] Samantha Schad asserts that during adolescence—ages twelve through seventeen—"the adolescent brain undergoes dramatic changes. . . . [T]he brain. . .matures."[115] During this evolutionary process, adolescents tend to "experience increases in reward seeking, which translates into vulnerability for risky behavior."[116] Numerous psychosocial factors—weighing more heavily the short-term outcomes of one's actions than the long-term, longing for peer acceptance, and sheer impulsivity—also influence adolescent decision-making, which all too commonly results in the commission of crimes.[117] Although "an adolescent's cognitive skills are fairly mature by age sixteen. . .[,]" Schad explains, "because adolescents are more prone to psychosocial immaturity, they tend to be less mature than adults when it comes to their judgment and decision making

111. *Id.* at 816.

112. *Id.*

113. *See id.*

114. *See* Samantha Schad, *Adolescent Decision Making: Reduced Culpability in the Criminal Justice System & Recognition of Capability in Other Legal Contexts*, 14 J. HEALTH CARE L. & POL'Y 375 (2011).

115. *Id.* at 377.

116. *Id.* at 378.

117. *Id.* at 380-81. Note Justice Stevens' agreement in *Thompson*: "[A Juvenile] is much more apt to be motivated by mere emotion or peer pressure than is an adult…." *Thompson*, 487 U.S. at 816.

capacity."[118] With this recent scientific explication of what has been widespread social understanding for millennia, the juvenile correction system's return to these principles appears not only socially, but also naturally necessary. And, as Justice Stevens declared in *Thompson*, the Eighth Amendment to the United States Constitution mandates such realignment.[119]

In *Graham v. Florida*, the United States Supreme Court again addressed Eighth Amendment concerns raised by juvenile sentencing.[120] In 2003, sixteen-year-old Terrance Graham, along with three other youths, attempted to rob a Florida restaurant.[121] After entering the restaurant, Graham and one of his accomplices encountered the manager, whom Graham's cohort struck in the head with a metal bar.[122] The youths thereafter fled the scene without having taken any money.[123] Graham was charged with a first-degree felony, armed burglary

118. Schad, *supra* note 114, at 381. Consider Schad's example of "how cognitive capacity and psychosocial factors affect the decision making process:"

> Imagine that a teenager is at the mall shopping with some of her friends. She wants to buy a new pair of sunglasses, but does not have the money. One friend suggests that she steal the glasses. As her friends begin to leave the store, she impulsively puts the sunglasses in her purse. She exits the store and the alarm goes off. Because adolescent cognitive skills mature before an adolescent becomes psychosocially mature, this teenager had the cognitive skills to know that stealing is against the law. She also had the cognitive capacity to know that it is wrong. However, at the moment she puts the sunglasses in her purse, she is not thinking about the future consequences of her actions. She does not think about going to jail or appearing in front of a judge. She is only thinking about the immediate reward of having the glasses she cannot afford. She is thinking about impressing her friends. She is not considering five minutes from now when she will be sitting in a police car waiting for her parents to pick her up. While she may have the cognitive capacity to make the right decision, her judgment is impaired by the factors of psychosocial immaturity.

Id.

119. *See Thompson*, 487 U.S. at 815.
120. Graham v. Florida, 560 U.S. 48 (2010).
121. *Id.* at 53.
122. *Id.*
123. *Id.*

with assault or battery, and a second-degree felony, attempted armed-robbery.[124] He was charged as an adult pursuant to Florida's prosecutorial-discretion statute, which places in the prosecutor's hands the decision of whether to charge sixteen- and seventeen-year-olds facing felonies as juveniles or adults.[125]

Pursuant to a plea deal, Graham pleaded guilty to both crimes, but the trial court "withheld adjudication of guilt. . ." and released Graham on three years' probation.[126] Less than six months later, Graham, then seventeen, and two twenty-year-old accomplices committed a home-invasion armed-robbery.[127] Graham attempted a second robbery that same night, and was subsequently arrested after a high-speed chase with police.[128] During police questioning, Graham admitted to having committed "two to three" other robberies.[129]

Upon violating probation, Graham was sentenced for the first- and second-degree felonies stemming from the botched restaurant robbery.[130] The seventeen-year-old received the maximum penalty allowable for each charge under Florida law—fifteen years for attempted armed robbery and life imprisonment for armed burglary.[131] The latter charge, however, is yet more relentless than it appears on its face, for, due to Florida's termination of its parole system, a life sentence in Florida meant that Graham would indubitably serve a life sentence without the possibility of parole.[132] The trial judge expressed his reasoning for imposing the harshest possible sentence in disregard of the Florida Department of Corrections'

124. *Id.*

125. FLA. STAT. § 985.557(1)(b) (2007) (formerly—and at the time of Graham's prosecution—FLA. STAT. § 985.227(1)(b) (2003)). *See supra* Part II discussion of prosecutorial discretion.

126. *Graham*, 560 U.S. at 53-54.

127. *Id.*

128. *Id.* at 54-55.

129. *Id.* at 55. (Similar to Morris Kent, Jr., Graham continued a life of crime while on probation. In Kent's situation, the failure of the juvenile probation system to rehabilitate and redirect young wrongdoers is apparent. Graham, however, was serving probation in Florida's *adult* system. Evidently, Florida's adult system did an equally poor job of correcting Graham's criminal behavior.). *See* Kent v. United States, 383 U.S. 541 (1966).

130. *Graham*, 560 U.S. at 48.

131. *Id.* at 57.

132. *See* FLA. STAT. § 921.002(1)(e) (2003).

recommendation that Graham receive a sentence of not more than four years, as well as the State's recommendation that Graham serve thirty years for armed robbery and fifteen years for attempted armed burglary:

> [Y]ou had a judge who took the step to try and give you direction through his probation order to give you a chance to get back onto track. . . . And I don't know why it is that you threw your life away. . . . [I]f I can't do anything to help you, if I can't do anything to get you back on the right path, then I have to start focusing on the community and trying to protect the community from your actions. . . . [T]hat is where we are today. . . . You've evidently decided this is the direction you're going to take in life, and it's unfortunate that you made that choice. I have reviewed the statute. I don't see where any further juvenile sanctions would be appropriate. I don't see where any youthful offender sanctions would be appropriate.[133]

Yet the trial judge's comments do not harmonize with the understanding of juvenile culpability deemed by Justice Stevens in *Thompson* to be pivotally important to the proper treatment of juvenile offenders under the Eighth Amendment.[134] Nor do his words conform to scientific fact.[135] To express that there is no hope for a juvenile offender, that he has made a conscious decision at age seventeen to adhere to a continued and ceaseless life of crime until the end of his days, is to deny the youth's ability to change; it is to disregard the scientific factors that affect adolescent decision-making and risk analysis.[136] It is also to disavow a social conviction that has been accepted for thousands of years—that adolescents, due to various forces acting upon and within them, are plagued by an inability to align

133. *See Graham*, 560 U.S. at 56-57.
134. *See* Thompson v. Oklahoma, 487 U.S. 815 (1988).
135. *See supra* notes 113-18 & accompanying text.
136. *See* Schad, *supra* note 114.

themselves with rigid morality.[137]

The United States Supreme Court likewise disagreed with the trial judge's sentiment.[138] The Supreme Court granted certiorari to settle Graham's contention that his sentence of life imprisonment without the possibility of parole violated the Eighth Amendment's Cruel and Unusual Punishment Clause.[139] Justice Kennedy delivered the opinion of the Court, in which he expressed an attitude antithetical to that professed by the trial judge who handed down Graham's sentence.[140] The opinion begins with an air of intensity, as Justice Kennedy explained the Eighth Amendment's import: "The Cruel and Unusual Punishment Clause prohibits the imposition of inherently barbaric punishments under all circumstances. . . . [U]nder the Eighth Amendment, the State must respect the human attributes even of those who have committed serious crimes."[141] Justice Kennedy noted that juveniles are "less deserving of the most severe punishments. . ." due to their "lessened culpability. . .[,]"[142] expressing a view of juvenile culpability akin to that conveyed by Justice Stevens in *Thompson*. In support of its position, the Court noted juveniles' slighter understanding of responsibility, their vulnerability to peer pressure, and their relative immaturity.[143] Further, relying on the scientific discourse that is the subject of Schad's work, the Court stated that juvenile malefactors are indeed more likely to reform than their adult counterparts.[144] Specifically, the Court explained, "developments in psychology and brain science continue to show fundamental differences between juvenile and adult minds. For example, parts of the brain involved in behavior control continue to mature through late adolescence."[145] Justice Kennedy put it simply: "Juveniles are more capable of change than are adults. . . . '[I]t would be misguided to equate the failings of a minor with those of an adult, for a greater possibility exists that a minor's

137. *Id.*
138. *Graham*, 560 U.S. at 48.
139. U.S. CONST. amend. VIII.
140. *Graham*, 560 U.S. at 48.
141. *Id.* at 59 (internal citations omitted).
142. *Id.* at 68 (citing Roper v. Simmons, 543 U.S. 551, 569 (2005)).
143. *Id.* at 68 (citing *Roper*, 543 U.S. at 569-70).
144. *Id.*
145. *Id.* at 68.

character deficiencies will be reformed.'"[146]

The *Graham* Court held that sentencing "juveniles," which it defined as all convicts under the age of eighteen, who had not committed homicide to life imprisonment without the possibility of parole violates the Eighth Amendment's Cruel and Unusual Punishment Clause.[147] Justice Kennedy explained that sentencing juveniles to life imprisonment without the possibility of parole entails an exceptionally more merciless punishment than when the same sentence is handed to older convicts,[148] noting that "[a] 16-year-old and a 75-year-old each sentenced to life without parole receive the same punishment in name only."[149] The difference being that a juvenile offender will generally remain imprisoned for a greater portion of his or her life and will generally serve more years than adults likewise sentenced.[150] The Court exempted juveniles convicted of homicide from its holding on the grounds that, despite their age, such adolescent wrongdoers exhibit greater moral culpability than juveniles convicted of felonies that, although serious, do not involve killing.[151]

Terrance Graham received the cruel and unusual, unconstitutional sentence of life imprisonment without the possibility of parole due to the compounding effects of multiple factors. Contrary to early juvenile court practices in the United States, the prosecutor, rather than the juvenile court judge, chose to remove Graham from the juvenile forum.[152] Considering the trial judge's exceeding departure from the well-settled jurisprudential understanding of juvenile culpability, it is clear that Graham's case was not adjudicated in a court that was appropriately geared to properly sentence adolescent

146. *Id.* (citing *Roper*, 543 U.S. at 570).

147. *Id.* at 48.

148. *Id.* at 71.

149. *Id.*

150. *Id.* at 50.

151. *Id.* at 69. The *Graham* Court also reasoned that, "[w]ith respect to life without parole for juvenile non-homicide offenders, none of the goals of penal sanctions that have been recognized as legitimate—retribution, deterrence, incapacitation, and rehabilitation, provides an adequate justification." *Id.* at 71-74.

152. *See supra* Part II discussion of juvenile waiver.

wrongdoers.[153] There was also a rather enigmatic problem at play, similar to the one identified by Justice O'Connor in *Thompson*, concerning the results of apparently hasty, ill-considered legislation.[154] Florida legislation at the time of Graham's sentencing was amiss. As the "[s]tate acknowledged at oral argument[,]. . .even a 5–year–old, theoretically, could receive [life without the possibility of parole] under the letter of the law."[155] The ridiculousness of such a statutory effect illustrates an unquestionable lack of "deliberate, express, and full legislative consideration."[156] The various forces that acted upon Graham and led to his unconstitutional sentence illustrate the collective interaction among elements within the juvenile correction system, which together culminate in the overall failure of that system.

V. Conclusion

This Comment's historical analysis seeks to inculcate its readers with an understanding that, due to an array of scientific factors, juvenile wrongdoers are quite often less culpable for their criminal acts than their adult counterparts. The necessary changes to the American juvenile correction system are many. And with each and every necessary change, roadblocks to their effectuation are certain. Monetary deficiency may be the most arduous difficulty that reformation of the juvenile correction system currently faces. States nationwide must succeed in tackling this currently overarching dilemma before juvenile correction systems will become properly funded and staffed, and therefore properly equipped to address their many failures. Nevertheless, the Supreme Court has interpreted our Constitution's Eighth Amendment as requiring certain changes within the juvenile correction system, which the States cannot deny. Societal principles, millennia-old as well as currently

153. *See Graham*, 560 U.S. at 48.

154. *See* Justice O'Connor's criticism of the Oklahoma statute that allowed capital punishment of minors who were under the age of sixteen at the time of their offense. Thompson v. Oklahoma, 487 U.S. 815, 815 (1988) (O'Connor, J., concurring).

155. *Graham*, 560 U.S. at 67.

156. *Id.*

operative, and scientific support thereof also mandate necessary changes. The States and their judiciaries cannot ignore the demands of societal mores and scientific proof any more than they can decline to adhere to the Supreme Court's interpretation of the United States Constitution.

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After confessing in 1989 to the brutal Spencer and Heaton murders, the Rhode Island Family Court ordered Craig Price committed to the Rhode Island State Training School until October 11, 1994, Price's twenty-first birthday.[157] Prosecutors, along with the entire State of Rhode Island, considered the sentence abhorrently deficient.[158] When Price's public defender learned that prosecutors were contemplating the possibility of having Price committed to a mental institution, she immediately advised Price not to cooperate with psychiatric personnel, despite a court order to do so.[159] In 1993, Price was charged with assault and extortion after allegedly threatening to "snuff out" a Training School correctional officer.[160] "Craig Price became the first Training School youth in memory prosecuted for a verbal confrontation[.]"[161] Price was found guilty by jury verdict and received a fifteen-year sentence, seven to serve, eight suspended.[162] Price thereafter continued to defy repeated court orders to undergo psychiatric evaluation.[163] Rhode Island Attorney General Jeffrey Pine urged the court to hold Price in contempt for his ongoing failure to cooperate.[164] The trial court agreed and imposed a one-year sentence for civil contempt,

157. Mark Arsenault, *'Flame of Hope'—Craig Price's Story*, THE PROVIDENCE J., Mar. 9, 2004, at A-01 [hereinafter *Flame of Hope*].

158. *Id.*

159. *Id. See* State v. Price, 820 A.2d 956, 960 (R.I. 2003) ("[H]is withdrawal from the diagnostic and treatment process resulted from fear expressed by his attorney that this psychiatric examination might lead to a civil commitment under the Mental Health Law, G.L.1956 chapter 5 of title 406, that could result in his being placed into a psychiatric facility for commitment beyond his twenty-first birthday.") *Id.*

160. *Flame of Hope*, *supra* note 157 (internal quotations marks omitted).

161. *Id.*

162. *Id.*

163. *Price*, 820 A.2d at 963.

164. *Id.*; *Flame of Hope*, *supra* note 157.

which would terminate at anytime upon Price's compliance with the court order.[165] Price finally agreed to undergo psychiatric evaluation, but doctors reported that Price had lied during the sessions about his involvement in the Spencer and Heaton murders.[166] The prosecution then moved to hold Price in criminal contempt.[167] Price was found guilty by jury verdict of criminal contempt and sentenced to twenty-five years, ten to serve, fifteen suspended contingent upon good behavior.[168] Price failed to satisfy the conditions of his suspended sentence, when in 1998 he "stomped on" a correctional officer, and in 2001 beat up another inmate.[169]

Price is currently serving his twenty-five-year sentence for criminal contempt. If he can manage to avoid further prosecution, the 300-pound Warwick Slasher who, when Arsenault first met with him in 2002, wore a XXXXL prison jumpsuit and was capable of bench-pressing 485 pounds,[170] is scheduled for release in 2022.[171]

165. *Price*, 820 A.2d at 963.
166. *Flame of Hope*, *supra* note 157.
167. *Price*, 820 A.2d at 963.
168. *Flame of Hope*, *supra* note 157.
169. *Id.*
170. *Into Another World*, *supra* note 1.
171. *Flame of Hope*, *supra* note 157.