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Youth and Prison Culture

In 1994 I walked into the system a teen and spent the next several decades being raised by the system. For the next decade the men I shared my space with and the guards that watched over me would become the systems version of foster parents. While my immaturity was written on my face and in my behavior in the systems eyes I was an adult because I met the definition of an “adult” based on a hard line drawn based on my age. It would take another 20 years before the science behind adolescent brain development began to question our understanding of why and youth offender crime like mine occurred. In hindsight the writing was on the wall but no one could see it then.

At the time of my arrest the science on adolescent brain development for youth 16-21 years old was in its infancy. Before I was sentenced Dr. Joel Alexander, a psychologist for the Western Oregon State College, who specialized in psychology and neuropsychology was hired to examine me. At the time of the exam he was doing a research on what he called “extreme group designs”.¹ He described his research as looking at “[a]ny group that you can identify in the population that is extreme in nature”.² He said these extreme groups “help, shall we say, delineate the normal population.”³ The two groups that Dr. Alexander identified as being of the most interest to him were “homosexuals” and “people charged with murder”.⁴ Because I fell into the latter category he was hired to examine me and render an opinion on if my neurological activity fell into the “normal population”.

¹ *State of Oregon v. Jacob Barrett*, Case No. 9402002CR, Sentencing Hearing held September 28, 1995. Testimony of Joel Amille Alexander (hereafter Alexander Testimony).

² Alexander Testimony, Id.

³ Alexander Testimony, Id.

⁴ Alexander Testimony, Id.

Dr. Alexander gave me a battery of tests to, in his words, “pinpoint any possible intellectual deficiencies, any possible locations of mental impairment, brain injury and so forth.”⁵ He was basing his work off of Dr. Adrain Raines of the University of Southern California who had published a book on “psychopathy, criminal behavior, looking at the psychophysiological aspects” of criminal behavior.⁶

Dr. Alexander described his work and that of Dr. Raines like “[t]he old field of phrenology, back in the 1800’s” except that his study involved looking at “the bumps in [] brain activity”.⁷ He had studied a whole 12 people and developed a theory on extreme group characteristics.⁸ In the criminal extreme group he identified “three major categories”: (1) “individuals who have severe brain damage, who are almost retarded in their mental abilities”; (2) “16 to 25 year old group, who are heavy drug users, hyperactive and getting in a lot of trouble at this young age”; and (3) a “psychopathy group” or “serial killer type of person”.⁹

After giving me a battery of tests and a modern version of phrenology Dr. Alexander testified that I had “a distinct absence of activity in the central to frontal regions of [my] brain” and that:

Well, for the group that he’s seemingly fitting into, he’s definitely non-normal. He’s fitting easily into the group, one of the three groups I identified, namely the young drug used group who use high amounts of LSD, methamphetamine, especially methamphetamine.¹⁰

I thought I was a normal teenager who had a drug addiction but his findings made me question that. It made me wonder what was wrong with me. I couldn’t help but begin to see myself as something different and I’m sure those who seen me as evil and worth

⁵ Alexander Testimony, Id.

⁶ Alexander Testimony, Id.

⁷ Alexander Testimony, Id.

⁸ Alexander Testimony, Id.

⁹ Alexander Testimony, Id.

¹⁰ Alexander Testimony, Id.

throwing away would feel justified in their feelings at the declaration I wasn't normal. Anyone, including homosexuals, because we belonged to the same "extreme group" who didn't have "normal" brain activity, were seen as something other than "normal".

When asked about how a youth like me could commit a murder Dr. Alexander testified:

In looking at his history and circumstances of the brain activity and everything, it's definitely an avalanche out of control. This – a crime like this is bound to happen sometime sooner or later.¹¹

In other words, it was predictable that a drug addicted teenager was likely to get out of control and commit a crime. My attorney followed up with the question:

Okay. The point I'd like to get to, though, is if he's – Well, when he's incarcerated for a very long time what would be your prognosis for him, say in 30 years, under the circumstances of being in a structured environment[.]¹²

Dr. Alexander answered:

Over time the evidence suggests that when people become more adultlike and their brain becomes more adultlike, they learn compensation techniques. In the mid 30's, mid 40's they usually are able to learn how to compensate for some of the deficiencies. *So long as their environment is conducive to that structure.*¹³

In other words, once my brain became more adult like I would mature as long as I was in an environment that promoted that type of maturity and rehabilitation. It is also telling they understood that I didn't have the brain development of an adult but were still willing to try me as an adult. Which fits into the argument that environment is everything when you are talking about rehabilitation. But prison isn't an environment that promotes maturity and rehabilitation. In fact, in an exchange between the prosecutor Dr. Alexander the prosecutor essentially admitted the environment was primed to be anything but rehabilitative:

PROSECUTOR: Do you think Jacob Barrett's life in prison is

¹¹ Alexander Testimony, Id.

¹² Alexander Testimony, Id.

¹³ Alexander Testimony, Id. (emphasis added).

gonna be less stressful than it is on the outside
or more stressful than it is on the outside?

ALEXANDER: Given that I haven't been in prison, that would
be a hard guess.

PROSECUTOR: Okay. Are you aware of some of the things that
go on in the prison?

ALEXANDER: Through dramatizations on TV and so forth.

PROSECUTOR: People trying to have – forced sex on the other
male people?

ALEXANDER: Um-hum.

PROSECUTOR: Drug use that goes on in prison? The everyday
hassle over who gets more?

ALEXANDER: Um-hum. Yes.

PROSECUTOR: He could get worse. The stress –

ALEXANDER: He could.

PROSECUTOR: He could be worse in prison when he, after 30
years.¹⁴

The prosecutor, the representative of the justice system who was suppose uphold the principles of Justice, was essentially admitting that the prison system was not designed to turn me back out into society better than when I went in. When even the officers of the justice system know that the system is not designed to rehabilitate it is time to question the design of the system altogether and why its not functioning.

Dr. Alexander's studies reflected the understanding of the human mind at that time. For example, Dr. Alexander's belief that homosexual's represent an "extreme group" outside the "normal mind" of the general population has long been debunked. The mind of someone who is gay is no different than the mind of a heterosexual, a bisexual, or anyone else for that matter.

A lot of our understanding on human nature and the mind stem from studies

¹⁴Alexander Testimony, Id.

presented in criminal cases. While Dr. Alexander's study and theories were in their infancy there was a truth in them that wouldn't come out for nearly a decade. And had they known at the time of my case what they know today about the development of the adolescent mind I may have had a very different prison experience.

The Science Behind Youth

At first glance it may seem irrelevant what my age was when I committed my crime or the science behind adolescent brain development but to truly understand my experiences in prison and why I made choices I made over the decades it is necessary to explore the science behind youth. To accomplish that we have to jump forward a decade in time.

In 2012, the U.S. Supreme Court held that mandatory life without parole (LWOP) sentence imposed on a defendant convicted of aggravated murder who was under 18 at the time of the offense violates that defendant's Eighth Amendment right to be free from cruel and unusual punishment.¹⁵ In 2016 the US Supreme Court held *Miller* to be retroactive in *Montgomery v. Louisiana*, US , 136 SCt 718, 193 LEd2d 599 (2016).

The *Miller* Court found, "youth is more than a chronological fact. It is a time of immaturity, irresponsibility, impetuosity, and recklessness. It is a moment and condition of life when a person may be most susceptible to influence and to psychological damage. And its signature qualities are all transient."¹⁶ Based upon this recognition that juveniles are both categorically less culpable and more amenable to rehabilitation, the court held they must be treated differently by the justice system¹⁷, which, of course, at the time of my case wasn't what the system was doing.

Montgomery recognized that *Miller* did not merely forbid mandatory life-without-parole sentences for those younger than 18 at the time of the offense. Rather, it

¹⁵ *Miller v. Alabama*, 567 US 460, 489, 132 S.Ct. 2455, 183 LEd2d 407 (2012)

¹⁶ *Miller*, 132 S.Ct. at 2467(internal quotations, citations and brackets omitted).

¹⁷ See *Id.* (barring sentences of life without possibility of parole for homicide for juveniles); *J.D.B. v North Carolina*, U.S. , 131 S.Ct. 2394, 2406, 180 L.Ed.2d 310 (2011) (age must be considered in determining whether child in custody for purposes of Miranda warnings); *Graham v Florida*, 560 U.S. 48, 130 S.Ct. 2011, 176 L.Ed.2d 825 (2010)(barring sentences of life without possibility of parole for juveniles convicted of nonhomicide offenses); *Roper v Simmons*, 543 U.S. 551, 125 S.Ct. 1183, 161 L.Ed2d 1 (2005)(death penalty unconstitutional as applied to juveniles).

established a categorical bar to life-without-parole sentences for "a child whose crime reflects unfortunate yet transient immaturity," regardless of whether the sentence was mandatory or discretionary.¹⁸ As *Miller* reasoned, subjecting a child to mandatory life-without-parole "precludes consideration of his chronological age and its hallmark features - among them, immaturity, impetuosity, and failure to appreciate risk and consequences."¹⁹

"[T]he clearest and most reliable objective evidence of contemporary values is the legislation enacted by the country's legislatures."²⁰ Today, unlike when I first fell, there is a direction of change toward recognizing that "late adolescents require extra protections from the criminal law" and more generally that society "treats eighteen- to twenty-year-olds as less than fully mature adults." The most persuasive evidence of a directional trend would be changes in state legislation prohibiting mandatory life imprisonment without parole for 18-year-olds.

A 2017 Report by the United States Sentencing Commission on offenders ages 25 or younger who were sentenced in the federal system between 2010 and 2015²¹ reported that 86,309 youthful offenders (aged 25 and under) were sentenced in the federal system during that five-year period.²² Of those, 2,226 (2.6%) were 18 years old, 5,800 (6.7%) were 19 years old, and 8,809 (10.2%) were 20 years old.²³ Of the 86,309 youthful offenders, 96 received life sentences. See *id.* at 48. Of those 96, 85 were 21 years or older at the time of sentencing, 6 were 20 years old, 4 were 19 years old, and only one was 18 years old.²⁴

The legal drinking age been set at 21 across the country by the National Minimum

¹⁸ *Montgomery*, 136 S.Ct at 734 (internal citations and quotations omitted).

¹⁹ *Miller*, 567 U.S. at 477.

²⁰ *Graham*, 560 U.S. at 62 (internal quotation marks and citation omitted).

²¹ United States Sentencing Commission, *Youthful Offenders in the Federal System, Fiscal Years 2010 to 2015*.

²² *Id.*, at 2

²³ See *id.* at 15

²⁴ See *id.*

Drinking Age Act.²⁵ Additionally, “between 2016 and 2018, 5 states and 285 localities raised the age to buy cigarettes from 18 to 21.”²⁶ (*Id.*, 47). Similarly, individuals typically must be 20 or 21 to rent a car and are usually assessed higher rental fees if they are under the age of 25.²⁷

Even the federal government designates individuals under the age of 23 as legal dependents of their parents for purposes of the Free Application for Federal Student Aid (FAFSA), and those under the age of 24 are dependents for tax purposes.²⁸ Under the Affordable Care Act, individuals are able to remain on their parents’ health insurance if they are 25 or younger as part of the government’s recognition of continued dependence.²⁹ In child welfare and education systems nationwide, individuals are entitled to services until they reach the age of 21. Twenty-five states have extended the eligibility for foster-care services to youth 18-21, and the Individuals with Disabilities Education Act (IDEA) permits individuals to continue to receive services through age 21 if they have a disability and have not earned a traditional high school diploma.³⁰

Some lines originally drawn at age 18 have also begun to shift to encompass 18-

²⁵ See 23 U.S.C.A. § 158 (2012).

²⁶ See Campaign for Tobacco-Free Kids, States and Localities That Have Raised the Minimum Legal Sale Age for Tobacco Products to 21, https://www.tobaccofreekids.org/assets/content/what_we_do/state_local_issues/sales_21/state_localities_MLSA_21.pdf ; See also Jennie Bergal, Oregon raises cigarette buying age to 21, Washington Post, (Aug 18, 2017), https://www.washingtonpost.com/national/health-science/oregon_raises_cigarette_buyin_age_to21/2017/08/18/83336667a_811e_11e7_902a_2a9f2d808496_story.html?utm_term=.132d118c0d10.

²⁷ See e.g., What are Your Age Requirements for Renting in the US and Canada, ENTERPRISE.COM, <https://www.enterprise.com/en/help/faqs/car-rental-under-25.html> (last visited May 8, 2018); Restrictions and Surcharges for Renters Under 25 Years of Age, BUDGET.COM, <https://www.budget.com/budgetWeb/html/en/common/agePopUp.html> (last visited May 8, 2018); Under 25 Car Rental, HERTZ.COM, https://www.hertz.com/rentacar/misc/index.jsp?targetPage=Hertz_Renting_to_Drivers_Under_25.jsp (last visited Oct 16, 2017).

²⁸ See Dependency Status, FEDERAL STUDENT AID, <https://studentaid.ed.gov/sa/fafsa/filing-out/dependency> (last visited May 8, 2018); Dependents and Exemptions 7, I.R.S., <https://irs.gov/faqs/filing-requirements-statusdependents-exemptions/dependents-exemptions/dependents-exemptions-2> (last visited Sept 21, 2017); 26 U.S.C.A. § 152 (2008).

²⁹ 42 U.S.C.A. § 300gg-14 (2010).

³⁰ See Extending Foster Care Beyond 18, NAT’L CONFERENCE OF STATE LEGISLATURES (July 28, 2017), <https://www.ncsl.org/research/human-services/extending-foster-care-to-18.apxs>; 20 U.S.C.A. § 1412(a)(1)(A)(2016).

to 20-year-old's. For example, a Kentucky state court in *Bredhold v. Kentucky*³¹, declared the state's death penalty statute unconstitutional as applied to those under the age of 21, based on a finding of a "consistent direction of change" that "the national consensus is growing more and more opposed to the death penalty, as applied to defendants eighteen (18) to twenty-one (21)." The Kentucky court cited the fact that, in the 31 states with a death penalty statute, a total of 9 defendants under the age of 21 at the time of the offense were executed between 2011 and 2016.

In another case the District Court of Connecticut³² addressed whether *Miller* protected an 18 year old. Luis Cruz was 15 years old when he joined a gang. On May 14, 1994 when he was 18 years and 20 weeks old, he and another member of the gang carried out a gang ordered murder. In the process, Cruz killed Tyler White, another gang member. He was ultimately convicted of the murders and sentenced to four concurrent LWOP terms. He filed a petition for a writ of habeas Corpus in federal court appealing his conviction and arguing "that *Miller's* prohibition of mandatory life imprisonment for adolescents should also be applied to those who were 18 at the time of their crimes because scientific research and national consensus indicate that 18 year olds exhibit the same hallmark features of youth that justified the decision in *Miller*."³³

The District Court of Connecticut held an evidentiary hearing at which expert witness, Dr. Laurence Steinberg testified about the status of scientific research on adolescent brain development. Dr. Steinberg testified that he had previously testified as an expert "in state court in Kentucky,³⁴ in state court in Delaware, in federal court on Southern district of New York, in state court in Pennsylvania, and before a Parole Board in Arkansas."³⁵ Importantly, Dr. Steinberg testified he was involved in crafting the *amicus* briefs in the United States Supreme Court in *Roper v. Simmons*, *Graham v.*

³¹ *Bredhold v. Kentucky*, Case No. 14-CR-00161, Fayette Circuit Court.

³² *Cruz v. U.S.*, Case No. 11-cv-787 (JCH).

³³ *Cruz, Id.*

³⁴ In that case, the Fayette Circuit Court of the Commonwealth of Kentucky declared Kentucky's death Penalty statute unconstitutional as applied to defendants under twenty-one (21) years of age, on the basis of Dr. Steinbergs testimony. See Commonwealth of Kentucky v. Travis Bredhold, Fayette Circuit Court, Seventh Division, Case No. 14-CR-161 (Aug. 1, 2017),

³⁵ (*Cruz v. U.S.*, Case No. 11-cv-787 (JCH). Testimony of Laurence Steinberg, September 13, 2017, Docket No. 111, at Transcript- 5:10-16).

Florida, and *Miller v. Alabama*, as the lead scientist for the American Psychological Association “to make sure the that the science of adolescent development was represented in the briefs.”³⁶

Dr. Steinberg testified that the working definition of adolescence is “the period spanning ages 10 to up until 21.”³⁷ He explained that there are different phases of development within adolescence, testifying that scientists who study adolescence divide it into three phases: early adolescence, from 10 to 13, middle adolescence, approximately 14 to 17, and late adolescence, 18 to 21.³⁸

Dr. Steinberg testified that research into late adolescent brain development did not occur until recently and from 2000 into the middle or later part of the decade, most research on adolescent brain development focused on people younger than 18; and that it wasn’t until around 2010 research began to accumulate into brain development beyond 18.³⁹ Dr. Steinberg was asked about two articles he co-authored, *Young Adulthood as a Transitional Legal Category: Science, Social Change and Justice Policy* and *When does a juvenile become an adult? Implications of law and policy*. He testified that both articles represent reliable scientific knowledge as to late adolescence and there is no “question or debate in the scientific community about the findings [in either of] these articles”⁴⁰

Dr. Steinberg testified about the numerous ways in which the brain’s behavior of 18 to 20-year olds are more similar to younger adolescents than they were to adults.⁴¹ When questioned by the *Cruz* Court⁴² Dr. Steinberg reiterated that he defines late adolescence at 18, 19, 20, and young adult at over 20.⁴³ When asked, what the confidence level he had with where the line should be drawn in a psychological sense, Dr Steinberg testified:

³⁶ Steinberg Tr- 36:1-11.

³⁷ Steinberg Tr- 6:12-16, 7:4-6.

³⁸ Steinberg Tr- 11:5-11; 13:9-14.

³⁹ Steinberg Tr- 13:15 to 14:25.

⁴⁰ Steinberg Tr- 15:1-8, 15:10-15, 16:4-8; 16:19-25; 17:5-11; 17:12-17; 18:15-18, and 19:3-5.

⁴¹ Steinberg Tr- 19:16 to 31:9.

⁴² Steinberg Tr- 58:17.

⁴³ Steinberg Tr- 60:19-22.

These labels. These are short hands that we use for the purpose of communication. A lot of development, in fact, most of development is gradual and where we choose to draw lines for purposes of creating these labels or for purposes of law, it is not arbitrary but reasonable people might disagree as to whether it should be 21 or 22. If I may, to the extent that a different way to answer the question is, am I confident is still going on? Yes, Absolutely confident.⁴⁴

Dr. Steinberg testified that there was no statistical difference between a 17 and 18 year old.⁴⁵ The Court interjected a critically important question:

Q. Just based on something that you said a moment ago or it was imbedded in a very long answer of something you said a moment ago, I want to have the record be clear. Is it your opinion to a reasonable degree of psychological science certainty that the findings which underpinned your conclusions as to the petitioner's in, for example, Graham, under 18, actually they were 14 but the opinion says under 18, you have the same opinion as to 18?

A. Yes. And had that been the question that was asked in Graham, I would have said the same things. I would have changed the age in the brief.

Q. The number would have changed?

A. Exactly.

Q. If someone said could you change it to 21, would you have been able to do that based upon your expertise as a psychologist?

A. I don't think I would be confident enough. I think I would be confident enough about scientific certainty, I am more certain about 20 than I am about 21.

Q. As to 18?

A. Absolutely certain.

Q. I was asking and if you didn't understand me, when I was using 18, 20, 22, I was referring to a person who nominally has that age. In other words, not under, but is at the moment a 20-year-old, i.e., a person who could be

⁴⁴ Steinberg Tr- 61:20 to Tr-62:4.

⁴⁵ Steinberg Tr- 69:6-16.

20 years and a day or 20 years and 11 months and 29 days.

A. That's how I understood your question.⁴⁶

Neurological maturity requires the normal development of a number of different regions and symptoms within the human brain.⁴⁷ Two structures have particular relevance to questions of criminal culpability, the limbic system and the prefrontal cortex. The limbic system, which includes the amygdale and the nucleus accumbens, is associated with emotional and motivational processes and the “fight or flight” responses.⁴⁸ The prefrontal cortex controls the “executive functions,” including emotional regulation, impulse control, working memory, risk assessment and the ability to evaluate future consequences.⁴⁹ When fully developed, it modulates impulsive behavioral urges emanating from the amygdale and other structures of the limbic system.⁵⁰ The structures of the limbic system lie deep within the brain and develop earlier and at a faster rate than does the pre-frontal cortex.⁵¹

Through adolescence and into early adulthood, the brain undergoes a thinking process or “pruning”. Redundant and cumbersome neural connections within the brain's grey matter begin to close down, channeling electrical brain activity into fewer and stronger neural pathways.⁵² This pruning process occurs first in areas associated with the

⁴⁶ Steinberg Tr- 70:9 to 71:18.

⁴⁷ In the *Miller* case the American Medical Association and the American Psychological Association both filed amici curiae briefs discuss the relevant psychological research. These two briefs discuss the relevant psychological research and the science of juvenile brain development in significant detail. See Brief for the American Psychological Association et al., Amici Curiae in Support of Petitioners, *Miller v Alabama*, __US__, 132 S.Ct. 2455 (2012)(hereinafter “APA Brief”); also Brief for the American Medical Association et al., as Amici Curiae in Support of Neither Party, *Miller v Alabama*, __US__, 132 S.Ct. 2455 (2012)(hereinafter “AMA Brief”).

⁴⁸ Abigail A. Baird et al., Functional Magnetic Resonance of Facial Affect Recognition in Children and Adolescence, 38 *J. Am. Acad. Child & Adolescent Psychiatry* 1,1 (1999)

⁴⁹ Elizabeth Sowell et al., In Vivo Evidence for Post-Adolescent Brain Maturation in Frontal and Striatal Regions, 2 *Nature Neurosci.* 859, 860 (1999).

⁵⁰ B.J. Casey & Kristina Caudle, The Teenage Brain: Self Control, 22(2) *Current Direct. In Psych.Sci.* 82-87, 84 (2013).

⁵¹ Alexandra O. Cohen & B.J. Casey, Rewriting Juvenile Justice: The Intersection of Developmental Neuroscience and Legal Policy, 18 *Trends in Cog. Sci.* 63, 63 (Feb.2014).

⁵² Sara Durston et al., Anatomical MRI of the Developing Human Brain: What Have We Learned? 40 *Am. Acad. Child & Adolescent Psychiatry* 1012, 1014 (2001).

limbic system and only in the pre-frontal cortex, one of the last regions to develop.⁵³

A second process aids the development of these stronger, more efficient pathways. Fatty, white matter called myelin begins to surround these developing pathways insulating them and allowing electrical impulses to accelerate and flow more smoothly between regions of the brain.⁵⁴ As these processes of pruning and myelination continue through adolescence and into adulthood, the prefrontal cortex exercises more control over the earliest developing, lower level regions of the brain.

The dynamic nature of this development accounts for a great deal of the behavioral changes youth exhibit as they age.⁵⁵ Until fully reaching mature adulthood, young people's behavior and decision making are more heavily influenced by the amygdale and other more primitive neurological regions.⁵⁶ A youth's reliance on these earlier developing regions results in an imbalance of the neurotransmitters that regulate pleasure and the desire for rewards, dopamine and serotonin.⁵⁷ Higher dopamine levels produce correspondingly stronger desires for immediate pleasure and gratification, while their less developed neurological structures make youth less able to resist these heightened urges.

The areas of the brain that regulate cognition and logic develop relatively early in adolescence.⁵⁸ However, social and emotional maturity continue to develop well into early adulthood with the developing pre-frontal cortex.⁵⁹ In other words, teenagers have the neurological foundation to support logical, rational thinking, but lack self-restraint

⁵³ Cohen & Casey, *supra* at 63

⁵⁴ Elkhonon Goldberg, *The Executive Brain: Frontal Lobes & The Civilized Mind*, 144 (Oxford Univ. Press 2001).

⁵⁵ Neir Eshel et al., *Neural Substrates of Choice Selection in Adults and Adolescents*, 45 *Neuropsychologia* 1270, 1270-1271 (2007); Kathryn Modechi, *Addressing Gaps in the Maturity of Judgment Literature: Age Differences and Delinquency*, 32 *Law & Hum. Behav.* 78, 79-80 (2008).

⁵⁶ Cohen & Casey, *Supra* at 64.

⁵⁷ Laurence Steinberg, *Adolescent Development and Juvenile Justice*, 5 *Ann Rev. Clinical Psychol.* 47, 54 (2008).

⁵⁸ Thomas Grisso et al., *Juveniles' Competence to stand trial*, 27 *Law & Hum. Beh.* 333-334 (2003); Daniel Keating, *Cognitive and Brain Development*, in *Handbook of Adolescent Psychology* 45, 64 (Richard Lerner & Laurence Steinberg eds., 2nd ed. 2004).

⁵⁹ Elizabeth Cauffman & Laurence Steinberg, *(Im)maturity of Judgment in Adolescence*, 18 *Behav. Sci & L.* 741, 756, 758 (2000).

and the ability to fully comprehend consequences, especially in emotionally charged settings.⁶⁰

Until further neurological maturity, young people in general have less ability to control their emotions, clearly identifying consequences, and make reasoned decisions than they will when they enter their late twenties and beyond. Neurological and physiological evidence suggests the “maturity of judgment” increases as a person progresses through adolescence to late-adolescence, young-adulthood and finally adulthood.⁶¹ “[P]hysiological research suggests that age-based brain maturation, which may be linked to maturity of judgment factors does not occur until the early twenties”⁶². The prefrontal cortex, the portion of the brain which controls executive functioning, “remains structurally immature until early adulthood, around the mid-twenties. Until that time, adolescents’ decision-making and responses to stimuli are largely directed by...more primitive neurological regions [of the brain].”⁶³

Psychological studies and controlled observations of young people’s behavior demonstrate that the same impulses to explore and experiment that allow youth to learn also compel them towards risky, sensation-seeking behaviors. Adolescent scores significantly lower than adults on assessments measuring “impulse control” and “suppression of aggression”⁶⁴ Even youth who have developed cognitive abilities similar to adults do not have the same ability to self regulate their behaviors, modulate their emotions or weigh the consequences of their actions.⁶⁵

The science proves that youth reduces culpability and is therefore relevant to the

⁶⁰ Id. At 743-745; Bonnie Halpern-Felsher & Elizabeth Cauffman, Costs and Benefits of a Decision: Decision-Making Competence in Adolescents and Adults, 22 J. Applied Development Psychol., 264-271 (2001).

⁶¹ Katheryn Lynn Modecki, Addressing Gaps in the Maturity of Judgment Literature: Age Differences and Delinquency, 32 Law & Hum. Behav. 78, 89-90 (2008).

⁶² Id. at 79

⁶³ Nick Straley, Miller’s Promise: Re-evaluating Extreme Criminal Sentences for Children, 89 Was.L.Rev. 963, 971 (2014).

⁶⁴ Cauffman & Steinberg, supra at 748-49, 754; see also, Laurence Steinberg et l., Age Differences in Sensation Seeking and Impulsivity as Indexed in Behavioral and Self-Report, 44 Developmental Psychol. 1764, 1774-76 (2008).

⁶⁵ APA Brief at 8; see also Laurence Steinberg, Adolescent Development and Juvenile Justice, 5 Ann. Rev. Clinical Psychol. 47, 55-56 (2008).

sentence imposed upon an individual defendant. “[T]he relevance of youth as a mitigating factor derives from the fact that the signature qualities of youth are transient; as individuals mature, the impetuosity and recklessness that may dominate in younger years can subside.”⁶⁶ And so, young people must be treated differently in some circumstances. “An offender’s age is relevant to the Eighth Amendment, and criminal procedure laws that fail to take defendants’ youthfulness into account at all would be flawed.”⁶⁷ However, these transitory characteristics do not require that all young people be treated differently in all circumstances.

Rather, the Supreme Court has acknowledged that the relevance of a defendant’s age to a crime will vary by crime and by individual.⁶⁸ This is a stance supported by science.⁶⁹ However, the science also justifies allowing a court to grant a young person an exceptional sentence downward when it is warranted, even for an offender older than 18.

Neurological Development Beyond A Persons Eighteenth Birthday

Eighteen does not represent a neurological milestone of any consequence. The pruning and myelination process continue well into young person’s mid-twenties.⁷⁰ As the United States Supreme Court has recognized, a young person like I was at the time of my crime, who was only days beyond my 19th birthday on the day of my offense I was no more neurologically developed than a young person 10 days short of his 18th birthday.

⁶⁶ Roper, 543 U.S. at 570 (quoting Johnson v. Texas, 509 U.S. 350, 368, 113 S.Ct. 2658, 125 L.Ed.2d 290 (1993)).

⁶⁷ Graham, 560 U.S. at 76.

⁶⁸ Cf. Mill, 132 S.Ct. 2467 (requiring courts to consider “the character and record of the individual offender or the circumstances of the offense,” and “the possibility of compassionate or mitigating factors,” including a defendant’s age, before sentencing a youth to life without parole).

⁶⁹ B.J. Casey & Kristina Caudle, The Teenage Brain: Self Control, 22(2) Current Direct. In Psych. Sci. 82-87,83 (2013) (noting that though as a group adolescents show poor self-control, there exist “striking differences” between individual adolescents in emotional regulation and decision-making).

⁷⁰ Jay N. Giedd, Structural Magnetic Resonance Imaging of the Adolescent Brain, 1021 Ann. N.Y. Acad. Sci. 77 (2004); Nitin Gogtay et al., Dynamic Mapping of the Human Cortical Development During Childhood Through Early Adulthood, 101 Proc. Nat’l Acad. Sci. 8174, 8177 (2004); see generally, Brain Changes, MIT Young Adult Development Project, <http://mit.edu/worklife/youngadult/brain.html> (2008); National Public Radio, Brain Maturity Extends Well Beyond Teen Years (2001) found at <http://www.npr.org/templates/story/story.php?storyId=141164708> (last visited January 26, 2015); Lucy Wallis, Is 25 the New cut-Off Point for adulthood, BBC News Magazine (September 23, 2013) found at <http://www.bbc.com/news/magazine-24173194> (last visited January 26, 2015).

“The qualities that distinguish juveniles from adults do not disappear when an individual turns 18. By the same token, some under 18 have already attained a level of maturity some adults will never reach.”⁷¹ Long standing legal and societal views of early adulthood track these biological facts.

The MIT Young Adult Development Project recently found:

According to recent findings, the human brain does not reach full maturity until at least the mid-20s...[T]he rental car company have it right. The brain isn't fully mature at 16, when we are allowed to drive, or at 18, when we are allowed to vote, or at 21, when we are allowed to drink, but closer to 25, when we are allowed to rent a car.

Until a person reaches his mid-twenties, neurological immaturity limits a young person's ability to control his emotions, consider consequences and make reasoned decisions. And though brain development plays out in different ways with different people, the biological facts support that a youth who is 19 is no different than a youth who is 17.

State Raised

The science behind youth brain development is important when you start looking at youth who are raised in the adult prison system and how that environment affects them from the moment they enter the system. There are different kinds of state raised prisoners. The first are those who have literally grown up in prison; they were in the juvenile system before being moved into the adult system, and the other are those like myself, who didn't meet the states definition of a juvenile who were 18 to 21 years old when they came into the system. In either case, they start their incarceration young and spend their entire youth and adulthood growing up behind the prison walls. In both cases, these youth have an arrested development in their emotional maturity.

Out in society men and women have a variety of normal social interactions over their life time that help them develop their sense of identity and perspective. All of their emotions and empathy fall from that experience. What defines them as *adults* comes from their societal influences. Society tempers their worldview. Of course, even all that is

⁷¹ Roper, 543 U.S. at 547.

subject to the complexities of individual circumstances and experiences, but for the most part those influences define people's lives for the better or worse.

For the state raised prisoner it is a different story. From the earliest age we are told there is something wrong with who we are. The very fact we are locked up informs we are different. In the system our "otherness" is reinforced every waking moment as the system seeps into our consciousness. From the moment we step off the transport bus we have a guard pounding into our head we have lost all rights to our body and humanity. We look like children but we are expected to "act like a man". A phrase that will define itself as we are absorbed into the system.

When I was moved from county jail to prison I went through the old Oregon City Intake Center (OCIC), which has long since been shut down. As we pulled up into a large bus garage steel doors shut behind us confining me in what feels like a prison cell for buses. When the bus doors open there is a large black officer in a hat that looks like an army drill sergeant hat. He starts yelling from outside the bus the moment the doors crack open.

"File off assholes," he yells.

As soon as we start to file off he is yelling at everyone to line up. As people pass him he shoots comments off at anyone he perceives as weak. "That's a stupid hair cut. What are you a faggot?" "Don't look at me I'll slap the punk into you." "Keep your mouths shut. You don't run anything here. This is my house." "This piece of paper says you're an asshole so that's how I'm going to treat you." As I walk by with no hair on my face looking like I'm barely into puberty he says, "They gonna fuck you pretty boy. They got your number." It immediately puts a deep grating fear in me. All the stories of rape and predators instantly run through my mind. If a guard is saying that to me now I can only imagine what will happen when I get inside to be processed. Silently I vow to do whatever I need to do in order to protect myself and survive.

That is the beginning for state raised prisoners. Our youthful undeveloped minds are ripe for the system to mold in whatever fashion the environment dictates. It forms the basis of how we see the world around us and the world as a whole. It begins to form the basis of how we see the people that will over see us for the rest of our lives. Our youth is being formed in a way that its not formed for youth in the free world.