

# Lost Potential: International Treaty Obligations and Juvenile Life Without Parole in *Edmonds v. State of Mississippi*

Andrea Templeton†

## Introduction

Mississippi laws allow children<sup>1</sup> to be tried in adult court.<sup>2</sup> Certain of these laws carry with them a mandatory sentence of life without parole for “every person who shall be convicted of murder . . . .”<sup>3</sup> On April 25, 2006, the Mississippi Court of Appeals upheld such a punishment by affirming Tyler Edmonds’s sentence of life imprisonment without parole for a crime he committed at age thirteen.<sup>4</sup> On May 10, 2007, the Supreme Court of Mississippi reversed and remanded the ruling to the Circuit Court of Oktibbeha County, citing errors that resulted in a constitutionally unfair trial.<sup>5</sup> The process by which Edmonds was originally convicted and subsequently tried was deeply flawed for reasons in addition to those considered by the court. The lack of accounting for Edmonds’s particular circumstances, namely his minor status, violated standards set forth in at least three international treaties to which the United States is a signatory.<sup>6</sup> Similarly, procedural

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†. J.D. expected 2008, University of Minnesota Law School; M.P.P. expected 2008, Hubert H. Humphrey School of Public Affairs; B.A. 2004, Middlebury College. The author would like to thank Eric Tars for his initial help, Professor Constance de la Vega for her insights, the board and staff of *Law & Inequality: A Journal of Theory and Practice* for their hard work, and Denise and Jim Templeton for their constant love and support.

1. This article uses the terms “youth,” “child,” and “juvenile” interchangeably to mean a person under the age of eighteen, which reflects common usage and the Mississippi definition. See, e.g., MISS. CODE ANN. § 43-21-105(d) (2006).

2. *Edmonds v. State*, 04-KA-02081-COA (¶ 92), 955 So. 2d 864, 894 (Miss. Ct. App. 2006), *rev’d en banc*, 04-CT-02081-SCT, 955 So. 2d 787 (Miss. 2007).

3. MISS. CODE ANN. § 97-3-21 (2006); see also *Edmonds*, 04-KA-02081-COA (¶ 95), 955 So. 2d at 895 (“This statute carries a mandatory sentence of life imprisonment and allows the trial court no discretion once a conviction for murder has been returned.”).

4. *Edmonds*, 04-KA-02081-COA (¶ 4), 955 So. 2d at 869.

5. See *Edmonds v. State*, 04-CT-02081-SCT (¶ 2), 955 So. 2d 787, 790 (Miss. 2007).

6. See Convention on the Rights of the Child, G.A. Res. 44/25, Annex, at art. 37, U.N. GAOR, 44th Sess., Supp. No. 49, U.N. Doc. A/44/49 (Nov. 20, 1989) (signed by the United States on Feb. 16, 1995) [hereinafter Children’s Convention];

issues regarding how Edmonds came to be tried in adult court and the ramifications of such a harsh sentence on a young offender speak to an emergent debate as to the justice of juvenile life without parole.<sup>7</sup>

This Comment illustrates the problems inherent in U.S. law regarding sentencing juveniles to life without parole in light of international consensus, focusing particularly on the State of Mississippi in the *Edmonds* case. Part I of this Comment provides an overview of international standards in the realm of juvenile justice, illustrating provisions that relate directly to sentencing juveniles in adult courts to life without parole. Part II provides a description of the appellate court's analysis<sup>8</sup> and highlights relevant aspects of the Mississippi Supreme Court's analysis overturning that decision.<sup>9</sup> The Comment continues in Part III with an analysis of the reasoning of both Mississippi courts, noting areas where the circuit court, on remand, could benefit from considering international standards. The Comment concludes by calling on the Mississippi Legislature to give the judiciary more discretion in the sentencing of juveniles, thereby recognizing an evolving consensus toward taking age into account when sentencing a juvenile to life without parole.

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International Covenant on Civil and Political Rights, arts. 10(3), 14(4), Mar. 23, 1976, 999 U.N.T.S. 171 (signed by the United States on Oct. 5, 1977; ratified on June 8, 1992) [hereinafter Civil and Political Covenant]; and American Declaration of the Rights and Duties of Man, arts. I, VII, XXVI, XVIII, XXIV, XXV, XXVI, Ninth Int'l Conference of Amer. States, Apr. 30, 1948, *reprinted in* Basic Documents Pertaining to Human Rights in the Inter-American System, OEA/Ser.L.V/II.92 doc. 31 rev. 3 at 17 (May 3, 1996) [hereinafter American Declaration].

7. See AMNESTY INTERNATIONAL AND HUMAN RIGHTS WATCH, *THE REST OF THEIR LIVES: LIFE WITHOUT PAROLE FOR CHILD OFFENDERS IN THE UNITED STATES* 102-04 (2005), available at <http://hrw.org/reports/2005/us1005/TheRestofTheirLives.pdf> [hereinafter AMNESTY REPORT] (documenting the use of the sentence of life without parole for child offenders and the various legal provisions it challenges); Steven Drizin & Allison McGowen Keegan, *Abolishing the Use of the Felony-Murder Rule when the Defendant Is a Teenager*, 28 NOVA L. REV. 507, 527 (2004) (arguing against using the felony murder rule to sentence a juvenile to life without parole); Bree Langemo, *Serious Consequences for Serious Juvenile Offenders: Do Juveniles Belong in Adult Courts?*, 30 OHIO N.U. L. REV. 141, 142 (2004) (arguing against the transfer of juveniles to adult courts); Wayne A. Logan, *Proportionality and Punishment: Imposing Life Without Parole on Juveniles*, 33 WAKE FOREST L. REV. 681, 684-85 (1998) (arguing that proportionality should be taken into account when sentencing juveniles to life without parole); Paul Morrissey, *Do the Adult Crime, Do the Adult Time: Due Process and Cruel and Unusual Implications for a 13-Year-Old Sex Offender Sentenced to Life Imprisonment in State v. Green*, 44 VILL. L. REV. 707, 709 (1999) (analyzing the constitutionality of sentencing children to life without parole).

8. *Edmonds*, 04-KA-02081-COA, 955 So. 2d 864.

9. *Edmonds*, 04-CT-02081-SCT, 955 So. 2d 787.

## I. With Reservations: Juvenile Offenders Under U.S. and International Law

Currently, the federal government and forty-two states allow sentencing of juveniles to life without parole.<sup>10</sup> This Section begins by looking at the relevant, domestic sentencing laws and continues with an enumeration of relevant international treaty obligations.

### A. *Juvenile Offenders Under Domestic Law*

#### 1. State Law

Under Mississippi law, “[e]very person who shall be convicted of murder shall be sentenced by the court to imprisonment for life in the State Penitentiary.”<sup>11</sup> Mississippi law also gives original jurisdiction to the state circuit court for “[a]ny act attempted or committed by a child, which if committed by an adult would be punishable under state or federal law by life imprisonment or death . . . .”<sup>12</sup> Transfer to youth court is allowed at the circuit court’s discretion as follows:

In any case wherein the defendant is a child as defined in this chapter<sup>13</sup> and of which the circuit court has original jurisdiction, the circuit judge, upon a finding that it would be in the best interest of such child and in the interest of justice, may at any stage of the proceedings prior to the attachment of jeopardy transfer such proceedings to the youth court for further proceedings . . . . If the case is not transferred to the youth court and the youth is convicted of a crime by any circuit court, the trial judge shall sentence the youth as though such youth was an adult.<sup>14</sup>

However, such a transfer is far from mandatory and depends on a determination of what is “in the best interest of such child and in the interest of justice.”<sup>15</sup>

U.S. state courts vary widely in their interpretations of the Eighth Amendment as applied to life without parole for juveniles. Some state courts have upheld the constitutionality of juvenile life

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10. AMNESTY REPORT, *supra* note 7, at 18.

11. MISS. CODE ANN. § 97-3-21 (2006).

12. MISS. CODE ANN. § 43-21-151(1)(a) (2006). Section 43, chapter 21 of the Mississippi Code is known as the “Youth Court Law.” § 43-21-101. It is also referred to as the “Youth Court Act.” *See, e.g., Edmonds*, 04-CT-02081-SCT (¶¶ 55–57), 955 So. 2d at 804–05 (Diaz, P.J., specially concurring).

13. *See* MISS. CODE ANN. § 43-21-105(d) (defining a child as “a person who has not reached his eighteenth birthday”).

14. MISS. CODE ANN. § 43-21-159(4).

15. *Id.*

without parole.<sup>16</sup> At least one court found life without parole unconstitutional when applied to child offenders,<sup>17</sup> and the Kansas Legislature ruled that life without parole disproportionately punishes minor offenders.<sup>18</sup> Other state courts have allowed for the possibility of parole when children have effectively been sentenced to life in prison.<sup>19</sup> Scholarly discussion of legislative responses to juvenile crime and the efficacy of harsh punishment for youth violence also adds to the debate about moral consensus.<sup>20</sup> This debate challenges procedural mechanisms allowing children to be tried in adult court—a typical legislative response to increasing youth violence.<sup>21</sup> Such a system, if abused, can lead to ineffective and overly harsh punishments.<sup>22</sup>

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16. See, e.g., *State v. Pilcher*, 27,085 (La. App. 2 Cir. 5/10/95); 655 So. 2d 636, 643–44 (La. Ct. App. 1995) (holding that a life sentence without possibility of parole for a fifteen-year-old murderer was not unconstitutional under the Eighth Amendment); *Swinford v. State*, 653 So. 2d 912, 918 (Miss. 1995) (upholding trial court's sentence of life imprisonment for a fourteen-year-old who aided and abetted murder); *White v. State*, 374 So. 2d 843, 847 (Miss. 1979) (upholding a sixteen-year-old child's sentence of life imprisonment without parole for armed robbery against the assertion that it was cruel and unusual punishment).

17. See *Naovarath v. State*, 779 P.2d 944, 948–49 (Nev. 1989) (holding that the sentence of life without parole constituted “cruel and unusual punishment for a mentally and emotionally disordered thirteen-year-old child” convicted of murder).

18. See John L. Patterson, *Alternative Penalty*, KANSAS CITY STAR (Mo.), Feb. 9, 2004, at B1 (writing about the Kansas Legislature's exemption of child offenders from a new bill substituting life without parole for the death penalty).

19. See *People v. Miller*, 781 N.E.2d 300, 303 (Ill. 2002) (affirming the reduction of a fifteen-year-old child's mandatory sentence of life due to the unconscionability of sentencing a child with “greater rehabilitative potential” than an adult to life without parole); *Trowbridge v. State*, 717 N.E.2d 138, 150 (Ind. 1999) (holding consideration of age consistent with an Indiana statute prohibiting life without parole sentences for youth under sixteen). Indiana law provides that a child under the age of sixteen who commits murder cannot be sentenced to death or life imprisonment without parole. IND. CODE § 35-50-2-3(b) (2004).

20. See, e.g., Samuel Marion Davis, *The Criminalization of Juvenile Justice: Legislative Responses to “The Phantom Menace,”* 70 MISS. L.J. 1 (2000) (examining the trend toward increased adult treatment of juveniles and proposing safeguards against potential abuse of the prosecutorial function); Barry C. Feld, *Juvenile and Criminal Justice Systems' Responses to Youth Violence*, 24 CRIME & JUST. 189 (1998) (proposing a sentencing policy framework that provides a graduated system of criminal sentencing consistent with the developmental continuum by recognizing youthfulness as a mitigating factor); Victor L. Streib, *The Efficacy of Harsh Punishments for Teenage Violence*, 31 VAL. U. L. REV. 427 (1997) (advocating a community focus for a long-term solution to juvenile violence).

21. See generally Feld, *supra* note 20. Feld notes that during the 1990s “nearly every state . . . amended its juvenile code in response to perceived increases in serious, persistent, and violent youth crime.” *Id.* at 189.

22. See *id.* (noting that the focus on accountability and lack of mitigation based on youth leads to disproportionate punishment of juveniles).

## 2. Federal Law

At least two provisions of the U.S. Constitution are at odds with sentencing juveniles to life without parole: the Eighth Amendment ban on cruel and unusual punishment<sup>23</sup> and the Due Process Clause of the Fourteenth Amendment.<sup>24</sup> Since a state sentencing provision will not be upheld if it is found to violate the U.S. Constitution,<sup>25</sup> an analysis of constitutional standards provides relevant background to the *Edmonds* case.

Juvenile life sentences without the possibility of parole have been upheld against challenges that they are cruel and unusual punishment in violation of the Eighth Amendment.<sup>26</sup> Such cases note that the serious nature of the offense establishes a need for a strict sentence,<sup>27</sup> or they comment on the absence of a societal consensus against such a sentence.<sup>28</sup> The U.S. Supreme Court

23. U.S. CONST. amend. VIII ("Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.")

24. U.S. CONST. amend. V ("No person shall . . . be deprived of life, liberty, or property, without due process of law . . .").

25. The Fourteenth Amendment requires:

No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

U.S. CONST. amend. XIV, § 1; *see, e.g., Roper v. Simmons*, 543 U.S. 551, 559–60 (2005) (holding that the Eighth and Fourteenth Amendments forbid the imposition of the death penalty on offenders who were under eighteen when the crime was committed).

26. *See, e.g., Harmelin v. Michigan*, 501 U.S. 957, 996 (1991) (holding that imposition of mandatory sentence of life in prison without possibility of parole, without any consideration of mitigating factors, did not constitute cruel and unusual punishment); *Harris v. Wright*, 93 F.3d 581, 583–85 (9th Cir. 1996) (holding that the sentence of life imprisonment without possibility of parole imposed on a fifteen-year-old defendant convicted of murder was not disproportionate to the offense in violation of the Eighth Amendment); *People v. Launsbury*, 551 N.W.2d 460, 464 (Mich. Ct. App. 1996) (holding that a mandatory life sentence without parole for a juvenile convicted of first-degree murder was not cruel and unusual punishment); *Laird v. State*, 933 S.W.2d 707, 714–15 (Tex. Ct. App. 1996) (holding that a statute mandating a life sentence for juveniles certified as adults and convicted of capital murder is not "unconstitutional for failure to avoid arbitrary and capricious infliction of punishment" or "for failure to avoid cruel and unusual punishment" and finding that the statute considers youth in mitigation of death penalty, which is the only other option besides a life sentence, in sentencing an adult defendant so convicted).

27. *See, e.g., Launsbury*, 551 N.W.2d at 463 (noting that "murder is a serious offense" and that the punishment of mandatory life imprisonment without parole "has been held to be proportionate to the offense" in this case).

28. *See, e.g., Hawkins v. Hargett*, 200 F.3d 1279, 1285 (10th Cir. 1999) (holding that there is "apparently no societal consensus that a long sentence imposed on a defendant for serious crimes he committed at age thirteen offends evolving standards of decency"). *But see Workman v. Commonwealth*, 429 S.W.2d 374, 378 (Ky. 1968) (holding that the penalty of life imprisonment without benefit of parole

stated in *Harmelin v. Michigan* that "the Eighth Amendment contains no proportionality guarantee."<sup>29</sup> American Jurisprudence cites only one case where such a sentence was held cruel and unusual due to its disproportionate nature, and that case was vacated.<sup>30</sup> Even so, critics of juvenile life without parole argue that a proportionality analysis should apply to sentencing of children because of differences in culpability between minors and adults.<sup>31</sup>

Arguments regarding the diminished competency and culpability of children led to international prohibitions on both the death penalty and sentences of life imprisonment without parole.<sup>32</sup> The U.S. Supreme Court has recognized that the final and most important standard for determining whether a punishment is cruel and unusual is whether it is so disproportionate that it goes against "the evolving standards of decency that mark the progress of a maturing society."<sup>33</sup> In *Roper v. Simmons*,<sup>34</sup> the most recent Supreme Court case involving criminal punishment of juveniles,<sup>35</sup>

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is cruel and unusual punishment and "shocks the general conscience of society today" when applied to juvenile offenders).

29. See *Harmelin*, 501 U.S. 957, 965 (1991). However, the fractured holding of *Harmelin* leads to questions as to whether proportionality really has no place in sentencing or whether its role is simply diminished. See generally Logan, *supra* note 7 (discussing proportionality and punishment as it relates to life without parole sentencing against juveniles).

30. 21A AM. JUR. 2D *Criminal Law* § 974 (2d ed. 2006). The case cited was vacated on rehearing, removing any precedential value. See *Rummel v. Estelle*, 568 F.2d 1193 (5th Cir. 1978), *vacated on reh'g*, 587 F.2d 651 (5th Cir. 1978), *aff'd*, 445 U.S. 263 (1980).

31. See Logan, *supra* note 7, at 709.

32. See Civil and Political Covenant, *supra* note 6; Children's Convention, *supra* note 6; *infra* Part I.B.2; see also *Roper v. Simmons*, 543 U.S. 551, 623 (2005) (Scalia, J., dissenting) ("[I]n addition to barring the execution of under-18 offenders, the United Nations Convention on the Rights of the Child prohibits punishing them with life in prison without the possibility of release. If we are truly going to get in line with the international community, then the Court's reassurance that the death penalty is really not needed, since 'the punishment of life imprisonment without the possibility of parole is itself a severe sanction' . . . gives little comfort." (quoting the majority opinion at 572)); AMNESTY REPORT, *supra* note 7, at 86–87 (highlighting court findings of differences between adults and youth in courts and crime).

33. *Roper*, 543 U.S. at 561 (citing *Trop v. Dulles*, 356 U.S. 86, 100–01 (1958) (plurality opinion)).

34. 543 U.S. 551 (2005).

35. Earlier cases include *Lorillard Tobacco Co. v. Reilly*, 533 U.S. 525, 587 (2001) (Thomas, J., concurring) (finding that children "lack the judgment to make an intelligent decision about whether to smoke"), *Thompson v. Oklahoma*, 487 U.S. 815, 835 (1988) (concluding that "less culpability should attach to a crime committed by a juvenile than to a comparable crime committed by an adult"), and *Parham v. J.R.*, 442 U.S. 584 (1979) (holding that children have no due process rights to notice and a judicial hearing before being committed by their parents to a

the Court struck down the juvenile death penalty in light of an evolving national standard among state sentencing guidelines against the juvenile death penalty.<sup>36</sup> Likewise, legal analysts note that the diminished competency and culpability that led to the prohibition of the death penalty for minors could equally apply to a prohibition of juvenile life without parole.<sup>37</sup> The state procedures discussed above in Part I.A.1 are inconsistent with an evolving moral consensus against life without parole.

### 3. Scholarly and Judicial Debate

Commentators attack the procedures involved with sentencing juveniles to life without parole, arguing that these procedures violate juveniles' constitutional right to due process.<sup>38</sup> Human rights advocates are specifically concerned with waivers and automatic transfers of youth offenders into adult court, which leave children susceptible to mandatory life without parole for crimes of murder<sup>39</sup> or felony murder.<sup>40</sup> Critics cite psychological and societal differences as major reasons why children should not be sentenced in adult courts: children have a reduced ability to make reasoned decisions<sup>41</sup> and the stresses and procedures of adult courts are magnified when applied to child offenders.<sup>42</sup> In contrast, some judges argue that legislatures, not courts, bear the

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mental institution).

36. *Roper*, 543 U.S. at 561. Evolving standards of moral decency were also used to strike down the death penalty for prisoners with mental retardation in *Atkins v. Virginia*, 536 U.S. 304, 316 (2002).

37. See Barry C. Feld, *Competence, Culpability and Punishment: Implications of Atkins for Executing and Sentencing Adolescents*, 32 HOFSTRA L. REV. 463, 544 (2003); Julie Rowe, *Mourning the Untimely Death of the Juvenile Death Penalty: An Examination of Roper v. Simmons and the Future of the Juvenile Justice System*, 42 CAL. W. L. REV. 287, 317 (2006).

38. See AMNESTY REPORT, *supra* note 7; Drizin & Keegan, *supra* note 7, at 534–42; Langemo, *supra* note 7; Morrissey, *supra* note 7; see also Richard Rosenbaum, *Child's Play No Longer: Children Charged and Tried as Adults in Florida—Ending Up in Prison for Life Without Parole*, 28 NOVA L. REV. 485 (2004) (arguing Florida's "juvenile transfer statutes" are facially unconstitutional).

39. See, e.g., MISS. CODE ANN. §§ 43-21-151(1)(a), 97-3-21 (2004) (granting jurisdiction to the circuit court in cases where the act committed by the youth is punishable by life imprisonment and sentencing anyone convicted of murder to life imprisonment).

40. See Drizin & Keegan, *supra* note 7.

41. "According to many psychologists, adolescents are less able than adults to perceive and understand the long-term consequences of their acts, to think autonomously instead of bending to peer pressure or the influence of older friends and acquaintances, and to control their emotions and act rationally instead of impulsively." AMNESTY REPORT, *supra* note 7, at 45.

42. See Rosenbaum, *supra* note 38, at 498–99 (arguing that very young defendants should be presumed incompetent for trial in adult court).

responsibility of addressing criminal sentencing.<sup>43</sup> Other justifications for juvenile life without parole include the significant brutality of certain crimes<sup>44</sup> and the idea that children should do the “adult time” for the “adult crime.”<sup>45</sup>

### B. Juvenile Offenders Under International Law

Treaty obligations assumed by the United States are incorporated into U.S. law by the Supremacy Clause of the U.S. Constitution, which states “all treaties made, or which shall be made, under the Authority of the United States shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby.”<sup>46</sup> In addition to treaty obligations, U.S. courts are bound by the jurisprudence of the Supreme Court, which has recently accepted international standards as persuasive authority when deciding how to treat death penalty sentencing of juveniles<sup>47</sup> and persons with mental retardation.<sup>48</sup> Studies highlighting the adverse effects of life without parole on juvenile offenders invoke widespread international legal consensus against the sentence.<sup>49</sup> These studies also suggest that the United States is increasingly isolated in its treatment of juveniles when compared to the rest of the developed world and most of the developing world.<sup>50</sup> Only fourteen countries allow life without parole for juvenile offenders, and only four of them (including the United States) have child

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43. See, e.g., *Edmonds v. State*, 04-KA-02081-COA (¶ 97), 955 So. 2d 864, 895 (Miss. Ct. App. 2006), *rev'd en banc*, 04-CT-02081-SCT, 955 So. 2d 787 (Miss. 2007). But see AMNESTY REPORT, *supra* note 7, at 90–92 (illustrating examples of judges who feel constrained by legislated, mandatory, sentencing guidelines imposing harsher punishments on juveniles).

44. See, e.g., *People v. Ortiz*, 67 Cal. Rptr. 2d 126 (Ct. App. 1997) (holding a sentence of twenty-six years to life for a fourteen-year-old is justified by the brutality of the crime).

45. Morrissey, *supra* note 7, at 707.

46. U.S. CONST. art. VI, cl. 2.

47. See *Roper v. Simmons*, 543 U.S. 551 (2005) (holding the death penalty to be unconstitutional when applied to juveniles under the age of eighteen).

48. See *Atkins v. Virginia*, 536 U.S. 304 (2002) (holding that execution of criminals with mental retardation constitutes cruel and unusual punishment under the Eighth Amendment of the U.S. Constitution).

49. See U.N. Econ. & Soc. Council [ECOSOC], Comm'n on Human Rights, *Rights of the Child*, ¶ 8, U.N. Doc. E/CN.4/2006/NGO/86 (Feb. 28, 2006) (submitted by Human Rights Advocates), available at [http://www.humanrightsadvocates.org/images/HRA\\_Statement4\\_2006.pdf](http://www.humanrightsadvocates.org/images/HRA_Statement4_2006.pdf) [hereinafter *Rights of the Child*] (noting that 132 countries reject the sentence of juvenile life without parole completely and that the ratification of the Convention on the Rights of the Child by all world countries except the United States and Somalia points to an internationally recognized, *jus cogens* norm against sentencing children to life without parole).

50. See AMNESTY REPORT, *supra* note 7, at 94–109.



offenders serving time.<sup>51</sup> While there are currently 2,225 children sentenced to life in prison without parole in the United States, there are only thirteen children serving this sentence in all other countries combined.<sup>52</sup>

Three major treaties enumerate international standards for the treatment of juveniles: the International Covenant on Civil and Political Rights ("Civil and Political Covenant"),<sup>53</sup> the American Declaration on the Rights and Duties of Man ("American Declaration"),<sup>54</sup> and the Convention on the Rights of the Child ("Children's Convention").<sup>55</sup>

The United States became a party to the Civil and Political Covenant in 1992,<sup>56</sup> assuming the obligations thereunder. Article 14 requires that criminal procedures, in dealing with juveniles, "take account of their age and the desirability of promoting their rehabilitation,"<sup>57</sup> which is impossible with certain mandatory sentencing procedures.<sup>58</sup> Sentencing children in adult courts also violates Article 10 of the Civil and Political Covenant, which requires separation of child offenders from adults<sup>59</sup> and penitentiary treatment appropriate to age and legal status.<sup>60</sup> In ratifying the Civil and Political Covenant, the United States filed a reservation<sup>61</sup> stating:

51. The fourteen countries known to permit sentencing of child offenders to life without parole are: Antigua and Barbuda, Australia, Brunei, Burkina Faso, Cuba, Dominica, Israel, Kenya, Saint Vincent and the Grenadines, the Solomon Islands, South Africa, Sri Lanka, Tanzania, and the United States. See *Rights of the Child*, *supra* note 49, at ¶¶ 8–10. Of these countries, South Africa has five children serving this sentence, Israel has seven, and Tanzania has one. *Id.* at ¶¶ 11–12.

52. *Id.*

53. Civil and Political Covenant, *supra* note 6.

54. American Declaration, *supra* note 6.

55. Children's Convention, *supra* note 6.

56. See UNITED NATIONS, MULTILATERAL TREATIES DEPOSITED WITH THE SECRETARY-GENERAL, International Covenant on Civil and Political Rights, at 190, U.N. Doc. ST/LEG/SER.E/25, U.N. Sales No. E.07.V.3 (2007), available at <http://www.ohchr.org/english/countries/ratification/4.htm> (last updated July 30, 2007) [hereinafter U.S. Reservation – Civil and Political Covenant].

57. Civil and Political Covenant, *supra* note 6, at art. 14(4).

58. See discussion *infra* Part III.B.

59. Civil and Political Covenant, *supra* note 6, at art. 10(2)(b) ("Accused juvenile persons shall be separated from adults and brought as speedily as possible for adjudication.").

60. *Id.* at art. 10(3) ("Juvenile offenders shall be segregated from adults and be accorded treatment appropriate to their age and legal status."); see also *id.* at art. 24(1) ("Every child shall have, without any discrimination . . . the right to such measures of protection as are required by his status as a minor, on the part of his family, society and the State.").

61. As defined in the Vienna Convention on the Law of Treaties, a "reservation" is "a unilateral statement, however phrased or named, made by a State, when

The policy and practice of the United States are generally in compliance with and supportive of the Covenant's provisions regarding treatment of juveniles in the criminal justice system. Nevertheless, the United States reserves the right, in exceptional circumstances, to treat juveniles as adults, notwithstanding paragraphs 2(b) and 3 of article 10 and paragraph 4 of article 14.<sup>62</sup>

Given the widespread sentencing of juveniles to life without parole in the United States,<sup>63</sup> the United States has stretched the exceptional circumstances provision<sup>64</sup> beyond its meaning.

By ratifying the Civil and Political Covenant, the United States agreed to report periodically on "measures [it has] adopted which give effect to the rights recognized [under the covenant] and the progress made in enjoyment of those rights."<sup>65</sup> Responsibility for oversight of this reporting falls to the United Nations' Human Rights Committee,<sup>66</sup> a body of experts elected by the participating states.<sup>67</sup> In its recent concluding observations, following the combined second and third reports of the United States on its compliance with the Civil and Political Covenant, the Committee noted with concern that the current practice of sentencing youth to life without parole puts the United States in violation of the treaty, notwithstanding the United States' reservation.<sup>68</sup> The Committee cited the large numbers of youth offenders serving life sentences in U.S. prisons and the fact that the vast majority of states allow persons under the age of eighteen at the time the offense is committed to receive life sentences without parole, as

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signing, ratifying, accepting, approving, or acceding to a treaty, whereby it purports to exclude or to modify the legal effect of certain provisions of the treaty in their application to that State." Vienna Convention on the Law of Treaties art. 2, *opened for signature* May 23, 1969, 1155 U.N.T.S. 331.

62. U.S. Reservation – Civil and Political Covenant, *supra* note 56.

63. See *Rights of the Child*, *supra* note 49, at ¶¶ 10–12; *supra* notes 25–28 and accompanying text.

64. See U.S. Reservation – Civil and Political Covenant, *supra* note 56.

65. Civil and Political Covenant, *supra* note 6, at art. 40.

66. *Id.* at art. 28. "States . . . undertake to submit reports on measures they have adopted which give effect to the rights recognized herein and the progress made in the enjoyment of those rights . . ." *Id.* at art. 40. The United States submitted a combined second and third report to the Committee in December 2005. See U.N. Human Rights Comm., *Consideration of Reports Submitted by States Parties Under Article 40 of the Covenant: United States of America*, U.N. Doc. CCPR/C/USA/3 (Nov. 28, 2005).

67. Civil and Political Covenant, *supra* note 6, at arts. 28–34.

68. See *supra* text accompanying note 62; see also U.N. Human Rights Comm., *Consideration of Reports Submitted by States Parties Under Article 40 of the Covenant: Concluding Observations of the Human Rights Committee, United States of America*, ¶ 34, U.N. Doc. CCPR/C/USA/CO/3 (Sept. 15, 2006) [hereinafter *Concluding Observations*].

evidence that the United States applies this sentence routinely, rather than only in exceptional circumstances.<sup>69</sup> The Committee further noted that this practice violates the Civil and Political Covenant Article 10(2)(b) (speedy adjudication for juveniles), Article 10(3) (age appropriate treatment), Article 14(4) (rehabilitation of juveniles), and Article 24(1) (special protection of minors).<sup>70</sup>

The United States is also a party to the American Declaration,<sup>71</sup> the signatory document of the Inter-American Commission on Human Rights. The American Declaration states that children have a right to special protection,<sup>72</sup> which the Commission has held to include a requirement that a State “make substantial efforts to guarantee [minors] rehabilitation in order to ‘allow them to play a constructive and productive role in society.’”<sup>73</sup> The interpretative mandate of the American Declaration encourages the Inter-American Commission on Human Rights to construe the Declaration in light of other international treaties and instruments as well as customary international law relative to the rights of the child,<sup>74</sup> most notably the Children’s Convention.

The third major treaty to address the issue is the Children’s Convention<sup>75</sup>—by far the most comprehensive convention in the realm of children’s rights. While the United States has signed, but not ratified, this convention,<sup>76</sup> some imply that the country should adhere to the principles.<sup>77</sup> Other than the United States and

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69. *Concluding Observations*, *supra* note 68.

70. *See supra* notes 57–60 and accompanying text.

71. American Declaration, *supra* note 6, at art. VII.

72. *Id.*

73. *Domingues v. United States*, Case 12.285, Inter-Am. C.H.R., Report No. 62/02, doc. 5 rev. ¶ 83 (citing *Villagran Morales v. Guatemala (Street Children Case)*, Judgment of Nov. 19, 1999, Annual Report 1999, ¶ 197), available at <http://iachr.org/annualrep/2002eng/USA.12285.htm>; see *Petition Alleging Violations of the Human Rights of Juveniles Sentenced to Life Without Parole in the United States of America* at 24 (Inter-Am. C.H.R. Feb. 21, 2006), available at [http://www.aclu.org/images/asset\\_upload\\_file326\\_24232.pdf](http://www.aclu.org/images/asset_upload_file326_24232.pdf) [hereinafter *ACLU Petition*].

74. *See ACLU Petition*, *supra* note 73, at 24.

75. Children’s Convention, *supra* note 6.

76. The United States signed the Children’s Convention on February 16, 1995. *See AMNESTY REPORT*, *supra* note 7, at 99. In addition, the United States has accepted the Declaration on the Rights of the Child, which also espouses special protection for children. *See Declaration on the Rights of the Child*, G.A. Res. 1386/XIV, U.N. GAOR, 14th Sess., U.N. Doc NR0/142/09 (Nov. 20, 1959).

77. *See Roper v. Simmons*, 543 U.S. 551, 623 (2005) (Scalia, J., dissenting) (implying that to truly “get in line with the international community” the United States would have to adhere to the Children’s Convention’s prohibition on

Somalia, every country in the world (192 of 194) has accepted the Children's Convention; none of the parties have registered a reservation to the convention's prohibition on life without parole.<sup>78</sup> Relevant provisions of this convention include the following: prohibiting capital punishment and life imprisonment without possibility of release for persons below eighteen years of age,<sup>79</sup> using incarceration only as "a measure of last resort and for the shortest appropriate period of time,"<sup>80</sup> taking into account a child's age and the desirability of "promoting the child's reintegration" into society,<sup>81</sup> and allowing a child to "challenge the legality of the deprivation of his or her liberty."<sup>82</sup>

## II. *Edmonds v. State of Mississippi*: Classic Characteristics of a Juvenile Sentenced to Life Imprisonment Without Parole

The *Edmonds* facts offer a distressing illustration of juvenile crime. At age thirteen, defendant Tyler Edmonds was accused of shooting his half-sister's husband.<sup>83</sup> After the alleged shooting, Edmonds reportedly left town with his half-sister Kristi,<sup>84</sup> then returned later and went to the police station with his mother, where he signed a *Miranda* statement and gave a videotaped confession of the crime.<sup>85</sup> Edmonds's mother was not permitted in the room when he confessed,<sup>86</sup> and the law enforcement officials

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sentencing youth to life without parole); see also Lainie Rutkow & Joshua T. Lozman, *Suffer the Children?: A Call for United States Ratification of the United Nations Convention on the Rights of the Child*, 19 HARV. HUM. RTS. J. 161, 170–72 (2006) (discussing measures introduced in Congress during the 1990s calling for the United States to ratify the Convention).

78. See UNITED NATIONS, MULTILATERAL TREATIES DEPOSITED WITH THE SECRETARY-GENERAL, Convention on the Rights of the Child, at 327, U.N. Doc. ST/LEG/SER.E/25, U.N. Sales No. E.07.V.3 (2007), available at <http://www.ohchr.org/english/countries/ratification/11.htm> (last updated July 13, 2007). The majority in *Roper v. Simmons* noted specially the fact that no State party to the Children's Convention had made a reservation to the prohibition against the juvenile death penalty contained in Article 37. *Roper*, 543 U.S. at 576; see also AMNESTY REPORT, *supra* note 7, at 99.

79. Children's Convention, *supra* note 6, at art. 37(a) ("Neither capital punishment nor life imprisonment without possibility of release shall be imposed for offences committed by persons below eighteen years of age.").

80. *Id.* at art. 37(b).

81. *Id.* at art. 40.1.

82. *Id.* at art. 37(d).

83. See *Edmonds v. State*, 04-CT-02081-SCT (¶¶ 2–4), 955 So. 2d 787, 790 (Miss. 2007).

84. *Id.* at (¶ 3), 955 So. 2d at 790–91.

85. *Id.* at (¶ 51), 955 So. 2d at 791.

86. *Id.*

did not videotape his initial custodial interrogation.<sup>87</sup> The trial court subsequently sentenced Edmonds to life imprisonment without parole.<sup>88</sup> This Section analyzes several holdings of the appellate and supreme courts, all of which are relevant to the sentencing of children to life without parole. Since the reasoning of the Mississippi Supreme Court's majority opinion does not focus on the same issues as that of the state appellate court, both opinions are discussed.

*A. Pre-Trial Procedural Issues: Voluntariness of Confession and Treatment of Juvenile Status*

The *Edmonds* appellate court began addressing procedure in several separate holdings. One holding addressed whether Edmonds's confession should have been admitted into evidence in the first place.<sup>89</sup> A second holding focused on whether, because Edmonds was a juvenile, jurors should have been given a cautionary instruction regarding the voluntariness of the confession.<sup>90</sup> In a third holding, the court wrestled with jury instructions in light of Edmonds's age and the possible sentence of life without parole.<sup>91</sup>

Edmonds, in his appeal, argued that "his age, his lack of experience with law enforcement interrogation, the removal of his mother from the room during the interrogation, and the fact that the police officers allegedly used Kristi to pressure him into confessing caused his confession to be unreliable, involuntary, and inadmissible."<sup>92</sup> During a suppression hearing, the trial court concluded that the totality of the circumstances and prior precedent gave no basis to conclude that Edmonds's confession "was not voluntarily and intelligently given," and the appellate court found no error in admitting the confession.<sup>93</sup> The court noted specifically that there was no testimony of either Edmonds or his mother asking for an attorney or for an end to the interrogation,<sup>94</sup> that both parties signed a *Miranda* waiver,<sup>95</sup> and that the prior precedent gave no weight to having different

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87. *Edmonds v. State*, 04-KA-02081-COA (¶ 23), 955 So. 2d 864, 876 (Miss. Ct. App. 2006), *rev'd en banc*, 04-C7-02081-SC7, 955 So. 2d 787 (Miss. 2007).

88. *Id.* at (¶ 2), 955 So. 2d at 867.

89. *Id.* at (¶¶ 16–23), 955 So. 2d at 874–75.

90. *Id.* at (¶¶ 99–104), 955 So. 2d at 895–97.

91. *Id.* at (¶¶ 86–90), 955 So. 2d at 893–94.

92. *Id.* at (¶ 16), 955 So. 2d at 874.

93. *Id.* at (¶ 18), 955 So. 2d at 875.

94. *Id.* at (¶ 17), 955 So. 2d at 875.

95. *Id.*

standards for a youth in adult court.<sup>96</sup>

The court of appeals also commented on an amicus brief filed by the Center on Wrongful Conviction and the Innocence Project New Orleans arguing for two new per se rules: an exclusion of "any statement taken from a minor outside the presence of his parents" and a requirement that "law enforcement record the entire custodial interrogation of a minor."<sup>97</sup> The court did not rule on the effectiveness of the proposed rules, but pointed out that any changes regarding the court's jurisdiction of cases must come from the Mississippi Legislature.<sup>98</sup> Ultimately, the court held that the confession was admissible.<sup>99</sup>

The Mississippi Supreme Court did not address the voluntariness of Edmonds's confession in its majority opinion beyond affirming the appellate court's decision regarding admissibility of expert testimony.<sup>100</sup> Even so, the topic is covered in the specially concurring opinion of Presiding Justice Diaz<sup>101</sup> and the specially concurring opinion of Justice Randolph.<sup>102</sup> Justice Randolph's concurrence states that Edmonds's confession was properly admitted due to the shortage of evidence of police or prosecutorial misconduct and the lack of legal requirement for the presence of Edmonds's mother during the interrogation.<sup>103</sup> In contrast, Presiding Justice Diaz put forth several strong arguments for error in admitting Edmonds's confession. First, Edmonds showed a lack of understanding of what it meant to give a confession.<sup>104</sup> Second, the confession was obtained before Edmonds had been charged with murder and was thus in violation of the Youth Court Act.<sup>105</sup> Third, reasonable doubt existed as to

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96. *Id.* at (¶ 18), 955 So. 2d at 875. Further in the opinion, the court notes that a youth's confession does not receive the same suspicion as that of an accomplice or a co-defendant. *Id.* at (¶ 100), 955 So. 2d at 896.

97. *Id.* at (¶ 23), 955 So. 2d at 877.

98. *Id.*

99. *Id.* at (¶ 22), 955 So. 2d at 877.

100. *Edmonds v. State*, 04-CT-02081-SCT (¶ 6), 955 So. 2d 787, 791 (Miss. 2007).

101. *Id.* at (¶¶ 36-45), 955 So. 2d at 799-800 (Diaz, P.J., specially concurring) (discussing false confessions).

102. *Id.* at (¶¶ 79-99), 955 So. 2d at 811-17 (Randolph, J., specially concurring).

103. *Id.*

104. *Id.* at (¶ 52), 955 So. 2d at 803 (Diaz, P.J., specially concurring).

105. *Id.* at (¶¶ 55-57), 955 So. 2d at 804-05; see MISS. CODE ANN. § 43-21-303(3) (2006) (requiring the presence of a parent during the interrogation for a minor). *But see Edmonds*, 04-CT-02081-SCT (¶ 95), 955 So. 2d at 816 (Randolph, J., specially concurring) (arguing that the Youth Court Act is inapplicable to Edmonds's case because "every relevant individual" recognized that the Sheriff's department was investigating a murder, which "plainly fits within the jurisdictional purview of the circuit court, not the youth court").

the voluntariness of the confession, due to circumstances regarding Edmonds's age and his inexperience with law enforcement.<sup>106</sup> Noting that the Mississippi Supreme Court must take into account factors unique to children if a juvenile has waived rights away,<sup>107</sup> Presiding Justice Diaz highlighted that "signing a waiver does not automatically make the subsequent statements voluntary, knowing, or intelligent," and challenged the circuit and appeals courts' reliance on a waiver to prove Edmonds's confession was voluntary.<sup>108</sup>

In addition to looking at the voluntariness of Edmonds's confession, the court of appeals wrestled with several issues regarding jury instructions at Edmonds's trial. One relevant holding denied the defense's request to provide the jury with an instruction to treat juvenile confessions with caution.<sup>109</sup> The court discussed the origin of such an instruction<sup>110</sup> and its focus on viewing the voluntariness of such confessions by juveniles with extra caution.<sup>111</sup> Ultimately, the court decided that its own precedent did not make refusing to give a cautionary statement reversible error.<sup>112</sup> The court, citing "clear legislative intent" that a juvenile's testimony not be viewed with the same suspicion as an accomplice or co-defendant's testimony,<sup>113</sup> declined "to offer juveniles prosecuted as adults the additional precaution of an instruction urging the jury to treat [them] specially simply because," of their minority statuses.<sup>114</sup>

Edmonds also claimed that he should have been permitted to inform the jury that he would receive a mandatory life sentence if convicted of murder.<sup>115</sup> The court stated its interpretation of Edmonds's argument to be that "the jurors might have been misled into believing that, due to his age, he could receive a sentence less than life."<sup>116</sup> The court concluded that Mississippi

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106. *Edmonds*, 04-CT-02081-SCT (¶ 63), 955 So. 2d at 807 (Diaz, P.J., specially concurring).

107. *Id.* at (¶ 61), 955 So. 2d at 806.

108. *Id.* at (¶ 65), 955 So. 2d at 807–08.

109. *Edmonds v. State*, 04-KA-02081-COA (¶¶ 99–104), 955 So. 2d 864, 895–96 (Miss. Ct. App. 2006), *rev'd en banc*, 2004-C7-2081-SC7, 955 So. 2d 787 (Miss. 2007).

110. *Id.* at (¶ 101), 955 So. 2d at 896 (citing *In re Gault*, 387 U.S. 1, 52 (1967)).

111. *Id.*

112. *Id.* at (¶ 103), 955 So. 2d at 896 (citing *Bandy v. State*, 495 So. 2d 486, 493 (Miss. 1986)).

113. *Id.* at (¶ 104), 955 So. 2d at 897.

114. *Id.*

115. *Id.* at (¶ 86), 955 So. 2d at 893.

116. *Id.* at (¶ 86), 955 So. 2d at 894.

law forbids one from arguing about a possible sentence for a defendant in front of a jury<sup>117</sup> and noted that informing a jury of possible sentences would only incite error, because a jury does not control sentencing.<sup>118</sup>

The majority opinion of the Mississippi Supreme Court ruling did not address potential jury errors. However, in his special concurrence, Presiding Justice Diaz noted that the trial judge improperly informed the jury of potential sentences by continually reminding the jury that Edmonds could not receive the death penalty.<sup>119</sup> Presiding Justice Diaz remarked that this improperly benefited the prosecution by allowing the jury to speculate that Edmonds's age or circumstances could be taken into account for sentencing purposes.<sup>120</sup>

### *B. Children in an Adult System*

In addition to confession issues, the court of appeals considered several procedural and substantive implications of trying and sentencing children in adult courts. Though the Mississippi Supreme Court did not address these issues in its majority review, they are worth taking into account on remand. Indeed, the dispute between Justice Randolph's and Presiding Justice Diaz's opinions as to whether the Youth Court Act applies to Edmonds's confession highlights the relevance of proper procedure when a juvenile offender is charged with a capital crime.<sup>121</sup>

Edmonds's capital murder charge sent him directly to adult circuit court.<sup>122</sup> Since he was a child, his case could have been transferred into youth court, though such a transfer was not mandatory.<sup>123</sup> In addressing the issue of whether to try Edmonds in adult court rather than transferring him to youth court,<sup>124</sup> the court of appeals noted both that capital murder comes under the original jurisdiction of the circuit court under Mississippi law,<sup>125</sup>

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117. *Id.* at (¶ 88), 955 So. 2d at 894.

118. *Id.* at (¶ 89), 955 So. 2d at 894.

119. *Edmonds v. State*, 04-CT-02081-SCT (¶ 68), 955 So. 2d 787, 808 (Miss. 2007) (Diaz, P.J., specially concurring).

120. *Id.* at (¶ 69), 955 So. 2d at 808.

121. See discussion *supra* Part II.A.

122. *Edmonds*, 04-KA-02081-COA (¶ 93), 955 So. 2d at 895.

123. Such a transfer is at the court's discretion in determining what is "in the best interest of such child and in the interest of justice." MISS. CODE ANN. § 43-21-159(4) (2006); see *Edmonds*, 04-KA-02081-COA (¶¶ 91-94), 955 So. 2d at 894-95.

124. *Edmonds*, 04-KA-02081-COA (¶¶ 91-94), 955 So. 2d at 894-95.

125. See discussion *supra* Part I.A.1.



and that a circuit judge has discretion in transfer proceedings.<sup>126</sup> The court concluded that the trial judge had properly balanced Edmonds's needs with the interests of justice and "found that the interests of justice necessitated that the case stay within the jurisdiction of the circuit court, rather than youth court."<sup>127</sup>

The court of appeals next addressed the claim that the lack of discretion given to the trial court to consider any particular circumstances or mitigating factors on behalf of Edmonds was unconstitutional.<sup>128</sup> After a cursory review of the applicable Mississippi law, which requires an automatic life sentence for an adult convicted of capital murder,<sup>129</sup> the court concluded that the Mississippi Legislature explicitly required life sentences for convictions of murder, without naming exceptions for defendants "of tender years."<sup>130</sup> The appeals court concluded that such legislation was constitutional, that exceptions were reserved for youth court, and that "any other sentence would have constituted error on the part of the circuit court, since the circuit court had no discretion to impose a different sentence."<sup>131</sup>

While concurring with the sentence, Presiding Judge Lee filed a special concurrence questioning the "wisdom and justice" of the bright line rule requiring original jurisdiction in circuit courts for all capital murder cases.<sup>132</sup> Presiding Judge Lee concluded that a change in laws would be necessary to offer youth offenders the benefits of a shifting constitutional standard such as the one shown in *Roper v. Simmons*.<sup>133</sup>

### C. Other Constitutional Errors in Edmonds

Without addressing all the procedural and substantive questions raised in the court of appeals, the Mississippi Supreme

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126. See *Edmonds*, 04-KA-02081-COA (¶ 92), 955 So. 2d at 894-95; see also MISS. CODE ANN. § 43-21-159(4) (2006).

127. *Edmonds*, 04-KA-02081-COA (¶ 93), 955 So. 2d at 895.

128. *Id.* at (¶ 95), 955 So. 2d at 895.

129. MISS. CODE ANN. § 97-3-21 (2006) ("Every person who shall be convicted of murder shall be sentenced by the court to imprisonment for life in the State Penitentiary."); see *Edmonds*, 04-KA-02081-COA (¶ 95), 955 So. 2d at 895.

130. *Edmonds*, 04-KA-02081-COA (¶ 97), 955 So. 2d at 895.

131. *Id.* at (¶ 98), 955 So. 2d at 895.

132. *Id.* at (¶¶ 123-25), 955 So. 2d at 900-01 (Lee, P.J., specially concurring) (noting that the U.S. Supreme Court made an "encouraging" change in declaring the death penalty unconstitutional for juveniles in *Roper*, departing from its prior plurality decision in *Thompson v. Oklahoma*, 487 U.S. 815 (1988), that the death penalty was only unconstitutional for those under sixteen at the time they committed the crime).

133. *Id.*

Court reversed and remanded Edmonds's case in light of several other errors that denied Edmonds a constitutionally fair trial.<sup>134</sup> These errors included the following: Kristi Fulgham's blanket invocation of her Fifth Amendment privilege, which precluded an inquiry into relevant information that could be pertinent to Edmonds's case;<sup>135</sup> the refusal of the trial court to admit testimony about the relationship between the deceased and Edmonds's half-sister;<sup>136</sup> and the exclusion of a videotape which offered evidence of Kristi's motive to murder the deceased.<sup>137</sup> The cumulative weight of these errors, according to the Mississippi Supreme Court, resulted in a denial of Edmonds's right to a fundamentally fair trial, as the only direct evidence linking Edmonds to the murder for which he was charged came from his half-sister's allegations and his own disputed confession.<sup>138</sup>

### III. Missed Opportunities for Compliance with International Law in *Edmonds*

With the recent Supreme Court decisions overturning the juvenile death penalty<sup>139</sup> and incorporating international law as persuasive authority,<sup>140</sup> the time is ripe for U.S. courts to take international standards into account in the area of juvenile sentencing. This Section shows how the trial court, which will now re-try Edmonds in light of the Mississippi Supreme Court decision, can benefit from complying with international standards as set forth in the Civil and Political Covenant,<sup>141</sup> the American Declaration,<sup>142</sup> and the Children's Convention.<sup>143</sup>

#### A. *Juvenile Confessions Should Receive Special Treatment*

The overarching theme of protecting children with special procedures that fit their special status seems especially relevant when looking at confessions of youth offenders. Because of psychological reasons, children are unduly influenced by authority, and therefore their confessions are less reliable than those of

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134. *Edmonds v. State*, 04-CT-02081-SCT (¶¶ 29–33), 955 So. 2d 787, 787 (Miss. 2007).

135. *See id.* at (¶¶ 13–23), 955 So. 2d at 793–97.

136. *Id.* at (¶ 32), 955 So. 2d at 787.

137. *Id.* at (¶¶ 24–28), 955 So. 2d at 797–98.

138. *Id.* at (¶¶ 29–33), 955 So. 2d at 798–99.

139. *See Roper v. Simmons*, 543 U.S. 551 (2005).

140. *See Hamdan v. Rumsfeld*, 126 S. Ct. 2749, 2786 (2006).

141. Civil and Political Covenant, *supra* note 6.

142. American Declaration, *supra* note 6.

143. Children's Convention, *supra* note 6.

adults.<sup>144</sup>

### 1. Voluntariness of Statements Is Suspect with Juveniles

From his initial contact with the police, Edmonds's age was discounted: his mother was not permitted in the room when he confessed,<sup>145</sup> and the law enforcement officers did not record his initial custodial interrogation.<sup>146</sup> The *Edmonds* appeals court, while not completely ignoring the defense's request to view the defendant's confession with suspicion, cited lack of judicial authority to change the rules<sup>147</sup> that effectively denied Edmonds the right to have his age taken into account with regard to the most incriminating piece of evidence against him. In his appeal, Edmonds cited several reasons for his involuntary confession,<sup>148</sup> including factors that justify the special treatment of minors in custody situations under international law. Edmonds's confession posed problems even for the Mississippi Supreme Court, as its justices were split on whether or not the surrounding circumstances rendered it inadmissible.<sup>149</sup> In the new trial, the court would do well to re-examine the admissibility of Edmonds's confession in light of several concerns.

The refusal to take Edmonds's age into account for the admission of his confession violates Article 24(1)<sup>150</sup> and Article 10(3)<sup>151</sup> of the Civil and Political Covenant, both of which require age appropriate treatment for juveniles. Both courts relied on the suppression hearing and the fact pattern, which includes his conversation with his mother, the videotaped confession, and two different accounts of Tyler's interactions with Kristi.<sup>152</sup> While the court of appeals allowed for deference to the trial court's findings of fact (i.e., that Tyler's confession was voluntary),<sup>153</sup> the facts also point to problem areas in juvenile sentencing that suggest reasons to find the confession suspect. As discussed above in Part I.A.2,

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144. See *supra* notes 31–42 and accompanying text.

145. *Edmonds v. State*, 04-KA-02081-COA (¶ 10), 955 So. 2d 864, 869 (Miss. Ct. App. 2006), *rev'd en banc*, 2004-CT-02081-SCT, 955 So. 2d 787 (Miss. 2007).

146. *Id.* at (¶ 21), 955 So. 2d at 876.

147. *Id.* at (¶ 23), 955 So. 2d at 877.

148. *Id.* at (¶ 16), 955 So. 2d at 874.

149. See discussion *supra* Part II.A.

150. See Civil and Political Covenant, *supra* note 6, at art. 24(1).

151. See *id.* at art. 10(3).

152. See *Edmonds v. State*, 04-CT-02081-SCT (¶ 5), 955 So. 2d 787, 791 (Miss. 2007); *Edmonds*, 04-KA-02081-COA (¶ 17), 955 So. 2d at 875.

153. *Edmonds*, 04-KA-02081-COA (¶ 17), 955 So. 2d at 875.

studies suggest children have a lower ability to comprehend their rights and their cases result in a higher likelihood of false confessions—they are unduly influenced by the process.<sup>154</sup>

The special protections provided to children under the Civil and Political Covenant require legal measures that are “appropriate to [a child’s] age and legal status.”<sup>155</sup> These measures are required by a child’s “status as a minor, on the part of . . . the State.”<sup>156</sup> The court’s reliance on the signed *Miranda* waiver<sup>157</sup> and the lack of request for an attorney or an end to the interrogation<sup>158</sup> does not account for the possibility that Edmonds, a child, may not have fully understood the procedures as presented. Indeed, the fact that neither Edmonds nor his mother was informed of the charges against him<sup>159</sup> suggests that even an adult in Edmonds’s position may not have understood the ramifications of confessing. The very facts that indicted him in the appellate court’s eyes are those which indicate a need for the special protections his defense requested.

## 2. Jury Instructions Should Reflect the Special Circumstances of Juvenile Crime

The court of appeals twice missed an opportunity to mitigate the trial court’s blunt refusal to take Edmonds’s age into account. First, it refused to overturn the trial court’s decision to deny the defendant the opportunity to make a cautionary statement to the jury regarding the weight of the confession on the case.<sup>160</sup> Second, it refused a jury instruction regarding the possibility of a mandatory life sentence for Edmonds.<sup>161</sup> The Mississippi Supreme Court majority did not address the jury instruction issue, though the opinion of Presiding Justice Diaz shed some light on how the circuit court could make up for this on remand.<sup>162</sup> The supreme court also did not address the circuit court’s reason for admitting the confession, which rested heavily on voluntariness of the statement and on “clear legislative intent” to deny any juvenile

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154. See *supra* notes 31–42 and accompanying text.

155. Civil and Political Covenant, *supra* note 6, at art. 10(3).

156. *Id.* at art. 24(1).

157. *Edmonds*, 04-KA-02081-COA (¶ 17), 955 So. 2d at 875.

158. *Id.*

159. *Edmonds v. State*, 04-CT-02081-SCT (¶ 55), 955 So. 2d 787, 804 (Miss. 2007).

160. *Edmonds*, 04-KA-02081-COA (¶ 104), 955 So. 2d at 896–97.

161. *Id.* at (¶ 90), 955 So. 2d at 894.

162. *Edmonds*, 04-CT-02081-SCT (¶¶ 66–69), 955 So. 2d at 808 (Diaz, P.J., specially concurring).

prosecuted as an adult special treatment "simply because he is a juvenile."<sup>163</sup> Regarding the request for an instruction on the possible sentence, the court of appeals argued procedural necessity: even though jurors may have been misled into believing that Edmonds's age could mitigate his sentence to less than life,<sup>164</sup> giving such an instruction would only incite error because a jury does not control sentencing.<sup>165</sup>

The reasoning behind both the lack of jury instruction as to mandatory life sentences and the admissibility of the confession reflects a lack of sensitivity to a juvenile's special circumstances as shown in all three covenants' guarantees of special treatment for juveniles.<sup>166</sup> Curiously, the court of appeals noted that Edmonds's confession would have received more suspicion had he been an accomplice or co-defendant, but held that his young age did not merit the same treatment.<sup>167</sup> As the jury bears ultimate responsibility for convicting Edmonds of the crime, it follows that it bears ultimate responsibility for weighing the evidence against him. With the suspect nature of juvenile testimony, namely the psychological and societal differences that give children in court a reduced ability to make reasoned decisions<sup>168</sup> and the magnification of the stresses on children in adult courts,<sup>169</sup> the jury ought to have been alerted to the information necessary for weighing its decisions. With the gravity of the sentence facing Edmonds if convicted, the jury ought to have been made aware that his age would not mitigate his sentence. This error should be corrected on remand.

#### *B. The Court Should Take Age into Account when Trying and Sentencing Juveniles*

In addition to taking age into account when dealing with procedural issues of admissibility and jury instruction, courts should pay attention to international treaties<sup>170</sup> and domestic

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163. *Edmonds*, 04-KA-02081-COA (¶ 104), 955 So. 2d at 897.

164. *Id.* at (¶¶ 86-87), 955 So. 2d at 893-94.

165. *Id.* at (¶ 90), 955 So. 2d at 894.

166. See Children's Convention, *supra* note 6, at art. 37(a); Civil and Political Covenant, *supra* note 6, at arts. 10(3), 24(1); American Declaration, *supra* note 6, at art. VII.

167. *Edmonds*, 04-KA-02081-COA (¶ 104), 955 So. 2d at 896-97.

168. See AMNESTY REPORT, *supra* note 7, at 45-49; see also *supra* text accompanying note 41.

169. See Rosenbaum, *supra* note 38, at 495; see also *supra* text accompanying note 42.

170. See Children's Convention, *supra* note 6; Civil and Political Covenant, *supra* note 6; American Declaration, *supra* note 6.

concerns<sup>171</sup> that argue for special procedures in trying and sentencing juveniles.

1. Youth Should Be Tried in Youth Court, or Should Be Allowed Special Procedures in Adult Court

In denying Edmonds relief from the trial court's refusal to transfer his case to youth court, the appellate court rested its analysis on complete deference to Mississippi laws, which make such transfers discretionary.<sup>172</sup> The appellate court deferred to the trial court's analysis in balancing Edmonds's interests with the interests of justice but neglected to expand on what the trial court particularly found such interests to be.<sup>173</sup> Taking international treaty compliance into account, combined with domestic concerns over the justice of juvenile sentencing in the United States, the interests of justice fall in line with the interests of Edmonds.

The routine and widespread sentencing of juveniles to life without parole<sup>174</sup> violates the exceptional circumstances reservation the United States filed under the Civil and Political Covenant<sup>175</sup> as well as several other provisions of the same covenant.<sup>176</sup> The appellate court's reliance on existing law and precedent prohibit it from taking into account the special circumstance of Edmonds's age.<sup>177</sup> Its holding that clear legislative intent shows the Mississippi Legislature "has chosen to treat juveniles as adults"<sup>178</sup> epitomizes the particular circumstances of juvenile life without parole that the Human Rights Committee finds troublesome. By not addressing Edmonds's age, the Mississippi Supreme Court also neglected the opportunity to comply with treaty obligations. The trial court repeatedly refused to take account of Edmonds's age during his trial,<sup>179</sup> violating Article 24(1).<sup>180</sup> The appellate court refused to find lack of transfer to youth court problematic,<sup>181</sup> violating Article

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171. See *supra* Part I.

172. *Edmonds*, 04-KA-02081-COA (¶¶ 92–94), 955 So. 2d 864 at 894–95.

173. *Id.* at (¶ 93), 955 So. 2d at 895.

174. See AMNESTY REPORT, *supra* note 7.

175. See U.S. Reservation – Civil and Political Covenant, *supra* note 56.

176. See *supra* notes 56–70 and accompanying text.

177. *Edmonds*, 04-KA-02081-COA (¶ 19), 955 So. 2d at 875–76.

178. *Id.* at (¶ 104), 955 So. 2d at 897.

179. *Id.* at (¶ 93), 955 So. 2d at 895.

180. See Civil and Political Covenant, *supra* note 6, at art. 24(1) ("Every child shall have, without any discrimination . . . the right to such measures of protection as are required by his status as a minor, on the part of his family, society and the State.").

181. *Edmonds*, 04-KA-02081-COA (¶ 93), 955 So. 2d at 895.

10(3).<sup>182</sup> Other concerns, such as the ability of an adult court to sentence Edmonds to life without parole, are addressed below, in Part III.B.2.

Edmonds's trial also violates due process rights guaranteed under the American Declaration,<sup>183</sup> which holds that for juvenile justice, a fair trial must include 1) the opportunity for an individualized determination by judges as well as courts and 2) justice systems that take age into account.<sup>184</sup> Mississippi's wholesale initial transfer of all capital crimes into adult courts, after which no individualized accounting of a defendant's age will take place and for which life without parole is mandatory, violates Edmonds's right to a fair trial under Article XVIII.<sup>185</sup> The possible mandatory sentence violates his right to petition under Article XXIV,<sup>186</sup> and the whole process violates his right to due process of law under Article XXVI.<sup>187</sup> These international due process concerns mirror the domestic due process concerns regarding a youth's reduced ability to make reasoned decisions<sup>188</sup> and a youth's ability to withstand the pressures he or she is faced with under adult procedures.<sup>189</sup>

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182. Civil and Political Covenant, *supra* note 6, at art. 10(3) ("Juvenile offenders shall be segregated from adults and be accorded treatment appropriate to their age and legal status.").

183. See American Declaration, *supra* note 6, at art. XXVI ("Every accused person is presumed to be innocent until proven guilty. Every person accused of an offense has the right to be given an impartial and public hearing, and to be tried by courts previously established in accordance with pre-existing laws, and not to receive cruel, infamous or unusual punishment.").

184. See ACLU Petition, *supra* note 73, at 32.

185. See American Declaration, *supra* note 6, at art. XVIII ("Every person may resort to the courts to ensure respect for his legal rights. There should likewise be available to him a simple, brief procedure whereby the courts will protect him from acts of authority that, to his prejudice, violate any fundamental constitutional rights.").

186. See *id.* at art. XXVI ("Every person has the right to submit respectful petitions to any competent authority, for reasons of either general or private interest, and the right to obtain a prompt decision thereon.").

187. *Id.* ("Every person accused of an offense has the right to be given an impartial and public hearing, and . . . not to receive cruel, infamous or unusual punishment.").

188. See, e.g., AMNESTY REPORT, *supra* note 7, at 45 ("According to many psychologists, adolescents are less able than adults to perceive and understand the long-term consequences of their acts, to think autonomously instead of bending to peer pressure or the influence of older friends and acquaintances, and to control their emotions and act rationally instead of impulsively.").

189. See Rosenbaum, *supra* note 38; *supra* note 42 and accompanying text.

## 2. Automatic Life Sentences Are Unconstitutional for Youth Offenders

The use of an automatic life sentence in juvenile sentencing, like a lack of transfer to youth court, is problematic under international law. Again, the *Edmonds* court relied on Mississippi statutes and judicial precedent in interpreting Mississippi's legislation to require life sentences for murder convictions, without naming exceptions for defendants "of tender years."<sup>190</sup> *Edmonds* argued that this legislation unconstitutionally withheld trial court discretion to consider particular circumstances or mitigating factors on his behalf.<sup>191</sup> The appellate court's conclusion that exceptions were reserved for youth court and impermissible in adult court<sup>192</sup> is contrary to other states' findings under similar circumstances<sup>193</sup> and also falls within the context of the debate on juvenile sentencing.<sup>194</sup> The Mississippi Supreme Court's omission of these issues in its majority opinion suggests that, as a majority, the justices either agreed with the appellate court's analysis or were reluctant to take a position when other grounds for reversal could be found.

The circuit and appellate courts' refusal to take account of *Edmonds*'s age in sentencing<sup>195</sup> violates provisions of all three treaties relevant to this debate. It violates the Civil and Political Covenant's guarantee of special protections for minors under Article 24(1).<sup>196</sup> Had the Mississippi Supreme Court upheld the sentence of life without parole,<sup>197</sup> it would have violated the requirements of special age appropriate criminal procedures for minors under Articles 14(4) and 24(1).<sup>198</sup> The particular harm

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190. *Edmonds v. State*, 04-KA-02081-COA (¶ 97), 955 So. 2d 864, 895 (Miss. Ct. App. 2006), *rev'd en banc*, 2004-CT-02081-SCT, 955 So. 2d 787 (Miss. 2007); *see also* MISS. CODE ANN. § 97-3-21 (2006) ("Every person who shall be convicted of murder shall be sentenced by the court to imprisonment for life in the State Penitentiary.").

191. *Edmonds*, 04-KA-02081-COA (¶ 95), 955 So. 2d at 895.

192. *Id.*

193. *See, e.g.*, *Naovarath v. State*, 779 P.2d 944, 949 (Nev. 1989).

194. *See supra* Part I.A.3.

195. *Edmonds*, 04-KA-02081-COA (¶¶ 93-94), 955 So. 2d at 895.

196. Civil and Political Covenant, *supra* note 6, at art. 10(3) ("Juvenile offenders shall be segregated from adults and be accorded treatment appropriate to their age and legal status."); *see also id.* at art. 24(1) ("Every child shall have, without any discrimination . . . the right to such measures of protection as are required by his status as a minor . . .").

197. *See Edmonds v. State*, 04-CT-02081-SCT (¶ 2), 955 So. 2d 787, 790 (Miss. 2007) (reversing the lower courts' holdings and remanding to the circuit court for "a new trial in accordance with this opinion").

198. Civil and Political Covenant, *supra* note 6, at art. 14(4) ("In the case of juvenile persons, the procedure shall be such as will take account of their age and



caused to juveniles when they are tried, sentenced, and punished as adults<sup>199</sup> threatens the United States' compliance with multiple articles of the American Declaration.<sup>200</sup> Major human rights organizations, such as Amnesty International and the American Civil Liberties Union ("ACLU"), have documented conditions under which juveniles serve the sentence of life without parole, and each has come to the conclusion that such sentences constitute cruel, infamous, or unusual punishment.<sup>201</sup> The standards under which juveniles, such as Edmonds, could be imprisoned violate provisions against non-physical harm and cruel, infamous, and unusual punishment—Articles I ("right to life, liberty and personal security") and XXVI ("right . . . not to receive cruel, infamous, or unusual punishment")<sup>202</sup>

In addition to the problems with the Civil and Political Covenant and the American Declaration, Edmonds's sentence contravenes Article 37 of the Children's Convention, which contains a flat prohibition on sentencing children to life without parole.<sup>203</sup> This provision would nullify Edmonds's original sentence. As noted by the ACLU, "[p]unishing a youth offender with the longest prison sentence possible[] offer[s] no hope of rejoining society, little motivation of rehabilitation, and scant opportunities for learning"<sup>204</sup> and violates all of the provisions discussed in Part I.B.2. The circuit and appellate courts' failure to take Edmonds's age into account<sup>205</sup> violates Article 40(1), which requires age appropriate sentencing and promotion of

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the desirability of promoting their rehabilitation."); *id.* at art. 24(1) ("Every child shall have, without any discrimination as to race, colour, sex, language, religion, national or social origin, property or birth, the right to such measures of protection as are required by his status as a minor, on the part of his family, society and the State.").

199. See AMNESTY REPORT, *supra* note 7, at 52–66.

200. See, e.g., American Declaration, *supra* note 6, at art. I ("Right to life, liberty and personal security"); *id.* at art. VII ("Right to protection for mothers and children"); *id.* at art. XVIII ("Right to a fair trial"); *id.* at art. XXIV ("Right of petition"); *id.* at art. XXV ("Right of protection from arbitrary arrest"); *id.* at art. XXVI ("Right to due process of law").

201. See, e.g., AMNESTY REPORT, *supra* note 7; ACLU Petition, *supra* note 73, at 11–20, 22–40.

202. American Declaration, *supra* note 6, at arts. I, XXVI.

203. Children's Convention, *supra* note 6, at art. 37(a) ("Neither capital punishment nor life imprisonment without possibility of release shall be imposed for offences committed by persons below eighteen years of age . . .").

204. ACLU Petition, *supra* note 73, at 39.

205. See *Edmonds v. State*, 04-KA-02081-COA (¶¶ 93–94), 955 So. 2d 864, 895 (Miss. Ct. App. 2006), *rev'd en banc*, 2004-CT-02081-SCT, 955 So. 2d 787 (Miss. 2007).

reintegration.<sup>206</sup> The sentence of life without parole, so firmly implanted in Mississippi law that the court saw no room for interpretation,<sup>207</sup> violates the Article 37(a) prohibition on life imprisonment without possibility of release for persons under eighteen years of age and the Article 37(b) provision that incarceration be for the shortest appropriate period of time.<sup>208</sup> By overturning the appellate decision, the Mississippi Supreme Court has given the State of Mississippi an opportunity to bring itself into compliance with international law by upholding the rights of children in its jurisdiction.

### Conclusion

Tyler Edmonds had the misfortune of committing a crime in a state with laws that removed his ability to draw attention to his thirteen-year-old status during his trial and sentencing for murder.<sup>209</sup> His trial, conducted in adult court, and his continued risk of a life sentence, mandated by a statutory requirement,<sup>210</sup> reflect the issues that characterize the debate around juvenile life without parole. The trial, appellate, and supreme courts' refusals to allow procedures and instructions that take account of Edmonds's age provide classic examples of the procedures proscribed by international treaties and constitute violations of United States' obligations therein. Evolving moral consensus against the practice of sentencing juveniles to life without parole in the United States<sup>211</sup> shows a step towards joining established international consensus against that sentence. With the current evolution of U.S. Supreme Court cases towards further protections for juveniles<sup>212</sup> and the weight of international opinion becoming more apparent in U.S. jurisprudence,<sup>213</sup> courts and legislatures

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206. Children's Convention, *supra* note 6.

207. *Edmonds*, 04-KA-02081-COA (¶¶ 118–20), 955 So. 2d at 900.

208. Children's Convention, *supra* note 6.

209. *Edmonds*, 04-KA-02081-COA (¶¶ 93–98), 955 So. 2d at 895 (affirming the trial judge's finding that "interests of justice necessitated that the case stay within the jurisdiction of the circuit court, rather than youth court" and rejecting Edmonds's attempts to show age as a "mitigating factor" in sentencing).

210. See MISS. CODE ANN. § 97-3-21 (2006).

211. See *Roper v. Simmons*, 543 U.S. 551, 561 (2005); *Atkins v. Virginia* 536 U.S. 304 (2002); *supra* text accompanying note 36.

212. See *Roper*, 543 U.S. at 561; *Atkins*, 536 U.S. 304.

213. See, e.g., *Roper*, 543 U.S. at 575 (noting that "at least since the time of [the Court's decision in *Trop v. Dulles*, 356 U.S. 86 (1958) (plurality opinion)] the Court has referred to the laws of other countries and to international authorities as instructive" for its interpretation of the Eighth Amendment); *supra* text accompanying note 36.

should re-visit their juvenile sentencing procedures. Taking Edmonds's age into account in the next trial would be a step in the right direction, showing Mississippi's commitment to international human rights and the rights of children at home.

Even if the trial court pays no attention to Edmonds's circumstances and again sentences him to life in prison without parole, *Edmonds v. State* could still have a positive effect on the juvenile sentencing system. In light of one of the concurrences filed at the appellate level, as well as the appellate court's sentencing language, the Mississippi Legislature could prove an effective forum for resolution of this problem. This special concurrence to the original opinion, written by Presiding Judge Lee, questioned "the wisdom and justice" in a harsh rule requiring original jurisdiction in circuit courts for all capital murder cases, even those of juveniles.<sup>214</sup> Citing *Roper v. Simmons* and the evolution towards more discretion for circuit courts in the sentencing of juveniles, Presiding Judge Lee concludes that "without a change in our laws, this shift in the constitutional standard offers little consolation to youthful . . . offenders similarly situated [to Edmonds]."<sup>215</sup> The court's language reflects its feeling of being bound by legislative intent and actively cites its limits when discussing the possibilities of allowing for special consideration of youth offenders in adult courts.<sup>216</sup>

While the Mississippi Supreme Court does not explicitly call for legislation, Presiding Justice Diaz's concurrence provides a strong argument for taking juveniles' circumstances into account.<sup>217</sup> Presiding Justice Diaz highlights the Mississippi Supreme Court's duty to take into account factors "unique to children" when reviewing a juvenile's waiver of the right against self-incrimination and the right to counsel.<sup>218</sup>

The combination of opinions at each stage of Tyler Edmonds's trial provides a solid impetus for reexamination of the juvenile sentencing problem. The State of Mississippi would do well to take into account recognition of an evolving standard towards

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214. *Edmonds*, 04-KA-02081-COA (¶ 123), 955 So. 2d at 900.

215. *Id.* at (¶ 125), 955 So. 2d at 901 (Lee, P.J., specially concurring) ("Recall that in its last session, the Supreme Court determined that the death penalty for persons under age eighteen at the time they committed the crime was unconstitutional." (citing *Roper*, 543 U.S. 551 (2005))).

216. *Id.* at (¶¶ 25, 95–104, 122–125), 955 So. 2d at 877, 895–97, 900–01.

217. *Edmonds v. State*, 04-CT-02081-SCT (¶¶ 60–64), 955 So. 2d 787, 806–07 (Mass. 2007) (Diaz, P.J., specially concurring) (citing *Fare v. Michael C.*, 442 U.S. 707, 725 (1979)).

218. *Id.*

giving trial courts more discretion in juvenile sentencing.<sup>219</sup> This shifting constitutional standard may ultimately persuade the Mississippi Legislature to re-write its juvenile sentencing laws, an act that would recognize the differences between minors and adults as well as children's great need for special consideration. Equally important is the recent remand of the case back to circuit court, which provides a second chance to set a legal precedent for compliance with international law. Assuring Tyler Edmonds of a fair trial, one that takes his age and surrounding circumstances into account, would be a solid step towards further assurance of human rights in Mississippi and in the United States.

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219. See, e.g., *Edmonds*, 04-KA-02081-COA (¶ 125), 955 So. 2d at 901, (Lee, P.J., specially concurring) (citing *Roper*, 543 U.S. 551).