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Joshua A. Tepfer

Northwestern University School of Law, j-tepfer@law.northwestern.edu

Laura H. Nirider

Northwestern University School of Law

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Adjudicated Juveniles and Post-Conviction Litigation

Joshua A. Tepfer & Laura H. Nirider

Introduction

Post-conviction relief is a vital part of the American justice system. By filing post-conviction petitions after the close of direct appeal, defendants can raise claims based on evidence outside the record that was not known or available at the time of trial.

One common use of post-conviction relief is to file a claim related to a previously unknown constitutional violation that occurred at trial, such as ineffective assistance of counsel. If a defendant's trial attorney performed ineffectively by failing to call, for instance, an alibi witness, then that omission is unlikely to be reflected in the trial record – but in post-conviction proceedings, the defendant may seek to expand the record to include evidence of such ineffectiveness. If a court sitting in post-conviction hears that evidence and sides with the defendant, the usual remedy is to grant a new trial. Without access to the opportunities to supplement the record that are afforded by post-conviction proceedings, however, a defendant who suffers ineffective assistance of counsel often has no opportunity for relief.

Post-conviction proceedings are also often used to raise newly discovered evidence of innocence. This use of post-conviction proceedings, in particular, has met with much success, especially since the development of DNA technology has enabled attorneys to subject trial evidence to scientific testing and to introduce those test results post-conviction as newly discovered evidence of innocence. To date, 289 individuals have been exonerated by DNA testing, almost all of it conducted through the vehicle of post-conviction proceedings. Each of these individuals stands as living proof of the fact that access to post-conviction relief is an essential part of a justice-seeking judicial system.

This article examines the troubling disparities in access to post-conviction relief between adults and juveniles that appear to occur in many jurisdictions. Some states explicitly make post-conviction relief unavailable to defendants who are tried as juveniles while granting such access to adults. In many other states, legislatures have drafted laws governing the availability of post-conviction proceedings that are vague and ambiguous, leading to uncertainty about whether juvenile defendants may take advantage of such proceedings. This disparity exists despite the fact that those tried in juvenile court need access to post-conviction remedies just as much as those tried in adult court.

Section I of this article explains that individuals adjudicated in juvenile court may be in particular need of post-conviction remedies, while demonstrating that their access to these remedies is far too often unclear, severely limited, or explicitly denied. Section II offers two examples of real-life juvenile defendants who either were or would have been harmed by the

unavailability of post-conviction relief. Section III concludes with a call for clarity and increased juvenile access to post-conviction proceedings nationwide.

Section I

A. Adjudicated Juveniles Need Post-Conviction Remedies

The ability to invoke post-conviction relief is critical for adjudicated juveniles. Youth have been shown to be especially vulnerable as a population to wrongful conviction – and, in particular, to false confession. As the U.S. Supreme Court has recognized on several occasions, juveniles are categorically less mature, less able to weigh risks and long-term consequences, more vulnerable to external pressures, and more compliant with authority figures than are adults.¹ The Court has concluded, in turn, that these youthful traits mean that the risk of false confession is “all the more troubling” and “all the more acute” when the “subject of a custodial interrogation is a juvenile.”² This conclusion has roots that stretch back to the 1967 Supreme Court case *In re Gault*, in which the Supreme Court first explained that “authoritative opinion has cast formidable doubt upon the reliability and trustworthiness of ‘confessions’ by children.”³

A slew of empirical studies have affirmed the accuracy of this conclusion. The leading study of 125 proven false confession cases, cited by the Supreme Court in *Corley v. United States* and *J.D.B. v. North Carolina*, found that 63% of false confessors were under the age of twenty-five and 32% were under eighteen.⁴ By way of comparison, contemporaneous statistics reveal that juveniles made up only 8% of the individuals arrested for murder and 16% of the individuals arrested for rape in the United States.⁵ In another respected study of 340 exonerations that have taken place since 1989, researchers found that juveniles under the age of eighteen were three times as likely to falsely confess as adults; a full 42% of juvenile exonerees had falsely confessed, compared to only 13% of wrongfully convicted adults.⁶ And the most recent study addressing the subject – an examination of 103 wrongful convictions of factually innocent teenagers and children – found that a false confession contributed to 31.1% of the juvenile cases studied, as compared against only 17.8% of adult wrongful convictions.⁷ Laboratory studies, moreover, have replicated these real-world empirics; in one famed laboratory study, a majority

¹ See *Roper v. Simmons*, 543 U.S. 551, 569 (2005); *Graham v. Florida*, 129 S. Ct. 1558, 1570 (2009).

² *J.D.B. v. North Carolina*, June 16, 2011, slip op. at 6 (citing Brief of the Center on Wrongful Convictions of Youth); see also *Corley v. U.S.*, 129 S. Ct. 1558, 1570 (2009) (stating that “[t]here is mounting empirical evidence that these pressures [associated with custodial interrogation] can induce a frighteningly high percentage of people to confess to crimes they never committed”) (citing Steven A. Drizin & Richard A. Leo, *The Problem of False Confessions in the Post-DNA World*, 82 N.C.L. Rev. 891, 906-07 (2004)).

³ *In re Gault*, 387 U.S. at 52.

⁴ Drizin & Leo, 82 N.C.L. Rev. at 945.

⁵ H. Snyder, Office of Juvenile Justice and Delinquency Prevention, Office of Justice Programs, *Juvenile Arrests 2004* (Dec. 2006).

⁶ Samuel R. Gross et al., *Exonerations in the United States, 1989 Through 2003*, 95 J. Crim. L. & Criminology 523-53 (2005).

⁷ Joshua A. Tepfer, Laura H. Nirider, & Lynda Tricarico, *Arresting Development: Convictions of Innocent Youth*, 62 Rutgers L. Rev. 887, 904 (2010).

of juvenile participants complied with a request to sign a false confession without uttering a word of protest.⁸ That study concluded that juveniles between the ages of twelve and sixteen were far more likely to falsely confess than young adults between the ages of eighteen and twenty-six.⁹

This higher incidence of false confessions among juveniles exists because standard police tactics – which in all probability were designed with the hardened adult suspect in mind – are frequently deployed against far softer targets: children and adolescents.¹⁰ Despite their common use during interrogations of children and adolescents, however, these tactics pose a particular risk to young suspects. In recognition of this fact, even John E. Reid & Associates – the leading police interrogation training firm in the country – recommends “special caution” when interrogating children.¹¹ Sadly, this recommendation goes underemphasized in Reid’s interrogation manual and trainings and is rarely implemented in real life.

The problem of false confessions from children is particularly troubling because once a defendant has confessed, his or her conviction is all but guaranteed. Despite substantial evidence to the contrary, prosecutors, judges, jurors, and even some defense attorneys continue to adhere to the misapprehension that individuals do not confess to crimes they did not commit. As a result, the U.S. Supreme Court has recognized that, for all practical purposes, “the introduction of a confession makes the other aspects of a trial in court superfluous” – a statement that rings true even for those who have falsely confessed.¹² In fact, confessions can be so prejudicial that they can persuade jurors to convict despite the existence of significant exculpatory evidence, such as conflicting physical evidence, contradictory accounts of witnesses, and alibis.¹³

While the research on juvenile wrongful convictions is best developed in the arena of false confessions, there is reason to believe that youth may be particularly vulnerable to other types of evidentiary problems and errors that lead to wrongful convictions, as well. As crimes involving children often happen in groups including other children, the witnesses presented against children are more likely to be children themselves.¹⁴ Those youthful witnesses may be particularly vulnerable even to unintentional suggestion during line-ups and other eyewitness identification procedures, due to an inherent desire to please authority figures or a simple desire to end the unpleasant experience of being at the police station.¹⁵ All this is to say, in short, that no matter in which court their cases are tried, the mere fact of youthfulness makes children and

⁸ See Allison D. Redlich & Gail S. Goodman, *Taking Responsibility for an Act Not Committed: Influence of Age and Suggestibility*, 27 L. & Hum. Behav. 141, 150-51 (2003).

⁹ *Id.*

¹⁰ See, e.g., Jessica R. Meyer & N. Dickon Reppucci, *Police Practices and Perceptions Regarding Juvenile Interrogation and Interrogative Suggestibility*, 25 Behav. SC. L. 1, 1-24 (2007).

¹¹ Cite to Reid Website.

¹² *Colorado v. Connelly*, 479 U.S. 157, 182 (1986) (citing E. Cleary, McCormick on Evidence 316 (2d ed. 1972)).

¹³ See Lisa E. Hasel & Saul M. Kassin, *On the Presumption of Evidentiary Independence: Can Confessions Corrupt Eyewitness Identifications?*, 20 Psychol. Sci. 122 (Jan. 2009).

¹⁴ Tepfer, Nirider, & Tricarico at ____.

¹⁵ Tepfer, Nirider, & Tricarico, at 921.

teens more likely to be wrongfully convicted. As it so happens, most cases involving teens end up in juvenile court.

This fact, however, presents a second problem. The peculiar institution of juvenile court itself can be, in Professor Steven Drizin’s words, a “breeding ground” for wrongful convictions and constitutional violations, including ineffective assistance of counsel. Juvenile court originated as an institution at the turn of the twentieth century, when reformers envisioned a body that would handle young people’s transgressions with an eye to rehabilitation and treatment, rather than punishment and long-term incarceration.¹⁶ To facilitate this emphasis on rehabilitation, some of the adversarial aspects of adult criminal court were removed from juvenile court; for instance, all individuals in the courtroom – prosecutors, defense attorneys, and judges alike – were conceived of as benevolent actors seeking to promote children’s “best interests” and welfare.¹⁷

Unfortunately, these well-intentioned features of juvenile court, over time, have bred a court culture that today discourages and sometimes precludes zealous and adversarial advocacy.¹⁸ Many juvenile courts continue to view zealous advocacy as “antithetical to rehabilitation.”¹⁹ Some attorneys, believing that their client will be best served by submitting to the consequences of a juvenile adjudication, may fail to research and investigate cases even when the client requests it.²⁰ They may fail to interview witnesses or visit the crime scene; they may omit to file pre-trial motions; they may even arrive at dispositional hearings unprepared.²¹ Scholars have suggested that ineffective assistance of counsel, sadly, is “routine and widespread” in this context.²² Without post-conviction access, however, much of this ineffectiveness can never be remedied.

The apparent prevalence of ineffectiveness in juvenile court, in turn, circles back to an increased risk of wrongful convictions.²³ By discouraging juvenile defenders from zealously subjecting the State’s claims to the full-blown “crucible of meaningful adversarial testing,” juvenile court culture makes reliability a secondary concern.²⁴ In effect, accurate fact-finding can be subordinated to the attorney’s or court’s perception of the child’s best interests and need for treatment.²⁵

¹⁶ Drizin & Luloff, 262.

¹⁷ See Feld, *Criminalizing*, at 187.

¹⁸ McKeiver, 403 U.S. at 545 (noting that juvenile court proceedings lack the “fully adversary” character of adult criminal trials).

¹⁹ Majd & Puritz, at 555.

²⁰ See Fedders at 794-95.

²¹ Fedders, 792-93.

²² Fedders, 791.

²³ See *Welch v. United States*, 604 F.3d 408, 432 (7th Cir. 2010) (Posner, J., dissenting) (juvenile adjudications “may well lack the reliability of real convictions in criminal courts”).

²⁴ See *United States v. Cronin*, 466 U.S. 648, 656 (1984).

²⁵ Majd & Puritz at 555-56 (describing reports that juvenile courts and judges place a “premium” on “maintaining a friendly atmosphere” that discourages some attorneys from filing motions or pursuing defenses).

Because of the potential for ineffective assistance of counsel and the susceptibility of juvenile defendants to wrongful conviction, it is imperative to ensure that adjudicated juveniles have access to post-conviction relief that will allow them to raise and remedy these issues in court. Although adjudicated juveniles may not suffer consequences directly on par with convicted criminals in adult court, adjudications of delinquency can and often do have far-reaching collateral consequences, such as lifetime sex offender registration for juveniles who have been adjudicated delinquent of certain sex offenses,²⁶ restrictions from serving in the military,²⁷ eviction from public housing,²⁸ and immigration-related penalties.²⁹ Unfortunately, however, the nature and extent of juveniles' access to post-conviction relief is far from clear in many jurisdictions. In some jurisdictions, moreover, such access is explicitly denied.

B. National Outlook: Access Unclear

Efforts to prove innocence post-conviction are ubiquitous in jurisdictions all over the country. By far, the most generally accepted means of proving innocence is through post-conviction DNA testing. Since DNA technology was first used in 1989 as a forensic tool to prove innocence post-conviction, individuals have been exonerated through post-conviction DNA testing in thirty-six states.³⁰ Forty-eight states,³¹ the District of Columbia,³² and the federal government³³ have post-conviction DNA testing statutes on the books. While these DNA testing laws have enabled 289 individuals to be proven innocent, not a single one of those individuals had been adjudicated delinquent in juvenile court, despite the fact that every jurisdiction has a separate juvenile court system.³⁴

²⁶ See, e.g., 730 ILCS 150/2(A)(5) and (3)(a) (2010); *In re J.W.*, 787 N.E.2d 747 (2003).

²⁷ See Army Regulations 601-210, Paragraphs 4-4, 4-32(5) (2007).

²⁸ See *Dept. of HUD v. Rucker*, 535 U.S. 125, 133-36 (2002) (upholding the practice of evicting tenants from public housing due to their illegal conduct).

²⁹ See *Wallace v. Gonzalez*, 463 F.3d 135 (2d Cir. 2006) (upholding the Board of Immigration Appeals' consideration of a prior juvenile adjudication in deciding whether to grant an alien's application for adjustment of status).

³⁰ Innocence Project Web Site – browsing profiles organized by state...

³¹ Only Massachusetts and Oklahoma do not currently have DNA testing statutes. On February 9, 2012, however, the Massachusetts legislature passed Bill S. 1987, which if adopted would make Massachusetts the forty-ninth state to enact a post-conviction DNA testing statute. The bill currently awaits the signature of the Governor. See <http://www.malegislature.gov/Bills/187/Senate/S01987>; <http://masslawyersweekly.com/the-docket-blog/2012/02/09/post-conviction-dna-testing-bill-approved/>.

³² DC Stat § 22-4133.

³³ 2004 Justice For All Act.

³⁴ See Carol S. Stevenson et al., *The Juvenile Court*, Vol. 6 No. 3 (Winter 1996) (available online at <http://futureofchildren.org/publications/journals/article/index.xml?journalid=55&articleid=310>) (all fifty states have a juvenile court system); *Juvenile Delinquents and Federal Criminal Law: The Federal Juvenile Delinquency Act and Related Matters*, Oct. 2004 (available online at <http://www.policyarchive.org/handle/10207/1143>) (discussing scope of federal juvenile jurisdiction); State Justice Institute Council for Court Excellence, *Guide to the D.C. Juvenile Justice System*, June 2009 (available online at <http://www.courtexcellence.org/DCJuvenileJusticeGuide.English%20Final.pdf>) (discussing the District of Columbia's juvenile court system).

A closer look at the various post-conviction DNA statutes may offer at least one explanation. Of the fifty jurisdictions that have post-conviction DNA testing statutes, only five – Colorado,³⁵ the District of Columbia,³⁶ New Hampshire,³⁷ South Carolina,³⁸ and Wisconsin³⁹ – explicitly allow young people who have been adjudicated delinquent in juvenile court to seek relief under those statutes. While the remaining jurisdictions’ statutes do not address juvenile access to post-conviction DNA testing, there are still strong reasons to believe that adjudicated juveniles may not seek relief under many of those statutes.

The vast majority of DNA testing statutes share a common wording that limits access to those “convicted of” a crime or felony. Forty-one jurisdictions use this language or something similar.⁴⁰ The problem with this wording, however, is that it may have the effect of excluding young people who have been adjudicated delinquent in juvenile court.⁴¹ State and federal laws generally draw a clear distinction between a “conviction” in criminal court and an “adjudication” in juvenile court.⁴² Take, for example, California law, which holds that “an order adjudging a minor to be a ward of the juvenile court shall not be deemed a conviction of a crime *for any purpose*.”⁴³ At the same time, California’s post-conviction DNA testing statute limits access to

³⁵ Colo. Rev. Stat. 18-1-411(d) (including an individual incarcerated in “a juvenile facility following adjudication for an offense that would have been a felony if committed by an adult” among those who may access the statute).

³⁶ DC Stat. §22-4133 (including those “adjudicated as a delinquent”).

³⁷ NH Rev. Stat. Ann. § 651-D:2 (providing access after “adjudication as a delinquent”)

³⁸ S.C. Code 17-28-30 (including those “adjudicated delinquent”).

³⁹ W.S.A. 974.07 (including those “adjudicated delinquent”).

⁴⁰ Alaska (12.73.010), Arizona (A.R.S. 13-4240), Arkansas (Ark. Stat. Ann. 16-112-20), California (Cal Penal Code 1405), Connecticut (54-102kk), Delaware (11 Del. C. 4504), Florida (FSA 925.11) Georgia (Ga Code Ann. 5-5-41), Hawaii (RS 844D-121), Idaho (Idaho Code 19-4901), Illinois (725 ILCS 5/166-3), Indiana (35-38-7-5), Iowa (ICA 81.10(1)), Kansas (KSA 21-2512), Louisiana (Art. 926.1), Maine (Me Rev Stat. 15 Sec. 2136-2138), Maryland (Code of Crim Proc 8-201), Michigan (770.16), Minnesota, (590.01-.06), Montana (46-21-110), Nebraska (29-4120), Nevada (176.0918), New Jersey (2A:84A-32a), New Mexico (31-1A-2), North Carolina (15A-269), North Dakota (29-32.1-15), Ohio (2953.71-.84), Oregon (136.690), Pennsylvania (42 sc. 9543) Rhode Island 10-9.1-12), South Dakota (23-5B-1), Tennessee (40-30-303), Texas (CCP 64.01), Utah (78B-9-300) Vermont 13 VSA 5561), Virginia 19.2-327.1), Washington 10.73.170), West Virginia (15-2b-14), Wyoming (7-12-301). *See also infra* note 44 for a discussion of Florida, Idaho, and Rhode Island’s statutes, which are worded slightly differently and may present different issues of statutory interpretation.

Alabama and Kentucky limit their post-conviction DNA testing to individuals convicted of a “capital offense.” Ala. Code 15-18-200; Ky Rev. Stat. Ann. 422.285. 13A-5-39. Although an adjudicated delinquent could never receive a “capital sentence,” it appears, under those states’ definitions, that a juvenile could be adjudicated of a capital offense. 13A-5-39 (Alabama defining a capital offense as “[a]n offense for which a defendant shall be punished by a sentence of death or life imprisonment without parole according to the provisions of this article”); KY Rev Stat § 640.040 (noting that a youthful offender can be adjudicated of a capital offense).

⁴¹ It is fairly clear that juveniles charged and convicted in adult criminal court by means of transfer or who otherwise are given an adult sentence would be allowed to access DNA testing statutes. *See e.g.*, NM Stat § 32A-2-18(C) (“If a judgment on a proceeding under the Delinquency Act results in an adult sentence, the determination of guilt at trial becomes a conviction for purposes of the Criminal Code.”)

⁴² *See e.g.* People v. Taylor, 221 Ill. 2d 157 (2006) (holding that a juvenile who escapes from juvenile detention after an adjudication of delinquency cannot be convicted under an escape statute that limits its application to those “convicted of a felony”); United States v. Brian N., 900 F.2d 218, 220 (10th Cir. 1990) (explaining that juvenile delinquency is “an adjudication of status--not a criminal conviction”).

⁴² Cal. Welf. & Inst. Code § 203.

⁴³ Cal. Welf. & Inst. Code § 203 (italics added).

“any person convicted of a felony.”⁴⁴ Under basic principles of statutory construction, it is difficult to imagine that an adjudicated juvenile is encompassed within the statute.⁴⁵

The structure of the Maine statutory scheme suggests the same conclusion. Access to post-conviction DNA testing in Maine is governed by Me. Rev. Stat. Ann. 15 § 2138, which allows “a person convicted of and sentenced for” certain crimes to seek testing.⁴⁶ The statute does delineate those who may seek relief – such as individuals who are on parole – but adjudicated juveniles are not mentioned.⁴⁷ Even further, Maine statutory and case law makes clear that a delinquency adjudication is not the equivalent of a felony conviction.⁴⁸ And the Maine statute governing non-DNA post-conviction claims for relief specifies clearly that adjudicated juveniles may seek relief under that statute – thus suggesting an intentional contrast between the scopes of the non-DNA and DNA post-conviction statutes.⁴⁹ While there does not appear to be any case law in Maine addressing this issue,⁵⁰ this statutory backdrop suggests that adjudicated juveniles may not be able to access the DNA testing statute.

In fact, there appears to be little case law addressing this precise question in any jurisdiction. One of the few courts to address the issue – in Texas -- has strongly suggested that juveniles cannot seek DNA testing when the DNA testing statute limits relief to those who have been “convicted.” Texas’ post-conviction DNA testing statute is found at Code of Criminal Procedure. Art. 64.01,

⁴⁴ Cal. Penal Code 1405.

⁴⁵ Three states use language that is also ambiguous as to whether it applies to adjudicated juveniles but that may allow for better statutory interpretation arguments that it does. Mississippi allows access to “any person sentenced by a court of record of the State of Mississippi;” 99-39-5, Missouri allows “a person in the custody of the department of corrections” to file a motion, 547.035; and New York states that a “defendant” may bring a motion. NY CPL 440.30(1a).

Two states use statutory language that allows access to individuals “convicted of, or sentenced to” a crime or felony. *See* Idaho (19-4901); Rhode Island (10-9.1-12). Juvenile petitioners in these states may have stronger statutory interpretation arguments for access by saying that they were “sentenced,” even if not convicted. *But see United States v. Moorer*, 383 F.3d 164, 169, n.3 (3rd Cir. 2004) (noting that “[u]nder the New Jersey Code of Juvenile Justice, juveniles who are adjudicated delinquent are not sentenced but rather are subject to a “dispositional hearing”) (citing N.J. Stat. Ann. § 2A:4A-41); *People v. J.J.M.* (In re J.J.M.), 299 Ill. App. 3d 327 (2d Dist. II App. 1998) (adjudicated juveniles are neither convicted nor given sentences). The vast majority of state statutes, however, if the term “sentencing” appears, use the conjunction “and,” which does not appear to aid the statutory argument. *See e.g.* Arizona (ARS 13-4240) (limited to individuals “convicted of and sentenced for”); Connecticut (“convicted of a crime and sentenced to”); Hawaii (HRS 844D-121 (convicted of and sentenced for”). One state, Florida, presents a similar issue: Its statute permits DNA testing for those who have been “found guilty,” which could arguably include adjudicated juveniles. West’s F.S.A. § 925.11. *See A.S.F. v. State*, 70 So. 3d 754 (Fl. Ct. App. 2011) (discussing a juvenile who was “found guilty” of a crime); *but see State v. J.M.*, 824 So.2d 105, 111 (Fla. S. Ct. 2002) (if the legislature had intended to include adjudicated juveniles within the scope of a different Act, it could have specifically said so).

⁴⁶ Me. Rev. Stat. Ann. 15 § 2138.

⁴⁷ Me. Rev. Stat. Ann. 15 § 2138(1).

⁴⁸ 15 M.R.S. § 3310(6) (2010); *State v. Brockelbank*, 2011 ME 118.

⁴⁹ Me. Rev. Stat. Ann. 15 § 2121-2132; *see specifically* 2121(1) (specifying that a “criminal judgment” under this statute includes an “adjudication and disposition in a juvenile case”).

⁵⁰ Only two published appellate cases address the post-conviction DNA statute in Maine. *See Cooksen v. State*, 17 A.3d 1208 (2011); *State v. Donovan*, 853 A.2d 772 (2004). Neither address this issue.

which allows “a convicted person” to seek testing.⁵¹ In the case of *In re R.J.M.*,⁵² a juvenile sought leave to seek relief under this statute after his adjudication for aggravated sexual assault. The lower court denied the motion, finding that there were “no reasonable grounds for a motion to be filed.”⁵³ In dismissing the appeal for lack of jurisdiction, the appellate court noted that the legislature did not explicitly authorize a juvenile’s appeal of a denial of such a motion.⁵⁴ The court explained that the Code of Criminal Procedure does not generally apply to adjudicated juveniles unless the legislature specifically “evinces a contrary intent.”⁵⁵ It went on to note that there was no contrary intent manifest in the DNA testing statute; rather, the statute is limited to those who have been “convicted,” and the Texas Family Code specifically states that “an order of an adjudication . . . is not a conviction of crime.”⁵⁶ Although the specific holding in this case was that an adjudicated juvenile cannot *appeal* the denial of a DNA testing motion, the decision strongly suggests that an adjudicated juvenile also cannot file such a motion in the first place.

Beyond the fundamental unfairness of not allowing adjudicated juveniles opportunities to prove their innocence, the apparent lack of juvenile access to post-conviction DNA testing in most jurisdictions also creates a troubling contradiction. The vast majority of states require juveniles to contribute a DNA sample to the national DNA database known as CODIS after an adjudication of guilt in juvenile court.⁵⁷ For example, Kentucky and California, which appear to deny juveniles the right to seek post-conviction DNA testing, still require adjudicated juveniles to submit their DNA profiles into CODIS.⁵⁸ These statutory schemes create an odd dichotomy: Juveniles’ DNA can be used only to prove their guilt, not their innocence.

Statutes and rules governing the availability of other, non-DNA forms of collateral relief – such as state-level writs of habeas corpus – often suffer from the same infirmity as the DNA statutes: in many jurisdictions, it remains uncertain as to whether such relief is available to adjudicated juveniles. For example, Arizona’s R. Crim. P. 32.1 provides one method for pursuing state-level post-conviction relief; as with the vast majority of DNA testing statutes, however, this provision limits access to those who have been “convicted” of a criminal offense.⁵⁹ Indeed, the Arizona statute explicitly lists several categories of defendants who are permitted to file under this section – such as those who have violated probation – yet it omits to mention adjudicated juveniles.⁶⁰ Given this statutory backdrop, it is unclear – if not unlikely – that this provision is applicable to

⁵¹ Texas C.C.P. Art. 64.01(a-1).

⁵² 211 S.W.3d 393 (Tex. App. 2006).

⁵³ *Id.*

⁵⁴ *Id.*

⁵⁵ *Id.*

⁵⁶ *Id.* (quoting TEX. FAM. CODE ANN. § 51.13 (a)).

⁵⁷ http://www.aslme.org/dna_04/grid/statute_grid_4_5_2006.html

⁵⁸ Ky. Rev. Stat. Ann. § 17.174; Cal. Penal Code § 296 .

⁵⁹ AZ R. Crim. Proc. 32.1.

⁶⁰ *Id.*

adjudicated juveniles. In other states, including North Dakota, Oregon, Pennsylvania, and Rhode Island, it is equally doubtful that adjudicated juveniles may seek relief.⁶¹

Although some states explicitly allow equal access⁶² – including Maine, as outlined above – there are a handful of court decisions throughout the country that explicitly prohibit adjudicated juveniles from seeking state-court collateral remedies. Adjudicated juveniles in Illinois are not permitted to seek relief pursuant to the Post-Conviction Hearing Act, the traditional means by which adult criminals raise non-forensic actual innocence claims and other constitutional violations.⁶³ Similarly, neither Arkansas⁶⁴ nor Texas⁶⁵ juveniles have access to state habeas corpus relief.

The South Carolina statutory scheme also appears to prohibit adjudicated juveniles from seeking non-DNA collateral relief. Recall that South Carolina was one of only five states to explicitly state in its post-conviction DNA testing statute that those who have been “convicted of or adjudicated delinquent” may seek DNA testing.⁶⁶ Conversely, South Carolina’s Uniform Post-Conviction Procedure Act limits access to non-forensic collateral relief to those persons who have been “convicted” of a crime.⁶⁷ The legislature’s failure to explicitly mention adjudicated juveniles in this statute when it had done so in the DNA context strongly suggests that juveniles do not have access to non-DNA collateral remedies.

Other statutory schemes provide some means for adjudicated juveniles to seek collateral remedies even while limiting their access to a greater degree than similarly situated adults. Consider Illinois, which, as explained above, prohibits juvenile access to the Post-Conviction Hearing Act but does allow adults and juveniles alike to seek relief from judgments to correct

⁶¹ See N.D.C.C. 29-32.1-01 (North Dakota statute limiting access to post-conviction procedures to a person “convicted of and sentenced for a crime”); O.R.S. 419C.400 (Oregon statute limited to “person convicted of a crime”); PA Stat Ann. 42 Sec. 9543 (PA statute limiting post-conviction relief to petitioners “convicted of a crime”); Rhode Island 10-9.1-1 (Rhode Island statute limiting post-conviction relief to person “convicted of or sentenced for” a crime);

⁶² See e.g., Alabama Code 15-12-23(b) (allowing judges to appoint counsel for adjudicated juveniles seeking habeas corpus or other collateral relief); D.C. Code 16-2335.01(a) (allowing adjudicated juveniles to seek a new hearing on the grounds of actual innocence); *In the Interest of J.M.*, 103 N.J. Super. 88 (1968) (allowing the delinquent juvenile collateral relief); Ohio R.C. 2953.21 (allowing “any person convicted of a criminal offense or adjudicated a delinquent child” to pursue collateral relief); *Robinson v. Boley State School for Boys*, 554 P.2d 44 (1976) (holding that as a matter of equal protection, juveniles must be afforded access to post-conviction procedures); *State ex rel. R.S. v. Trent*, 169 W. Va. 493 (1982) (granting state habeas relief to West Virginia juvenile).

⁶³ See *In Re A.G.*, 195 Ill. 2d 313, 322 (2001) (citing *In re A. W. H.*, 95 Ill. App. 3d 1106, 1107 (1981); *In re R. R.*, 75 Ill. App. 3d 494, 496 (1979) for the proposition that the Illinois high court has not reviewed lower court decisions holding that the Post-Conviction Hearing Act does not apply to juvenile proceedings); see also *People v. Washington*, 171 Ill. 2d 475 (1996) (explaining that the Post-Conviction Hearing Act can be utilized to make claims of actual innocence and other constitutional violations).

⁶⁴ *Robinson v. Shock*, 282 Ark. 262 (1984).

⁶⁵ *Ex Parte Valle*, 104 S.W.3d 888 (Tex Crim. App. 2003) (holding that adjudicated juveniles cannot request habeas relief because they are not “convicted”).

⁶⁶ S.C. Code 17-28-30

⁶⁷ S.C. Code 17-27-20

errors of fact.⁶⁸ Although adult criminal defendants have a two-year period in which they can pursue this relief, the Illinois statutory scheme allows adjudicated juveniles only one year to pursue equivalent relief.⁶⁹ There is no reason apparent in the statutes for this discrepancy.

In short, most jurisdictions have not established clear rules as to whether adjudicated juveniles have the same rights as adults to seek relief through post-conviction proceedings. Despite this lack of clarity, there is good reason to believe that access to all forms of post-conviction relief is severely limited for many adjudicated juveniles across the country. As exemplified by the two Illinois case studies below, these limitations are, or can be, disastrous.

Section II

A. Case Study: Alberto M.

In early 1999, Alberto M., a twelve-year-old Latino boy living in Chicago with his parents, older sister, and two younger brothers, was having a difficult time.⁷⁰ His mother suffered from depression, anxiety, and possible bipolar disorder⁷¹ while his father abused drugs and alcohol,⁷² leading to a volatile home environment.⁷³ Perhaps in response, Alberto started lashing out and acting inappropriately, getting in some trouble at school and at home. It wasn't long before he started encountering law enforcement. In March, after an altercation with his mother, he was arrested for domestic battery.⁷⁴ The case never made it to court, but it signaled some mounting problems for Alberto.

In May, a distraught Alberto started telling friends that he was going to kill himself.⁷⁵ When he was discovered with a rope and a knife, he was admitted to Children's Memorial Hospital, where he received two weeks of intensive psychological therapy.⁷⁶ He was put on antidepressants and drugs designed to mitigate his attention deficit disorder.⁷⁷

Alberto's problems multiplied greatly in September, however, when the Cook County State's Attorney's Office filed a petition for adjudication of wardship against him, alleging that Alberto committed acts of sexual penetration against his nine-year-old brother, Evan.⁷⁸ According to the charges and court records, it was alleged that Alberto, who by this time had turned thirteen years

⁶⁸ *People v. Gandy*, 227 Ill. App. 3d 112 (5th Dist. Ill. 1992).

⁶⁹ 705 ILCS 405/2-32.

⁷⁰ The names of Alberto and Evan have been changed to protect their identities.

⁷¹ Lutheran Social Services of Illinois, Psychiatric Evaluation, A.M., October 27, 2000 (on file with authors); Children's Memorial Hospital, Discharge Summary, A.M. February 4, 2000 (on file with authors).

⁷² Lutheran Social Services, supra note __.

⁷³ Children's Memorial Hospital, Discharge Summary, A.M., May 19, 1999 (on file with authors).

⁷⁴ Chicago Police Department, Juvenile Summary Report, A.M.; Juvenile Court of Cook County, Social Investigation, A.M., June 13, 2000, at 4 (on file with authors).

⁷⁵ *Id.*;

⁷⁶ *Id.*

⁷⁷ *Id.*; see also *In re A.M.*, Petition for Termination from Sexual Offender Registry, at Ex. A (Sexual Offense Risk Assessment) (on file with authors).

⁷⁸ *In re A.M.*, Petition for Adjudication of Wardship – Amended (on file with authors).

old, was in his room with his brother Evan when he became aroused by a female wrestler on the television.⁷⁹ Alberto then allegedly sexually penetrated his brother.⁸⁰ Law enforcement learned of this after Evan allegedly told their mother, who alerted the police.⁸¹ Alberto then confessed, while nine-year-old Evan also made statements implicating his brother.⁸²

Alberto, however, told a far different version of the events that led to his charges. Alberto stated that he and his brother were swimming nude in a family member's pool. While they were playing in the water, they began re-enacting a scene from *Mulan* – a 1998 animated Disney film – in which Alberto lifted his younger brother over his head. As they were doing so, their mother entered the pool area, saw them naked, overreacted, and called the police. When brought to the police station, Alberto was bombarded with questions from police officers, who accused him of committing sexual acts against his brother. After what seemed like hours of constant questioning and the police's adamant refusal to accept his denials, Alberto gave in. Scared and confused, he admitted to what the police were saying he did to his brother. Next thing Alberto knew, he was shipped off to the detention center and charged with serious crimes in juvenile court.

While Alberto was released from detention after just a couple of days, he wasn't allowed back home. As the case wound its way through juvenile court, he was placed in the custody of the pastor of the family's church.⁸³ Alberto's problems, however, continued. Shortly after the New Year, Alberto was readmitted to the hospital for a week's worth of psychological treatment.⁸⁴ Alberto had been acting very erratically, including incidents of uncontrolled laughter or sobbing, and teachers reported that he spoke nonsensically at times.⁸⁵ He had run away twice and had allegedly verbally and physically intimidated his guardian.⁸⁶ His older sister had been hospitalized following her own suicide attempt just two weeks earlier.⁸⁷ After his hospital admission, Alberto was diagnosed with bipolar disorder and was prescribed lithium.⁸⁸

At the same time, however, the State's case against Alberto suffered a significant setback. Per a court order, Alberto was evaluated by a psychologist, who determined that he was incapable of knowingly understanding and waiving his *Miranda* rights.⁸⁹ In light of these conclusions, the Cook County State's Attorney was in all probability barred from using Alberto's confession against him. Perhaps in response, the State offered Alberto a deal: in exchange for dropping the seven of the eight allegations, including the most serious charges, Alberto could plead guilty to one count of sexual conduct with a family member under the age of eighteen and avoid detention

⁷⁹ Juvenile Court of Cook County, Social Investigation, A.M., June 13, 2000, at 4, *supra* note 4.

⁸⁰ *Id.*

⁸¹ *Id.*

⁸² *Id.*

⁸³ Social Investigation Report, at 5 *supra* note 4.

⁸⁴ Children's Memorial Hospital, Discharge Summary, A.M., January 30, 2000 (on file with authors).

⁸⁵ *Id.*

⁸⁶ *Id.*

⁸⁷ *Id.*

⁸⁸ *Id.*

⁸⁹ The University of Chicago, Psychiatric Evaluation, A.M., January 6, 2000 (on file with authors).

entirely.⁹⁰ The deal required him to be on probation for five years and do some community service.⁹¹ Alberto's counsel also explained to him that it would require his registration as a sex offender for a period of ten years.⁹² Given the seriousness of the charges, his other family and medical problems, and the risk of a long period of detention if he went to trial, Alberto reluctantly decided to take the deal, despite his private insistence that he was innocent. In mid-2000, Alberto accepted the terms as read to him by his juvenile court judge and signed a form that required his registration as a sex offender for ten years. That form was later read into the record in open court by the prosecutor.⁹³

Over the next year or so, unsurprisingly, Alberto's psychological and emotional problems only grew. He missed school and counseling appointments frequently; stopped taking his medications; had multiple violent episodes involving family members and classmates; and, in mid-2001, after again making suicidal statements, was hospitalized yet again.⁹⁴ Over this same time period, his parents separated and sought a divorce.⁹⁵ In November, he was arrested on two separate occasions.⁹⁶

In early 2002, however, Alberto entered a therapeutic day school and began treatment with a new counselor.⁹⁷ Although his improvements were gradual, they were significant. Alberto's violent episodes began to subside. He improved his grades, attended his counseling sessions, and consistently took his medication.⁹⁸ In July 2005, he was discharged from probation, having satisfactorily met all the requirements.⁹⁹ The Cook County Juvenile Probation Department issued a report deeming him unlikely to sexually offend in the future, and in fact, he had not been adjudicated or convicted of any offense – sexual or otherwise – since his guilty plea in July 2000.¹⁰⁰ Alberto had also consistently complied with his annual sex offender registration duties.¹⁰¹

By his early twenties, it was clear that Alberto had entirely turned his life around. He had graduated from high school and now had a solid career as a department head at home improvement store.¹⁰² He was making more than \$25 an hour when he worked overtime, which

⁹⁰ *In re A.M.*, Motion to Withdraw Guilty Plea or Relief from Judgment Pursuant to 705 ILCS 405/2-32, at Ex. C (transcript of court proceedings, April 26, 2000) (on file with authors).

⁹¹ *Id.*

⁹² *Id.*, at Ex. C (Affidavit of A.M.)

⁹³ *Id.* at 2.

⁹⁴ Hartgrove Hospital, Psychological Screening Evaluation, A.M. (June 11, 2001); Juvenile Court of Cook County, Supplemental Social Investigation, A.M., August 13, 2001 (on file with authors).

⁹⁵ Supplemental Social Investigation, August 13, 2011, at 4.

⁹⁶ Juvenile Court of Cook County, Supplemental Social Investigation, A.M., February 13, 2002 (on file with authors).

⁹⁷ *Id.*, at 4.

⁹⁸ Monthly Case Log, A.M., January 2002-July 2005.

⁹⁹ Petition for Termination of Sex Offender Registry, *supra* note 7, at Ex. A, at 4.

¹⁰⁰ *Id.*

¹⁰¹ *Id.*

¹⁰² *Id.* at 2.

was often.¹⁰³ He was the primary means of financial support for his mother and two younger brothers, including Evan, with whom he lived.¹⁰⁴ He had a girlfriend and an older male friend who was a close mentor.¹⁰⁵ In his spare time, Alberto wrote lyrics and produced his own music.¹⁰⁶ He even found time to take some classes at a community college; pursuant to sex offender registration regulations, however, he was required to alert the administration of his status as a sex offender. Feeling ostracized by school administrators, he dropped out.¹⁰⁷ All told, Alberto was eagerly looking forward to July 2010, when he was due to complete his sex offender registration requirements. At that time, he felt that he would be able to move beyond his past life for good.

In late 2009, however, Alberto learned something very troubling. Law enforcement began telling him that his registration was not due to be terminated and that he was going to have to register as a sex offender for the rest of his life.¹⁰⁸ Alberto was shocked, as he recalled his lawyer specifically informing him that his registration duties would last only ten years.¹⁰⁹ The ten-year limit had been a crucial factor in Alberto's choice to plead guilty, as his counsel had thoroughly relayed how arduous and embarrassing the registration requirements were.¹¹⁰ Alberto immediately sought the advice of counsel, hoping that there was a way he could terminate his registration requirements or somehow prove his innocence and get the charges vacated.

Alberto's counsel – who are the authors of this article – soon determined that under applicable Illinois law, the offense to which Alberto had pled did in fact require lifetime registration, even though Alberto had been a juvenile.¹¹¹ After ordering the court file and transcripts, however, counsel soon discovered that Alberto was never informed of this. To the contrary, the juvenile court judge's guilty plea admonishments specifically stated that Alberto was only required to register for ten years.¹¹² A boilerplate court form, signed and initialed by Alberto, said the same thing.¹¹³ Counsel also interviewed Alberto's former public defender; while she had no specific recollection of the case, she did recall some confusion about the length of his sex offender registration obligations. In a notarized affidavit, Alberto swore that his counsel informed him that the requirements would last just ten years and that he relied on this information in choosing to plead guilty.¹¹⁴

¹⁰³ Id.

¹⁰⁴ Id.

¹⁰⁵ Id.

¹⁰⁶ Id.

¹⁰⁷ Id.

¹⁰⁸ Motion to Withdraw Guilty Plea or Relief from Judgment Pursuant to 705 ILCS 405/2-32, at Ex D (affidavit)

¹⁰⁹ Id.

¹¹⁰ Id.; *see also* Social Investigation Report, June 13, 2000.

¹¹¹ 730 ILCS 150/2(A-5), (E)(1); 730 ILCS 150/7; Public Act 91-48 (effective July 1, 1999).

¹¹² Motion to Withdraw Guilty Plea.

¹¹³ Id.

¹¹⁴ Id. (affidavit)

At the same time, counsel began to investigate Alberto's claim of innocence by speaking to Alberto's younger brother Evan, the alleged victim. Alberto had warned his counsel that he did not know what Evan was going to say, given that the family never had spoken much about the alleged assault. When counsel met with Evan, who was now an eighteen-year-old high school senior, Evan stated without hesitation that the assault never happened.¹¹⁵ He told a similar story to Alberto's: Their mother overreacted when she saw the two brothers playing naked in a family member's pool.¹¹⁶ He recalled being questioned as a nine-year-old by multiple police officers about whether Alberto had assaulted him in a sexual way; specifically, he recalled feeling scared and fearing that he was going to go to jail.¹¹⁷ Due to his youth, Evan could not recall whether he ultimately had told the police that Alberto had assaulted him, but he repeatedly declared that even if he did make that statement, it wasn't true: his brother had never sexually assaulted him in any way.¹¹⁸ Evan signed a notarized affidavit documenting this story and promised to testify consistently in court if he was ever called to do so.¹¹⁹

Armed with this new evidence, Alberto was geared up to pursue relief in the Illinois courts. His counsel intended to raise a claim of actual innocence based on Evan's affidavit as well as due process and ineffective assistance of counsel claims based on the affirmative misinformation that Alberto's attorney had told him about the length of his registration requirements.¹²⁰

These efforts, however, were soon stymied. Alberto's attorney discovered that Illinois law precluded juveniles from filing petitions under the Post-Conviction Hearing Act,¹²¹ the traditional means by which a criminal defendant raises claims of actual innocence or constitutional violations based on newly discovered evidence.¹²² Instead, the only way for Alberto to pursue any sort of collateral relief in juvenile court was to file a so-called petition for relief from final order, a traditional civil remedy that must be raised within one year of the date of adjudication.¹²³ One year, of course, had long since passed. When Alberto attempted nevertheless to file claims under this statute, a juvenile court judge refused to entertain his claims, citing the time limitation.¹²⁴ Despite the fact that Alberto had evidence of his innocence; that his defense attorney, prosecutor, and judge had affirmatively given him misinformation that

¹¹⁵ Affidavit of E.M., April 30, 2010 (on file with authors).

¹¹⁶ Id.

¹¹⁷ Id.

¹¹⁸ Id.

¹¹⁹ Id.

¹²⁰ Indeed, the substance of an ineffective assistance of counsel claim appeared to be very strong, as the U.S. Supreme Court had just recently ruled that an adult immigrant Petitioner who pled guilty of a criminal offense based on the affirmative misadvice of his counsel that the conviction would not affect his immigration status, and relied on that advice in pleading, can establish ineffective assistance of counsel. *Padilla v. Kentucky*, 130 S. Ct. 1473 (2010). There was a strong argument that affirmative misadvice about sex offender registration status was at least as important a collateral matter as immigration consequences and the same result should lie.

¹²¹ 725 ILCS 5/122-1 et. seq.

¹²² *In re William M.*, 206 Ill. 2d 595 (2003).

¹²³ 705 ILCS 405/2-32.

¹²⁴ *In re A.M.*, Order, July 26, 2010.

induced his guilty plea; and that any delay in raising these issues was in no way Alberto's fault, Alberto had no legal vehicle for presenting his claims to the court.¹²⁵

B. Case Study: Robert Taylor and Jonathan Barr

On the afternoon of November 19, 1991, fourteen-year-old Cateresa Matthews was on her way home from school in the close-knit, south Chicago suburb of Dixmoor.¹²⁶ Just as she did every day, she walked from Rosa L. Parks Middle School to her great-grandmother's house, where she ate a home-cooked meal.¹²⁷ After bidding her great-grandmother goodbye, she then walked to a nearby city bus stop, where she usually caught the bus that took her home.¹²⁸ Inexplicably, however, Cateresa never arrived home. As the afternoon stretched into the evening, her mother placed several increasingly frantic telephone calls to the local police, hospitals, and Cateresa's friends and schoolmates – all to no avail. The next morning, Cateresa was still nowhere to be found.

Nearly three weeks later, Cateresa was still considered a missing person by authorities until a Dixmoor resident named Jesus Novoa made a shocking discovery. On the afternoon of December 8, Novoa was walking along a grassy area next to Interstate 57, which ran through his residential neighborhood.¹²⁹ Along a foot-hewn path that ran through tall grasses, he stumbled across the body of Cateresa Matthews.¹³⁰ She was lying on her back with her pants removed and her underwear dangling off one ankle.¹³¹ A spent .25-caliber bullet casing sat on her chest.¹³² She had been shot in the mouth.¹³³

After Novoa and his family members called the police, crime scene investigators arrived on the scene. Almost immediately, they concluded that Cateresa had been killed recently. Her body did not show signs of decomposition or animal predation, as would be expected after three weeks in an open field.¹³⁴ Blood was still draining from her body, also suggesting a recent death.¹³⁵

¹²⁵ Alberto's story does have a happy ending. Although Alberto was never able to prove his innocence in court, he applied to be removed from the sex offender registry through an Illinois statute that allows early removal for certain adjudicated juveniles. See 730 ILCS 150/3-5. On March 2, 2011, Alberto was removed from the sex offender registry. A.M., Court Order, March 2, 2011. He spent roughly eight more months on the registry than he was told he would have to when he pled guilty.

¹²⁶ *People v. James Harden*, Case No. 92 CR 27247, *Motion For Forensic Testing Pursuant To 725 ILCS 5/116-3*, at 2-3 (on file with authors); *People v. James Harden et. al*, Case No. 92 CR 27247, *Joint Petition For Relief From Judgment, Immediate Vacation of Convictions, and Release of Petitioners On Their Own Recognizance*, at 3 (hereinafter *Dixmoor Motion to Vacate*).

¹²⁷ *Id.*

¹²⁸ See *Dixmoor DNA Motion*, at 3; *Dixmoor Motion to Vacate*, at 3.

¹²⁹ See *Dixmoor DNA Motion*, at 2-3; *Dixmoor Motion to Vacate*, at 3.

¹³⁰ *Id.*

¹³¹ See *Dixmoor Motion to Vacate*, at 3.

¹³² See *Dixmoor Motion to Vacate*, at 3.

¹³³ See *Dixmoor Motion to Vacate*, at 3.

¹³⁴ See *Dixmoor DNA Motion*, at 3; *Dixmoor Motion to Vacate*, at 3-4.

¹³⁵ See *Dixmoor DNA Motion*, at 3; *Dixmoor Motion to Vacate*, at 3-4.

And rigor mortis, which usually disappears within 36 hours of death, was present in her limbs.¹³⁶ Based on these observations, her autopsy report concluded that she had been killed the day her body was discovered: December 8, 1991.¹³⁷

Because her body was found on state property adjacent to the interstate, Dixmoor authorities handed the investigation over to the Illinois State Police. Their investigation, however, led nowhere. After canvassing the neighborhood and interviewing Cateresa's friends and relatives, police were at an apparent loss for leads. Beginning in late February 1992, police reports reflect an eight-month period of law enforcement inactivity as Cateresa's murder transformed from an electrifying crime into just another cold case.

That changed in October 1992, when police reports reflect that a fifteen-year-old student at Rosa Parks brought them new information. According to reports, this young informant told police that another fifteen-year-old classmate, Jonathan Barr, had told him that he had seen Cateresa getting into a car with two other teens – Robert Taylor and Robert Lee Veal – on the day she disappeared.¹³⁸ Interestingly, Barr was the younger brother of Cateresa's ex-boyfriend James Harden. And both Barr and Harden lived only a half-block away from where Cateresa's body was found.

Armed with this information, the police brought Robert Lee Veal to the local State's Attorney's Office for questioning nine days later. Like Barr and Taylor, Veal was also fifteen; but unlike them, he suffered from severe learning disabilities and was generally considered slow.¹³⁹ Despite his limitations, police interrogated Veal about the crime for hours without a parent or guardian present.¹⁴⁰ After several hours of questioning, Veal agreed to sign a statement that was written out by law enforcement.¹⁴¹ In that statement, Veal admitted to participating in the gang-rape and murder of Cateresa Matthews, along with four other teens: Jonathan Barr, Robert Taylor, seventeen-year-old James Harden, and seventeen-year-old Shainne Sharp.¹⁴²

The police arrested and interrogated Robert Taylor next. Again, after hours of interrogation, Taylor did as Veal had done: he signed a statement written out by law enforcement in which he admitted to participating in the gang-rape and murder of Cateresa with the same group of teens.¹⁴³ Two days later, police interrogated Shainne Sharp under similar circumstances; after

¹³⁶ See *Dixmoor DNA Motion*, at 3; *Dixmoor Motion to Vacate*, at 3-4.

¹³⁷ See *People v. James Harden et al.*, Case No. 95-3905, *Direct Appeal Brief and Argument For Defendants-Appellants*, at 8-10 (hereafter *Dixmoor Direct Appeal Brief*).

¹³⁸ See *Dixmoor DNA Motion*, at 3; *Dixmoor Motion to Vacate*, at 4; *Dixmoor Direct Appeal Brief*, at 13.

¹³⁹ See *Dixmoor Direct Appeal Brief*, at 13.

¹⁴⁰ *Id.*

¹⁴¹ See *Dixmoor Motion to Vacate*, at 5; *Dixmoor Direct Appeal Brief*, at 13-14.

¹⁴² See *Dixmoor Motion to Vacate*, at 5; *Dixmoor Direct Appeal Brief*, at 13-14.

¹⁴³ See *Dixmoor Motion to Vacate*, at 5; *Dixmoor Direct Appeal Brief*, at 13-14.

enduring nearly a day of questioning without a parent or attorney present, he too signed a similar statement.¹⁴⁴

The three inculpatory statements all admitted to the same basic nexus of events: an assault on Cateresa in the field where her body was found, with at least four of the five boys raping her and James Harden shooting her.¹⁴⁵ The three accounts wildly diverged, however, when it came to the surrounding events. Taylor described being picked up from school by a car containing the other four boys and Cateresa; the group then allegedly drove directly to the field where the assault occurred.¹⁴⁶ Sharp described being picked up from a basketball game by a car containing Taylor, Harden, and Veal – although he didn't know Veal's name and called him simply "the light-skinned dude" – and then being driven to Harden's house to play dice, where Barr and Cateresa joined them.¹⁴⁷ For his part, Veal described being picked up on his way home from a local candy store by Taylor, Harden, and Sharp, who were in a car together; a few minutes later, they also picked up Barr and Cateresa and then supposedly drove straight to the crime scene.¹⁴⁸ All three teens, however, agreed on one key fact. According to all three confessions, the assault and murder happened on the same day that Cateresa disappeared: November 19, 1991.

Following the confessions, all five teens were arrested and charged with a host of offenses, including Cateresa's sexual assault and murder. As the defendants awaited trial, law enforcement decided to take one further investigative step in order to corroborate the confessions with physical evidence: Using early DNA testing techniques, they asked the Illinois State Police Crime Lab to compare the DNA from the semen left inside Cateresa's body against the DNA of the charged boys.¹⁴⁹ That scientific testing, however, left law enforcement with two surprising results. First, it turned out that the DNA was left by a single male donor – not by four or five different individuals, as would be consistent with the three confessions.¹⁵⁰ Second, and even more notably, scientific testing conclusively established that the semen had not been left by any of the five charged teens.¹⁵¹ Instead, it belonged to some unknown man.

Despite this startling result, the Cook County State's Attorney's Office barreled forward with all five prosecutions. Because of their ages, Taylor and Barr had to be charged in juvenile court, meaning that they faced far less prison time if they were adjudicated delinquent; but the State proceeded to file motions requesting their transfer to adult criminal court, where they could face sentences of life in prison. After hearing argument, however, the juvenile court judge made an unusual decision: despite the seriousness of the charged offenses, he declined to transfer Taylor

¹⁴⁴ See *Dixmoor DNA Motion*, at 3-4; *Dixmoor Motion to Vacate*, at 5.

¹⁴⁵ See *Dixmoor DNA Motion*, at 3-4; *Dixmoor Motion to Vacate*, at 4-5.

¹⁴⁶ See Confession of Robert Taylor, October 29 1992 (on file with authors).

¹⁴⁷ *Dixmoor Motion to Vacate*, at 6-7.

¹⁴⁸ *Dixmoor Motion to Vacate*, at 6-7.

¹⁴⁹ See *Dixmoor DNA Motion*, at 5; *Dixmoor Motion to Vacate*, at 5; *Dixmoor Direct Appeal Brief*, at 14-15.

¹⁵⁰ See *Dixmoor Direct Appeal Brief*, at 14-15.

¹⁵¹ See *Dixmoor Direct Appeal Brief*, at 14-15.

and Barr's cases to adult criminal court.¹⁵² In so concluding, he reasoned that – despite the existence of multiple written confessions – there was not sufficient evidence such that a grand jury would be expected to issue an indictment in adult proceedings.¹⁵³ Key to his decision was the fact that the three confessions simply got the date of Cateresa's death wrong: "How could they charge these guys with killing and raping this girl on November 19? She didn't die until December 8."¹⁵⁴

The State immediately appealed this decision and the Illinois Appellate Court reversed, sending Taylor and Barr's cases straight to adult criminal court.¹⁵⁵ With all five teenage defendants now facing adult time, the State was in a powerful position. Prosecutors accordingly offered Sharp and Veal sweetheart deals: if they pled guilty and testified against Taylor, Harden, and Barr, they would serve only about eight years in prison.¹⁵⁶ Both Sharp and Veal accepted the deals; and based on their testimony (and, in Taylor's case, on his confession), Harden, Taylor, and Barr were convicted as adults and sentenced to the equivalent of life in prison.¹⁵⁷

Some seventeen years later, attorneys for Harden, Taylor, and Barr (including the authors of this article) filed post-conviction motions for DNA testing under 725 ILCS 5/116-3.¹⁵⁸ Over the intervening time, law enforcement had constructed the CODIS database, which contains the DNA of various offenders and charged individuals – a database that did not exist at the time of the Cateresa Matthews murder trials.¹⁵⁹ Although it was already known that the DNA left on Cateresa's body did not belong to the defendants, defense attorneys reasoned that perhaps the DNA donor could finally be identified. After the trial court agreed to grant the motions, the DNA testing proceeded – and on March 9, 2011, it was finally learned that the DNA belonged to a man named Willie Randolph.¹⁶⁰

Additional investigation revealed damning information about Randolph. He was much older than the five convicted defendants – thirty-three years old at the time of Cateresa's murder.¹⁶¹ He lived only a mile away from Cateresa's great-grandmother's house in Dixmoor.¹⁶² And he had a history of sexual violence. In 1977, Randolph had been convicted for raping a woman on the street.¹⁶³ Perhaps most strikingly, when he was in his early twenties, he also reportedly

¹⁵² See *In the Interest of R.T. and J.B.*, 648 N.E. 2d 1043, 1045 (Ill. App. 1995).

¹⁵³ *Id.*

¹⁵⁴ *Id.* at 1046.

¹⁵⁵ *Id.* The appellate court specifically concluded that the trial court erred in considering the State's likely success at trial during the transfer hearing.

¹⁵⁶ *Dixmoor Motion to Vacate*, at 6.

¹⁵⁷ *Dixmoor Motion to Vacate*, at 9.

¹⁵⁸ See, e.g., *Dixmoor DNA Motion*.

¹⁵⁹ See *Dixmoor DNA Motion*, at 2.

¹⁶⁰ Email from Assistant State's Attorney Mark Ertler, March 9, 2011 (on file with authors).

¹⁶¹ *Dixmoor Motion to Vacate*, at 10.

¹⁶² *Dixmoor Motion to Vacate*, at 11.

¹⁶³ *Dixmoor Motion to Vacate*, at 10.

sexually assaulted his fourteen-year-old girlfriend in the very same field in which Cateresa's body was later found in 1991.¹⁶⁴

Armed with this new evidence, defense attorneys filed post-conviction motions to vacate the convictions of all five of the convicted defendants.¹⁶⁵ After the State eventually dropped its opposition to those motions, the court vacated the convictions of Harden, Taylor, and Barr on November 3, 1991 – only sixteen days shy of the twentieth anniversary of Cateresa's disappearance.¹⁶⁶ Now in their mid-thirties, Harden, Taylor, and Barr were immediately released from prison; within weeks, the guilty pleas and convictions of Sharp and Veal – who had long ago finished their reduced prison sentences – were vacated, too. As of the writing of this article, the Cook County State's Attorney's Office has not filed charges against Willie Randolph in connection with Cateresa Matthews' death.

The story of these five defendants carries, at the least, the satisfaction of knowing that a long-festering injustice was corrected, albeit decades too late, through post-conviction proceedings. But the frightening corollary to that reality is the knowledge that, in Illinois, such a resolution might not have been available for Taylor and Barr if their cases had remained in juvenile court. The Illinois statutory provision that enabled them to file their motion for DNA testing – 725 ILCS 5/116-3 – permits a defendant to move for forensic testing in the trial court that entered judgment on his or her “conviction.” Generally speaking, Illinois jurisprudence has distinguished between juveniles “adjudicated delinquent” in juvenile court and adults “convicted” in criminal court.¹⁶⁷ Juveniles, for instance, are not permitted to file post-conviction petitions under the Illinois Post-Conviction Hearing Act.¹⁶⁸ While no case in Illinois has yet extended this reasoning to post-conviction motions for DNA testing, that legal vehicle may well be deemed unavailable to juveniles too; at minimum, it is unclear whether juveniles have access to DNA testing after their adjudications. Thus, despite the righteousness of their cause, access to the exonerating power of post-conviction DNA testing could easily have been denied to Taylor and Barr if their cases had remained in juvenile court – a sad irony, given that the institution of juvenile court was intended to provide extra protections for vulnerable juveniles.

Section III

In most ways, of course, Alberto was very lucky that his case was adjudicated in juvenile court rather than being transferred to adult criminal court. The charges against him were very serious

¹⁶⁴ See *People v. James Harden et al.*, Case No 92 CR 27247, *Petitioners' Motion To Admit Evidence of Willie Randolph's Other Crimes and Bad Acts*, at 4, Ex. B (hereinafter *Dixmoor Motion To Admit Other Crimes*). Charges were never filed in connection with this alleged assault.

¹⁶⁵ *Dixmoor Motion to Vacate*.

¹⁶⁶ Steve Mills & Andy Grimm, *DNA secures freedom for 3 in 1991 slaying*, Chi. Trib., at 1 (Nov. 4, 2011).

¹⁶⁷ See *People v. Taylor*, 850 N.E.2d 134, 137 (Ill. 2006).

¹⁶⁸ See, e.g., *In re A.W.H.*, 95 Ill. App. 3d 1106 (1981).

and could have carried up to thirty years in prison if he had been convicted in criminal court.¹⁶⁹ Robert, for his part, was equally unlucky: Had his case remained in juvenile court, he would have been out of prison no later than his twenty-first birthday instead of languishing behind bars until age thirty-four for a crime he did not commit. On the other hand, Illinois laws prevented Alberto from pursuing his innocence post-conviction or arguing that he had received constitutionally deficient counsel, because he was tried in juvenile court. At the same time, Robert has been able to clear his name only because he was subjected to the jurisdiction and penalties of criminal court.

Because juveniles like Alberto and Robert face a heightened risk of wrongful conviction and a potentially heightened risk of ineffective assistance of counsel – and because the direct and collateral consequences of a delinquency adjudication can be severe -- it is fair, just, and urgently necessary for legislatures to amend post-conviction statutes to ensure access for adjudicated juveniles. The required amendment is also uncomplicated: In the context of post-conviction DNA testing, the forty-one jurisdictions that currently make post-conviction relief available to those who have been “convicted” of crimes should simply add the phrase “or adjudicated delinquent” to their statutes. That is essentially what Colorado, the District of Columbia, New Hampshire, South Carolina, and Wisconsin have done – and the addition of those simple words has brought a dictionary’s worth of clarity to the law. Indeed, the same thing can be done in statutes governing the availability of non-forensic collateral remedies. These simple amendments will ensure that adjudicated juveniles are given the same desperately needed access to post-conviction proceedings that convicted adults receive.

One Virginia legislator is more than doing his part. Moved by the story of Virginia resident Edgar Coker, Jr., Republican General Assembly Delegate Gregory D. Habeeb has introduced legislation in Virginia that would actually *increase* juveniles’ post-conviction access even above the level of access that convicted adults typically receive.¹⁷⁰ Edgar Coker, Jr. spent seventeen months in detention – and still remains on the sex offender registry – after he pled guilty to raping a fourteen-year-old peer.¹⁷¹ He entered the plea instead of risking adult charges and a far greater sentence.¹⁷² Since that time, however, Edgar’s “victim” has admitted that she lied about being raped and that she had consented to the sex.¹⁷³ She and her mother have been fighting to vacate Edgar’s adjudication and remove him from the sex offender registry, but the Virginia courts have refused, claiming that no statute allows them to grant Edgar relief and thus that their hands are tied.¹⁷⁴ Delegate Habeeb has taken steps to correct this situation by introducing a bill that would allow adjudicated juveniles who plead guilty to seek a post-conviction writ of

¹⁶⁹ Aggravated criminal sexual assault is a Class X felony with a sentencing guideline of 6-30 years in prison. 720 ILCS 5/12-14(d); 730 ILCS 5/5-4.5-25.

¹⁷⁰ http://www.washingtonpost.com/local/therootdc/wrongly-accused-rape-convict-takes-case-to-va-supreme-court/2012/01/13/gIQAyJHNxP_story.html?wpisrc=emailtoafriend

¹⁷¹ *Id.*

¹⁷² *Id.*

¹⁷³ *Id.*

¹⁷⁴ *Id.*

innocence; currently, neither adults nor juveniles who plead guilty may seek that form of relief.¹⁷⁵ In so doing, he has recognized the critical importance of juvenile access to collateral proceedings.

Legislators, advocates, and other stakeholders throughout the country must take similar steps to amend the law in their home jurisdictions to ensure that juveniles and adults have equal access to post-conviction relief. For Alberto, Robert, Jonathan, Edgar, and many more like them around the country, such steps could represent huge advances in juveniles' access to justice.

¹⁷⁵ Id.