

DEFENDING AND DESPAIRING: THE AGONY OF JUVENILE DEFENSE

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I represent mostly adult criminal defendants, not juveniles. There are reasons for this, most of which reflect my personality, temperament, and skills. I like my lawyer-client relationships short and intense, generally culminating in a courtroom event of some sort (trial, plea, sentencing). When my work is over, it's over. If it goes bad, an appellate lawyer comes in to try and pick up the pieces. I prefer jury trials to bench trials. With rare exception, I'd rather make my case to twelve ordinary citizens than a judge who has seen it all and knows it all.¹ I prefer disaffected and detached clients to needy and vulnerable ones (not that all adult defendants are disaffected and detached, or all juveniles needy and vulnerable, but grownups tend to be less needy and vulnerable than children). My forthright (some would say "blunt") approach to client counseling—I don't believe in pussyfooting around—seems better suited for mature audiences.

Yet, I believe there is no more important work than defending kids, especially those accused of serious crimes. The consequences of juvenile crime are increasingly severe, whether kids remain in the juvenile system or are prosecuted as adults.² We lock up too many people in this country, many of whom are children.³ Surely, at the start of the twenty-first century—given our knowledge about the causes of juvenile delinquency and crime—we can do more than

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¹ See generally Abbe Smith, *Defense-Oriented Judges*, 32 HOFSTRA L. REV. 1483, 1492-93 (2004) (lamenting the arrogance and ignorance of many trial court judges).

² See CHARLES PUZZANCHERA ET AL., NATIONAL CENTER FOR JUVENILE JUSTICE, JUVENILE COURT STATISTICS 1999, 28-31 (2003) (reporting the number of juveniles transferred to criminal court and for what types of offenses), available at <http://www.ncjrs.org/pdffiles1/ojdp/201241.pdf>; see also Aaron Kupchik et al., *Punishment, Proportionality, and Jurisdictional Transfer of Adolescent Offenders: A Test of the Leniency Gap Hypothesis*, 14 STAN. L. & POL'Y REV. 57, 57-60 (2003) (examining punishment of youth in juvenile and criminal court and noting that more juveniles are being transferred to adult court at younger ages for a broader variety of crimes); Lisa S. Beresford, *Is Lowering the Age at Which Juveniles Can Be Transferred to Adult Court the Answer to Juvenile Crime? A State-by-State Assessment*, 37 SAN DIEGO L. REV. 783, 790 (2000) (reporting that the number of juvenile transfers to adult court increased by forty-two percent from 1985 to 1994—from 7,200 to 12,300).

³ See Melissa Sickmund et al., *Census of Juveniles in Residential Placement Databook* (2004), available at <http://www.ncjrs.gov/pdffiles1/ojdp/fs200008.pdf>; U.S. Dep't of Justice, Bureau of Justice Statistics Bulletin, *Prison and Jail Inmates at Midyear 2004*, 5 (2005), available at <http://www.ojp.usdoj.gov/bjs/pub/pdf/pjim04.pdf>.

put troubled kids in cages. So, why not work with young offenders who are on their way to becoming adult clients, to try and alter that trajectory, to put them on a different path, to keep them from those cages? Why not devote myself to confronting the repressive and racist politics that propel our increasingly punitive juvenile justice system?⁴

The answer is not about personality or politics. It's about self-protection. My heart takes enough of a beating representing adults. Kids up the ante. The bleak future for many kids in the juvenile and criminal justice systems—no matter how devoted their lawyers—is heart-breaking.⁵ It can be almost unbearable.

Let me share a story. The story is about a juvenile client I'll call Terrell.⁶ The facts of Terrell's case are not sympathetic. The more I tell his story the more I realize how unsympathetic it is. Even my progressive friends—usually a good audience when I have a drug case (the police are lying, the war on drugs is out of control), an assault (the other guy was the aggressor), or even a homicide (the other guy was the aggressor)—have trouble with Terrell. Most lawyers and law students (even those working in the juvenile justice system) are skeptical at best. The only reliable audience is juvenile defenders. But, even for that crowd, it isn't the most sympathetic story.

I was appointed to represent Terrell when he was charged with committing two separate rapes during a two-week period in Washington, D.C. Terrell had just turned fifteen when the crimes happened, so he was eligible for transfer to adult criminal court.⁷ This is where the Government wanted him—or, more specifically, adult prison. The rapes were ugly, as rapes often are. The victims were strangers, young women who were home alone when Terrell broke in. One woman was raped in her baby's room. By chance, the baby was away at the victim's mother's house. The other woman was forced to say that she enjoyed it while being raped at gunpoint.

Terrell was well known to the authorities. He first started getting arrested—mostly for joyriding, and then later for drug-selling and shoplifting—when he was nine years old. He was a diminutive nine-year-old. It was remarkable that he could see over the steering wheel in order to drive a car. When a court psychologist inquired about this, Terrell said he used pillows. He

⁴ See generally Dorothy E. Roberts, *Criminal Justice and Black Families: The Collateral Damage of Over-Enforcement*, 34 U.C. DAVIS L. REV. 1005, 1010-15 (2001) (arguing that the criminal justice system colludes with the child welfare system to take custody of an excessive number of black children).

⁵ See Thomas F. Geraghty & Will Rhee, *Learning From Tragedy: Representing Children in Discretionary Transfer Hearings*, 33 WAKE FOREST L. REV. 595, 598-99 (1998) (discussing the tragedy of juveniles being transferred to adult criminal court). As Geraghty and Rhee write:

Every transfer is a tragedy. It is a tragedy for the children—many of whom have already experienced too much tragedy in their young lives and now must face the harsher penalties of the criminal court. It is also a tragedy for the juvenile court system which in many cases has failed to rehabilitate the child and now must surrender the child to the criminal court.

Id. at 599.

⁶ The client in the story is a composite of several clients. I have added and altered details to protect their privacy.

⁷ See D.C. CODE § 16-2307(a)(1) (2005).

later told me that he took cars because he liked the feeling of driving, the feeling of freedom and of getting away.

When I first met Terrell, he looked more like twelve than fifteen. He had a sweet face. But he had a weariness about him, like a child in a war zone.⁸ He was not easy to talk to. He didn't have much to say. Most of the time he didn't want to talk; sometimes he refused to meet. I would go to Oak Hill, D.C.'s juvenile jail, with a recent fellow who was a visiting clinical professor at the law school,⁹ and a current fellow. I figured he might be glad to see at least one of us, especially because we did our best to ply him with vending machine treats. But he couldn't be bought with charm or candy.

It turns out it wasn't personal. Terrell was stoned most of the time he was at Oak Hill. His drug of choice was PCP (Phencyclidine), in the form of "dippers" (cigarettes dipped in this highly toxic and addictive chemical substance) was in ready supply at D.C.'s oft-maligned and deservedly so juvenile jail.¹⁰ Terrell had been using drugs since he was seven or eight, first marijuana, and then, when he became a teenager, PCP and ecstasy.

Terrell used drugs for the same reason he stole cars: he liked the feeling of getting away. When he was high he could be somewhere other than where he was, at least for a time. When he was high, the stuff that usually bothered him—problems at home, problems at school, problems with the law—didn't seem to matter too much.

When I learned about his horrible childhood I understood why Terrell might want to get away. The phrase "horrible childhood" is a criminal and juvenile justice cliché; almost everyone who appears before a judge for sentencing or disposition has had a horrible childhood. But, if I have ever used that phrase lightly, I never will again. Terrell's childhood was truly a horror. He was born to a drug-addicted mother who continued to use cocaine and heroin throughout the pregnancy and for the first decade of Terrell's life. Terrell

⁸ For a haunting film about children growing up in a war zone, see *TURTLES CAN FLY* (Mij Film Co. 2004) (telling the story of young refugees in a village on the Iraqi-Turkish border who collect land mines for food, often losing limbs in the process, on the eve of an American invasion). For a nonfiction examination of the effects of war and deprivation on child development, see JAMES GARBARINO ET AL., *NO PLACE TO BE A CHILD: GROWING UP IN A WAR ZONE* (1991) (exploring the lives of children in Cambodia, Ireland, Mozambique, the Palestinian territory, and a Chicago neighborhood ravaged by drug wars).

⁹ When I refer to a "fellow" I mean a post-graduate fellow in Georgetown's two-year E. Barrett Prettyman Fellowship Program in criminal defense advocacy and clinical teaching.

¹⁰ Oak Hill may be one of the worst juvenile jails in the country. Its poor conditions and inadequate services led to the "Jerry M" class action lawsuit against the District of Columbia in the 1980s, which was resolved through a consent decree that the District has consistently violated over the past eighteen years. See Colbert I. King, *The Kids the District Hasn't "Saved"*, WASH. POST, Feb. 14, 2004, at A29. Drugs are plentiful at Oak Hill. *Id.* In 2004, the D.C. Inspector General's Office confirmed that marijuana and PCP were being smuggled into Oak Hill "on a continual basis," most likely by correctional officers. *Id.* Worse, the inspection team found that many children got their first taste of marijuana and PCP while at Oak Hill. *Id.* They tested negative for drug use upon arrival, but tested positive for marijuana and PCP after being confined there. *Id.*

Recently, the D.C. City Council voted to close Oak Hill and replace it with smaller facilities that "meet national standards." Theola S. Labbe, *Juvenile Justice Expert Tapped for D.C. Post; Vincent Schiraldi Nominated to Run New Youth Services*, WASH. POST, Jan. 5, 2005, at B2.

remained in the hospital's neonatal intensive care unit for two weeks after his birth so that his own drug withdrawal could be monitored. His father also had a drug problem, and was in and out of jail during most of Terrell's childhood. When the father's relationship with Terrell's mother ended a couple of years after his birth, so did any relationship with Terrell.

When Terrell was little, his mother instructed him on the proper procedure to follow if he found her unconscious and with a needle in her arm. "Pull it out and call 911," she told him. Terrell said he only had to do this a few times. Once, when he was around seven, he found her naked and comatose in the bathtub with a needle hanging from a vein. He thought she was dead. He managed to summon an ambulance.

Terrell's mother had so many problems of her own—drug dependency, a history of abuse, a history of mental illness—she could not begin to take care of a child. She both neglected and abused Terrell. She ignored the advice of Terrell's doctors, counselors, and teachers whenever they expressed concern (about his physical health, his mental health, his emotional well-being, his ability to learn). The child welfare agency had already removed a child from Terrell's mother's custody due to neglect, and she had resolved to avoid these sorts of authority figures in the future. She allowed Terrell to miss long periods of school for no reason. She did not get involved when he was held back repeatedly in elementary school. She allowed him to hang in the streets with much older boys. She allowed him to smoke marijuana and even bought some for him on occasion. When Terrell was five or six, she left him alone with a troubled older cousin who repeatedly sexually abused him.

Terrell's mother had a temper. Whenever Terrell did something "wrong"—which reflected his mother's mood more than whatever it was Terrell had actually done—his mother would beat him. She would grab whatever was handy—a belt buckle was her weapon of choice—and she would beat Terrell in the body and about the face and head. The beatings got worse as Terrell got older.

The court-ordered supervision of Terrell, who continued to get in trouble on a regular basis, was desultory and disjointed. He was routinely sent to Oak Hill, where he was often locked down for twenty-two hours a day. He was sent to other juvenile facilities as well, but none were suited to his particular needs and problems. From age nine to age fifteen, he had received "treatment" at a half dozen juvenile facilities, but not one had inquired into or provided counseling for his history of physical and sexual abuse and depression. Not once had he been placed in a residential treatment program for substance abuse. His learning disabilities (he was basically illiterate and had trouble with spoken language, too) and likely brain damage were also largely unnoted. Terrell tried to kill himself at a couple of facilities (by trying to jump from a building, by setting himself on fire) and ran from most.

When he was accused of the two rapes—and there was never any question that he committed the crimes¹¹—he was using PCP and ecstasy daily, an explosive combination. PCP is associated with aggressive and violent behavior.

¹¹ There was every form of evidence against Terrell: DNA, blood and sperm, fingerprints, eyewitness identification, and his own inculpatory statements.

Ecstasy stimulates the libido. No doubt, Terrell was also reenacting his own childhood sexual abuse.

When my two younger colleagues and I drove out to see Terrell shortly after his arraignment, I offered advice that turned out to be prescient. I said we should keep our guard up and not let our hearts get the best of us. The case was likely to end badly, and this would be a hard thing to experience close up. Terrell was a child—a disadvantaged, damaged, dejected child—who was facing years and years in an adult prison. We would do everything we could for him, but we should prepare ourselves for a dreary outcome. We would surely lose the transfer hearing. In addition to keeping our guard up emotionally, I suggested we be vigilant on a physical level as well. Our client was young and looked even younger; he had a certain vulnerability beneath the bravado; he was appealing in many ways. But, he was also dangerous.

I didn't like saying this last thing. It is not something a defender usually says. Other people call our clients "dangerous." We call them *in need of treatment*. But Terrell was both.

Early on in the case, when we would discuss with Terrell the time he was facing, his chances of prevailing at a transfer hearing, and the Government's plea offer (which, if he waived the transfer hearing, would limit Terrell's exposure from two life sentences and 270 years to a mere fifty years), Terrell would say that he might as well kill himself. Whether out of "client-centeredness" or my own morbid projection (how could I not consider how I might feel in his shoes?), I gave this serious thought.

What kind of life would Terrell have if he was locked up for thirty or forty years, which was probably what Terrell would get if we made a strong plea for leniency at sentencing. What would life be like for him if he ever emerged from prison? It was entirely possible that he would not make it out alive; he would be a young, scrawny, convicted sex offender. Even if he bulked up, a sentence of thirty or forty years could be a natural life sentence for Terrell. Prisons are violent places. Who knew how long he would live there?

Maybe death was better. Maybe death was the merciful thing. I honestly started thinking that it might be a good thing if Terrell killed himself. But, of course, I couldn't keep thinking this. I had to work on his case. I had to go forward.

I didn't share my existential crisis with my young colleagues. It wouldn't have been productive. I told them we should listen to Terrell when he talked about killing himself. We should consider whether he was serious and intended to hurt himself, and, if so, we should think about alerting the authorities at the jail. We agreed that this would be a last resort as Terrell would not appreciate being under heightened surveillance unless it was absolutely necessary. Mostly, I thought we should talk with him about his feelings and encourage him to share them. We should also recognize that words should not always be taken literally. When Terrell says he might as well kill himself he might be expressing many feelings: fear, sorrow, anxiety, dread, hopelessness, loneliness.

With help from several mental health professionals—some employed by the court and some by the defense—we managed to dodge the first bullet. After a lengthy hearing, Terrell was found incompetent to proceed to a transfer

hearing due largely to the combination of brain injury (from intrauterine drug exposure and child abuse) and severe learning disabilities, which affected his ability to retain and process language.¹² The Court also cited Terrell's delayed development due to deprivation and trauma and his immaturity.

The Government was not happy. They were confident they could prove that Terrell posed a threat to public safety (which was presumed under the D.C. transfer statute when the charge is rape) and that he was unlikely to be rehabilitated.¹³ They were eager to proceed to the transfer hearing. They considered Terrell a serious offender, and a sophisticated one. His crimes were not childish pranks; he broke into the homes of adult women and brutalized them. He may have had some learning problems and an unfortunate upbringing, but this didn't distinguish him from many who came before the criminal or juvenile justice system.

They didn't agree that Terrell was incompetent and they were not happy with the prospect of Terrell receiving treatment toward "competency restoration." They knew it was an opportunity for Terrell to prove that he could make effective use of treatment, was "amenable to treatment," and was "rehabilitatable." We did, too. It was one of the reasons we pursued a finding of incompetency.

But, Terrell was not happy to be found incompetent. To him, this meant that people thought he was retarded. He hated anyone saying he was stupid. He was not happy to be going away to a residential treatment program on the other side of the country. He was unimpressed with the program's brochure even though there was a swimming pool on the premises. He was peevish and bad-tempered about everything.

Professor Barbara Babcock, a former public defender and Director of the Public Defender Service for the District of Columbia, tells one of my favorite criminal defense stories: the story of Geraldine.¹⁴ Geraldine was a pitiful woman with all sorts of problems, including a longstanding heroin addiction, who had been charged with a minor drug offense that carried a lengthy sentence because of Geraldine's record. Although Geraldine seemed not to care about her fate and sat through her trial impassively, Babcock advocated for Geraldine with great passion, almost coming to blows with the prosecutor on more than one occasion. When the jury came back with a not guilty verdict, Geraldine suddenly threw her arms around Babcock and declared, "I'm so happy for you."¹⁵ Terrell did not even give us this. He wasn't happy for us, and he wasn't happy for him.

Still, he went to the program and, as the Government feared, he performed remarkably there. For the first time in his life he did everything right. He worked well with both staff and peers. He was regarded as an exemplary youth, a peer leader, a role model. He meaningfully engaged in substance

¹² IQ tests put him in the mild mentally retarded/borderline range. His reading skills were at the first grade level, and his math skills were only slightly better.

¹³ See D.C. CODE § 16-2307 (2005).

¹⁴ See Barbara Allen Babcock, *Defending the Guilty*, 32 CLEV. ST. L. REV. 175, 178-79 (1983).

¹⁵ *Id.* at 179. Babcock put forward an unlikely but ultimately successful insanity defense. *Id.*

abuse treatment, recognized the connection between his drug use and his crimes, and vowed to never use again. He was ashamed of his crimes and remorseful about them.¹⁶ He took a serious look at the time he was facing and was chastened. He wanted to prove that the Government was wrong when they called him a “threat to society” and when they said he couldn’t change. He worked hard in school, which was tailored to meet his disabilities, and progressed. He was placed in the sex offender unit of the treatment facility¹⁷ and, for the first time ever shared his own rape. He also talked honestly about his offenses.¹⁸ He felt empathy for his victims. He wished he had never hurt them; he wished he could take it back. He was eager to get to the bottom of his crimes.

Terrell grew so much at the treatment facility. He was talking differently. He was thinking differently. He *felt* different, and he was proud of the ways in which he had changed. He was deeply attached to the staff and counselors—he liked and respected them—and they felt the same way about him. He started to hope. Maybe there was a future for him. Maybe he could really be somebody one day. Maybe he could graduate from high school, get a job, and have a family. And then he was accused of raping a staff member.

How things can change. A lost cause had been redeemed only to be lost again. Our winning strategy had gone terribly wrong. Terrell’s hope turned quickly to despair. So did mine.¹⁹

I’ll fast-forward now. There’s no sense lingering over the dreary details.

Terrell denied the charge and maintained that it was consensual sex. He rejected the suggestion that things may have started out consensually but went too far. He rejected the suggestion that he was an adolescent boy who had been confined for years and got carried away. He said he didn’t rape her. She came on to him.

But, Terrell was a resident of a sex offender treatment program with two prior rapes. If he *was* telling the truth, who would ever believe him? The state prosecutor was unmoved by the argument that Terrell should never have been left alone with a young female staff member so early in his treatment, and, whatever happened, it should not result in Terrell’s prosecution as an adult. Terrell’s public defender tried hard but lost every battle: Terrell was found competent, was transferred to criminal court, and was convicted of rape. He received the maximum sentence.

By the time Terrell returned to Washington, D.C., to face his original charges, he was no longer a slightly built teenager. He was nearly twenty and looked like a man. The District of Columbia does not have blended sentencing

¹⁶ For an interesting discussion of remorse in children who commit serious crime, see Martha Grace Duncan, “*So Young and So Untender*”: *Remorseless Children and the Expectations of the Law*, 102 COLUM. L. REV. 1469 (2002) (questioning the validity of remorse as a predictor of future character).

¹⁷ We made a strategic decision to build a record of amenability to treatment for the transfer hearing, even if it meant forsaking a future trial. For purposes of transfer—and treatment—Terrell would admit to the rapes.

¹⁸ He never denied having committed the rapes to counsel or the treatment staff. He had always expressed shame and remorse.

¹⁹ My original colleagues on the case had long since moved on. A series of devoted fellows worked with me on Terrell’s case over the years.

or extended juvenile jurisdiction. Under the transfer statute, Terrell needed to show he could be rehabilitated by age twenty-one. No judge would ever find that Terrell should remain in juvenile court in view of his D.C. charges, his out-of-state rape conviction, and waning juvenile jurisdiction.

I told Terrell that he should cut his losses and take a plea, but he refused. I managed to talk the Government into a deal that would require only a few more years of incarceration on top of the out-of-state sentence. Terrell would have none of it. I saw him at the jail every day for a week to try to move him. I tried every technique I could think of. I made arguments. I made entreaties. I sat quietly, saying only that I was sad, in an effort to move him through the “five stages of grief”²⁰ so that he might arrive at “acceptance.” I brought pictures of famous African American men in their early forties, the age Terrell would be when he was eligible for parole under the terms of the plea offer. I also brought pictures of men in their sixties and seventies, the age he would be if he received a consecutive sentence under the sentencing guidelines.

Terrell felt strongly that he had been wrongfully convicted and would win on appeal. His trial had been unfair. He could not do the kind of time the Government was offering. By the time he was in his forties his parents would be dead. He might be dead, too. He started talking about killing himself again.

He wanted me to fight for him. He understood that I believed there was no chance of winning. He said, “You can’t know that. There is always a chance.” I said, “Not in this case.” He said, “You’re always bringing me bad news.” I said, “I tell you the truth. You deserve that.” He said, “I have a teeny, tiny hope, and I want you to have one, too.” I said, “I don’t want to mislead you.”

He worried that my feelings about him had changed because of the out-of-state rape conviction. But, my feelings about Terrell hadn’t changed. My opinion about his case had. The distinction was too subtle for Terrell. He experienced my pessimism as a lack of faith in him. Even though I told him that he was the boss, I worked for him, and I would fight for him if that’s what he wanted, he wanted me to be more hopeful. I offered a compromise: How about if I try to be more *cheerful*? He agreed.

To the uninitiated, a lawyer putting body and soul into a losing battle is a curious thing. Why not save your energy for a case where you can make a difference? But, something automatically kicks in when you care. When I cannot secure a client’s liberty I try to at least preserve his or her dignity. Devoted defenders are motivated by many things other than winning: the client’s wish, professional ethics and craft, the outrage of a justice system that offers nothing but a prison cell to a troubled young man who desperately wants to change.²¹

I fought hard, working day and night to put together a case, but failed to breathe life into Terrell’s teeny, tiny hope. I challenged competency and trans-

²⁰ See ELISABETH KÜBLER-ROSS, *ON DEATH AND DYING* 34-121 (1969). The five stages of grief are: anger, denial, bargaining, sorrow, and acceptance. Terrell never moved beyond anger and denial.

²¹ See Abbe Smith, *Too Much Heart and Not Enough Heat: The Short Life and Fractured Ego of the Heroic, Empathic Public Defender*, 37 U.C. DAVIS L. REV. 1203, 1241-64 (2004) (offering a paradigm of respect, craft, and a sense of outrage for sustaining a career in indigent criminal defense).

fer. I offered testimony from accomplished mental health professionals about Terrell's decisional incompetence,²² continuing language problems, frontal lobe damage, continuing developmental delay, immaturity, and trauma. I offered testimony from accomplished and thoughtful mental health professionals about Terrell's great strides in treatment, his motivation in treatment, the mitigating circumstances of the out-of-state incident, and the fact that, as a developmentally delayed teenager, his brain was still growing, especially the part of the brain that makes judgments and controls impulses, and Terrell would be a very different person in a few year's time.²³ I cross-examined the Government's witnesses, some of whom were sympathetic and wanted Terrell to receive treatment. But, no one could say that Terrell would be rehabilitated by the time he was twenty-one. I argued that the Court need not concern itself with the public safety prong of the transfer statute in view of Terrell's lengthy out-of-state sentence—Terrell posed no threat to public safety while he was in prison—and the Court should consider only whether Terrell would be rehabilitated at the out-of-state prison during the period of his incarceration there.

The D.C. judge found Terrell competent and granted the Government's motion to transfer him to criminal court.

What does a lawyer do with her feelings? Against my better instincts, I had started to share Terrell's teeny, tiny hope. I started to think that maybe the judge would give Terrell a break and say his out-of-state sentence was enough. There's a name for this kind of thinking. It's called "trial psychosis."

I went back to wondering about the meaning of life for a twenty-year-old who will likely spend the majority of his life behind bars. I went back to thinking about suicide as a reasonable alternative. And yet, I was mindful of Terrell's strength, his resilience. He had lasted this long; he was still standing; he could adapt. Who was I to say what a meaningful life was? Maybe he would find something of meaning; maybe he could be of use²⁴ during the time he

²² See generally Thomas Grisso et al., *Juveniles' Competence to Stand Trial: A Comparison of Adolescents' and Adults' Capacities as Trial Defendants*, 27 LAW & HUMAN BEHAVIOR 333 (Aug. 2003); LOURDES M. ROSADO, UNDERSTANDING ADOLESCENTS: A JUVENILE COURT TRAINING CURRICULUM (2000), available at <http://www.njdc.info/pdf/maca6.pdf>.

²³ See Petition for Writ of Certiorari, *Patterson v. Texas*, Case No. 38,095-03 (Tex. Crim. App. Jan. 13, 1999) (unpublished opinion), cert. denied, 536 U.S. 984 (2002), <http://www.abanet.org/crimjust/juvjus/supreme%20court%20petition.pdf>, at 21-23 (explaining research by Dr. Ruben C. Gur on brain maturation that indicates the adolescent brain is not likely completely matured and that adolescents are probably less morally culpable than persons older than twenty); see also American Bar Association Juvenile Justice Center, *Cruel and Unusual Punishment: The Juvenile Death Penalty: Adolescence, Brain Development and Legal Culpability* (Jan. 2004), <http://www.abanet.org/crimjust/juvjus/Adolescence.pdf>.

²⁴ The same month as Terrell's competency and transfer hearings, a client named Patsy Kelly Jarrett—someone I had known since law school—was released from prison after serving 28 1/2 years for a crime she did not commit. Notwithstanding her innocence, Jarrett had come to believe that she was in prison those many years for a reason: to serve others. She was a nurse's aid in the Bedford Hills Prison infirmary and a loyal friend to many women at the prison. See Abbe Smith, *Defending the Innocent*, 32 CONN. L. REV. 485, 501-02, 507 n.96 (2000) (discussing my representation of Jarrett); see also FRONTLINE: THE PLEA (Ofra Bikel Productions 2004) (documentary film telling Jarrett's story, focusing on her refusal to accept a plea offer which would have resulted in her release). It was important to Jarrett to believe that she had been of use. See MARGE PIERCY, *To Be of Use, in CIRCLES ON THE WATER: SELECTED POEMS OF MARGE PIERCY* 106 (1982):

spends in prison. And maybe we would be able to make use of the sympathetic mental health reports from the juvenile hearings to persuade the adult sentencing judge to be lenient. This is called "sentencing psychosis."

This case pretty near killed me. Terrell's life seemed over—and he was a child, whether he was fifteen or twenty. I had known him too long. It had not been a short, intense relationship. It had been a long, intense one. I could still see the scrawny kid, the baby face, even though everyone else saw a strong and broad-shouldered man. Terrell talked to me like a child. He said things I can't get out of my head. He said, "Why did I have to be born to my mom instead of someone else? I didn't have to turn out this way." He said, "I'm not a bad person. I have a good heart." He said, "I'm scared, Abbe." I said, "I know."

But I know very little. I don't know what to say to a man-child who will probably never again step foot in his mother's house, the only place that had ever been his home no matter how cruel life had been there. He may never again step foot in Washington, D.C. He may never again be free. I don't know how to have that conversation with Terrell or any other young person in his situation. I didn't know how to tell Terrell that it would be okay, when it didn't feel okay to me. He was right to be frightened. I was frightened for him.

I'd like to tell students and fellows to go out there and represent the Terrells of the world. Too many of them will end up in prison if we don't fight for them. But, I don't know how many Terrells I have left in me.

When I told Terrell about the D.C. judge's decision, he thanked me for fighting for his life. He said it had been nice knowing me. I said it was my privilege to fight for him and I intended to keep right on knowing him.