

Death By Design: *Part 1*

THE WREN COLLECTIVE

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When he was just 4 years old, Christopher Jackson was sexually abused by a teen boy he lived with—abuse that continued until he turned 9. His grandmother, who took him in afterward, regularly beat him until he passed out. Jeffery Prevost was sexually assaulted when he was a child. His mother physically abused him, at one point firing a gun at him. Mabry Landor, who suffers from bipolar disorder, was sexually and physically abused by his brothers. Roosevelt Smith and Joseph Jean had an IQ of 69; they are both intellectually disabled, and thus, ineligible for the death penalty.

Each of these men went to trial in Harris County facing the death penalty. In every case, defense counsel failed to present this evidence, and juries sentenced all these men to death.

Sixty years ago, in *Gideon v. Wainwright*, the Supreme Court issued a landmark ruling that would ultimately ensure every person facing the possibility of having their liberty stripped away would get an attorney if they could not afford one.¹ Nowhere is that right more important than in a capital murder case, where the potential sentence is death and where almost every person in this country who is charged with a capital crime is poor. That right, however, has been elusive in death penalty cases in Harris County, Texas, the death penalty capital of the nation and the world.²

Over the last few decades, news outlets have run periodic stories about death penalty lawyers in Harris County with too-high caseloads who have missed critical filing deadlines or who did minimal work on their client's case. On the 60th anniversary of *Gideon*, the Wren Collective investigated whether these stories were isolated examples of flawed representation or whether the representation reflected problems that exist throughout the system of capital defense. We interviewed judges, trial and postconviction attorneys, and mitigation specialists.³ We reviewed caseloads, jail visits, and billing records. We read postconviction pleadings from the majority of Harris County capital cases that ended with death sentences in the last two decades. We focused primarily on those cases where individuals are still on death row, but also looked at a few whose sentences have been overturned. In total, we examined 28 cases.⁴

28

death penalty cases in Harris County over the last two decades ended with a death sentence

Our findings are documented in this report. They are difficult to read.⁵ The system is utterly broken.

In every case we reviewed that resulted in a death sentence, trial lawyers failed to uncover compelling evidence that could have convinced a district attorney to drop a death sentence or a jury to give life. Attorneys failed to investigate and did not present evidence of their client's mental illnesses and intellectual disabilities. They missed galling examples of physical and sexual abuse of their clients because they did not talk to family or witnesses. Many did not prepare important experts to testify until the day that they were supposed to take the stand.

In all 28 Harris County capital cases we reviewed, trial lawyers failed to uncover relevant evidence. Of those cases...



Lawyers failed to present available, compelling evidence of their client's mental illness or serious developmental impairments.



Lawyers failed to present evidence of physical or sexual abuse, or sometimes both.



Lawyers failed to present evidence that their client was intellectually disabled, which could have rendered them ineligible for the death penalty.



Lawyers left out evidence of serious parental neglect.

Like most aspects of the legal system, people of color suffered the most from poor representation in death penalty cases. Of the 28 cases we reviewed, 93% involved people of color. Seventeen are Black, eight are Latine, one is Arab, and two are white. All are men.

Representing a client in a death penalty case is perhaps the most demanding work in the legal profession. Like in all criminal cases, capital attorneys must investigate the factual case and then try to show a jury that the government has not proven the client's guilt beyond a reasonable doubt. But that is where the similarities end. If the jury convicts their client of capital murder, the trial moves into a punishment phase, where lawyers try to convince a jury that their client's life is worth saving. To do this, they present the client's life history, which often includes trauma, abuse, and mental illness—themes that can run through several generations of the person's family. The lawyers then present the client's life story to the jury to explain how the individual reached the point where they committed such a brutal crime. The lawyers hope that this evidence, known as "mitigation," will convince even one juror to spare the client's life, leading to a life-without-parole sentence.⁶

Uncovering this evidence requires thousands of hours of work, performed by defense counsel, a team of mitigation specialists with a background in social work and mental health, and the input of expert witnesses such as psychologists and psychiatrists. Casual observers might believe that a person facing a death sentence will simply reveal to their lawyer every deep, dark, and painful thing that ever happened to them, as will their family members, but the opposite is generally true. The defense team must convince the client, who is often mentally ill, to revisit their own trauma and abuse. They must convince family members to describe shameful secrets, and even crimes

committed by other family members whom they love, including sexual or physical abuse. It is rare that people will be so forthcoming with an attorney who is at first a stranger and whose background is generally nothing like the person they are representing, no matter the stakes at trial. The only way to gain this information is to earn the client and family's trust. Doing so requires time, patience, kindness, and work.

This work is so hard that investigations reveal effective lawyers spend several thousand hours on these cases, even before trial.⁷

In the cases we reviewed with publicly available data on caseloads, which includes all those from 2014 on, almost all lawyers had unmanageable caseloads, several with 400 or more at a time. As a result, some lawyers could not possibly have worked the thousands of hours required to prepare for trial.

Some lawyers did not even bother forming relationships with their client, only visiting them once or twice in jail—and sometimes, not at all. The Harris County Sheriff's Office was able to find and provide jail logs for 21 out of the 28 individuals whose cases we reviewed.⁸ Analysis of those jail logs revealed the following:⁹



Many of these individuals spent years in jail awaiting trial, rarely if ever seeing a lawyer.

Part 2 of this report explores the structural reasons that poor representation has thrived in Harris County capital cases. One of our major takeaways is that the people who historically have had the most power to improve the indigent defense system in Harris County are the judges, but they have abdicated their duty to do so. They appoint the lawyers, they control the funds that pay the lawyers and their teams, and they preside in the courtrooms where the cases are heard. Data on unmanageable caseloads is plentiful, and given that there are over 400 pending capital cases in the county and only 46 lawyers qualified to serve as first chair on capital cases, the math is plain. The system as it stands cannot work. Yet presiding judges have either been unable or unwilling to monitor the quality of representation provided in death penalty cases or to do anything to change it.

Some might be skeptical of our findings outlining systemic problems in representation because no appellate court has found these lawyers deficient and ineffective during postconviction litigation. But the criminal legal system has a vested interest in preserving the status quo by protecting convictions and the trial lawyers who are necessary to make the system work. A person who has been sentenced to death must surmount the fictitious legal presumptions that defense lawyers are competent and trials are fair in order to have their sentence overturned.¹⁰ Additionally, a 2018 study of postconviction death penalty cases in Harris County found that in an astounding 178 out of 191 cases, judges simply signed the state's proposed findings of fact, essentially allowing "the prosecutors to write their opinion for them," and glossing over any claims raising issues of ineffective assistance of counsel.¹¹

For too long, unprepared lawyers have done little to stop their vulnerable, mentally ill clients from being sentenced to death, and judges have turned a blind eye to it. It is time for a sweeping overhaul of the way legal representation is provided in death penalty cases in Harris County.

William Irvan

Lawyers failed to present evidence of mental illness, physical abuse, and neglect; one first chair attorney jail visit, one second chair attorney visit

A 2003 jury convicted William Irvan of capital murder committed during a sexual assault and sentenced him to death.¹² Mr. Irvan likely suffers from bipolar disorder¹³ and organic brain damage.¹⁴ As a child, he had learning disabilities and could not read until he was an adult;¹⁵ he dropped out of school in the tenth grade.¹⁶ His father was physically abusive,¹⁷ and there is evidence that Mr. Irvan's father raped his mother while she was sleeping in the bed with one of her sons.¹⁸

The jury heard none of this evidence, however, because the trial attorneys did not uncover it.¹⁹ For the first two years he spent in jail, the defense lawyer conducted no mitigation investigation.²⁰ Mr. Irvan repeatedly wrote to his lawyer,²¹ and then eventually, to the court, asserting that his attorney rarely came to visit him at the jail and did not keep him apprised of the case.²² In 2003, that attorney moved to withdraw, without providing prior notice to Mr. Irvan, and over Mr. Irvan's objection.²³ Mr. Irvan received one new lawyer in February²⁴ and then, when he insisted on his rights, a second chair in July of that year,²⁵ with trial scheduled to start in November.²⁶ According to jail records provided by the sheriff, both went to the jail to see Mr. Irvan once. They hired a mitigation specialist shortly before the trial.²⁷ She highlighted a few themes and leads she believed they needed to investigate, but Mr. Irvan's lawyers did not take her advice.²⁸

Walter Sorto

Lawyers failed to present evidence of intellectual disability, extreme physical abuse and neglect; zero first chair attorney visits, zero second chair attorney visits

A 2003 jury sentenced Walter Sorto to death in November of 2003 for his participation in the killing, sexual assault, and murder of two women.²⁹ Mr. Sorto is likely intellectually disabled, but the jury did not hear about it.³⁰ According to an expert who testified at trial, Mr. Sorto's intellectual functioning was "a little bit above" average.³¹ In reality, Mr. Sorto has an IQ score of 66 from the Test of Nonverbal Intelligence (TONI), a test that measures IQ, among other variables. This score puts him well within the range of intellectual disability.³² But defense counsel's expert used a Spanish-language IQ test known to overestimate an IQ score by 20-25 points, and defense counsel did nothing to object to the use of this test that has not been standardized since the 1960s.³³ Instead, one of Mr. Sorto's attorneys said in a sworn affidavit to postconviction counsel that "Mr. Sorto showed no cognitive impairments, despite some testimony of his family that he had difficulty in the first grade."³⁴

It is not just the IQ score that shows how wrong counsel was—evidence uncovered during a robust postconviction investigation belies this statement.³⁵ At the age of ten, Mr. Sorto still could not sign his own name or count past fifteen,³⁶ and he remained in the first grade for several years.³⁷ His parents would send him on errands, and while on the way, he would forget what he was supposed to be doing.³⁸ He could not put his shoes on the correct feet until he was 14 or 15,³⁹ and he could not dress himself without help from his family members.⁴⁰ Had defense counsel better investigated the possibility of intellectual disability, Mr. Sorto might not be on death row today. The issue of intellectual disability is still pending in court.

Defense counsel also missed a wealth of mitigating evidence about Mr. Sorto's extreme exposure to abuse, violence and neglect, and the poverty he experienced as a child in El Salvador.⁴¹ Additionally, some of the witnesses were not entirely forthcoming about the depth of abuse Mr. Sorto experienced.⁴² Mr. Sorto's mother, for example, testified that while her son grew up extremely poor and struggled in school, his aunt and grandmother gave him a good home, and she denied that he ever experienced physical abuse.⁴³ In postconviction, she explained that his attorneys did not prepare her for trial, and so she did not know "what kind of information they thought was important that I shared."⁴⁴ Thus, she lied and denied the abuse he experienced because she thought it would be unhelpful.⁴⁵ Her testimony had undercut that of Mr. Sorto's sister, who described abuse by Mr. Sorto's grandmother,⁴⁶ and the expert witness, who testified that Mr. Sorto was a victim of both physical and sexual abuse.⁴⁷

In reality, as numerous witnesses have now reported,⁴⁸ Mr. Sorto grew up so poor that he wore the same clothes every day,⁴⁹ and often went all day without eating.⁵⁰ Witnesses have explained that Mr. Sorto's family, including his mother, her husband, and his grandmother, beat him regularly, sometimes using belts or rods.⁵¹ One family member described him tied to a tree and beaten with rubber cables.⁵² Family members sometimes withheld food as punishment.⁵³ Mr. Sorto's mother and grandmother forced him to start working in the cotton fields when he was eight, and he was eventually responsible for fumigating⁵⁴ and spraying the field with pesticides.⁵⁵ He was a witness to horrific violence during the Salvadoran civil war,⁵⁶ a theme touched on but not deeply explored at trial.⁵⁷ Defense counsel could have called numerous family members and other witnesses to describe these themes in vivid detail, but they did not.⁵⁸

Ray Freeney

Lawyers failed to investigate history of physical and sexual abuse and neglect; no available jail logs

A 2003 jury convicted Ray Freeney, a former National Guardsman who had long suffered from schizophrenia, of rape and capital murder for the deaths of two women.⁵⁹

Mr. Freeney suffered extensive physical and emotional abuse throughout his childhood. His mother abused him,⁶⁰ frequently throwing objects and spewing profanity-laced insults at her children.⁶¹ At one point, she was arrested and criminally charged for hitting Mr. Freeney in the back of his head with a can of chili when he was fourteen years old.⁶² His brother recalled that they “didn’t get whoopings; [they] got beat.”⁶³ Periodically, his mother left him to his maternal grandmother, who physically and emotionally abused him and his siblings. When his uncle came over, he sexually assaulted Mr. Freeney.⁶⁴

But the jury never heard of this traumatic upbringing because defense counsel completely failed to uncover it.⁶⁵ Instead, the defense’s mitigation investigation focused almost entirely on Mr. Freeney’s mother—the primary perpetrator of the childhood abuse—whose testimony led jurors to believe that “Mr. Freeney had lived a fairly normal childhood, with a loving mother and no significant history of misconduct.”⁶⁶

Tarus Sales

Lawyers failed to present evidence of abuse and neglect; no available jail logs

On March 1, 2003, a jury convicted Tarus Sales of capital murder and sentenced him to death for ordering the killing of a security guard—a claim hotly disputed at trial and that the shooter now asserts is untrue, stating he acted on his own accord.⁶⁷

During the punishment phase, defense counsel could have presented strong firsthand testimony describing how Mr. Sales suffered from serious neglect and abuse. His father abandoned him, and his mother spent a good portion of her son’s childhood in prison. When around, she hustled and gambled to provide for her children.⁶⁸ Mr. Sales grew up in the “devil’s den,” as one witness described it, in an extraordinarily difficult environment rife with drugs, drinking, and violence.⁶⁹ With the exception of one uncle, all the men in his family were either alcoholics or killed over drugs. He had exposure to extreme violence, as all the men he grew up around, whether they were his mother’s boyfriends or uncles, were abusive. When he was very young, Mr. Sales witnessed his mother’s boyfriend murder a neighbor.⁷⁰

But defense counsel could only present little evidence because they did not interview witnesses. Numerous witnesses who knew about Mr. Sales’ family history paid their own way to travel from Nashville to Houston, and came to court, waiting to testify.⁷¹ But instead of presenting witnesses who could talk about their observations of Mr. Sales’ life history, defense counsel elected to present the mitigation specialist who gave an abbreviated overview of Mr. Sales’ life and background.⁷² Other than her testimony, two lay witnesses testified, and they only spoke to trial counsel for 10 to 15 minutes on the day of their testimony.⁷³ As a result, the jury heard very little about Mr. Sales’ life before they gave him the death penalty.⁷⁴

Pete Russell

Lawyers failed to present evidence of mental illness and neglect; no available jail logs

In 2003, a jury convicted Pete Russell of capital murder and sentenced him to death for stabbing his girlfriend.⁷⁵ After Mr. Russell realized she had died, he positioned her body into a “five-point star, symbolic of the five elements of the universe.”⁷⁶ He “lit candles and turned on a gas heater, because the gas represented the ‘air’ element.”⁷⁷ He wrote: “She is a Devil. I am God” on the wall in blood.⁷⁸ A few days later, police found Mr. Russell in a motel, lying in a bathtub with his mouth foaming from poison.⁷⁹ He reported that a voice told him to commit suicide and “come home.”⁸⁰

Mr. Russell was psychotic and likely delusional, which counsel’s own mental health expert told him after conducting an hour-long interview for competency and sanity. The expert told defense counsel to have him further evaluated for “a psychosis,” but counsel did not follow that advice,⁸¹ and ignored the mitigation specialist’s concern that Mr. Russell had serious mental health problems.⁸²

Mr. Russell struggled in other ways his entire life. He failed two grades, starting in the first grade, and had been placed in special education as a child.⁸³ He started selling drugs at fifteen to support his mother.⁸⁴ His father abandoned them; the man who eventually stepped in as a father figure was likely an alcoholic.⁸⁵ His family had a long history of criminal and violent behavior, all of which he witnessed.⁸⁶

And yet, instead of showing how Mr. Russell’s bizarre behavior stemmed from his mental instability, defense counsel presented a bevy of witnesses who described Mr. Russell largely as a “regular boy.”⁸⁷ His only mention of mitigation in closing was that Mr. Russell did not have his father around and lived in a dangerous area.⁸⁸

The lawyers did little to prepare for trial, which might explain the misleading punishment phase evidence. One attorney later admitted to a judge that he “[did not] know what mitigation is.”⁸⁹ And yet counsel did not even bring a mitigation specialist onto the case until six weeks before jury selection began.⁹⁰ Counsel’s slapdash preparation for the case involved interviewing just a few witnesses, telling most of the family and friends who came to trial to offer support that they were not needed because “everyone’s saying the same thing,” and instructing witnesses to “jot some things down” about Mr. Russell.⁹¹

Gerald Marshall

Lawyers failed to present evidence of mental illness, physical abuse, interfamilial sexual abuse, and neglect; zero visits from attorneys

In May of 2003, police arrested Gerald Marshall for capital murder, accusing him of shooting another man in a robbery gone wrong.⁹² Had Mr. Marshall's lawyers adequately investigated his life history,⁹³ they would have learned that both of his parents struggled with drug addiction and untreated mental illness.⁹⁴ His mother exposed Mr. Marshall to drug use in utero and his father routinely beat him as a child.⁹⁵ Mr. Marshall was also aware that his father sexually abused his sister. At one point, he ended up in foster care with a foster mother who was emotionally and physically abusive.⁹⁶

A thorough mental health evaluation would also have revealed that Mr. Marshall likely suffered from a mood disorder with psychotic features and experienced drug addiction himself, both at the time of the incident and in the months and years after his arrest.⁹⁷ As a result of head injuries from his father's beatings, he also most likely suffered from brain damage.⁹⁸

But the jury responsible for deciding whether Mr. Marshall should live or die heard none of this information, likely because his attorneys never learned about it.⁹⁹ Although counsel represented him for 17 months before trial began,¹⁰⁰ Mr. Marshall's first chair attorney never went to meet with him at the jail, opting instead to meet with him in the holding tank at the courthouse, airing their confidential conversations to whoever was present.¹⁰¹ His second chair attorney never met with him outside of the courtroom.¹⁰² Most interviews of key life history witnesses occurred at the courthouse, after the trial had already started,¹⁰³ including the mitigation specialist's sole interview of Mr. Marshall's parents, obviously key individuals in his life.¹⁰⁴

Instead of presenting the full picture of Mr. Marshall's life history to try and save his life during the sentencing phase, the defense put on the stand a police officer who had previously testified for the state; an incarcerated person the government alleged Mr. Marshall assaulted; and the co-defendant who had previously testified against Mr. Marshall during the guilt phase of trial.¹⁰⁵ The lawyers also called Mr. Marshall's uncle, but failed to prepare him. As a result, he told the jury that Mr. Marshall had a good and stable upbringing when that was far from the truth.¹⁰⁶

Juan Reynoso

Lawyers failed to investigate evidence of mental illness, physical abuse, and neglect; zero visits from attorneys

In 2004, a jury sentenced Juan Reynoso to death for a murder committed during a robbery.¹⁰⁷ As a child, Mr. Reynoso was subject to repeated violent¹⁰⁸ and traumatic events.¹⁰⁹ His mother abandoned him when he was 13,¹¹⁰ and his older brother and father physically abused him.¹¹¹ For protection, he sought out a gang when he was thirteen,¹¹² and throughout his teenage years,¹¹³ he was assaulted by multiple gang members¹¹⁴ and was the target of several

murder attempts.¹¹⁵ He suffered from chronic depression,¹¹⁶ and, to try and cope with his trauma, started using drugs at the age of twelve.¹¹⁷ He also attempted suicide several times,¹¹⁸ including by driving his car off a highway overpass,¹¹⁹ stabbing himself in the chest,¹²⁰ and trying to hang himself while in custody with the Texas Youth Commission.¹²¹ By the time of trial, at the age of 24, he exhibited symptoms of organic brain damage, including experiencing blackouts, seizures, and tremors.¹²²

Unfortunately, the defense team did little to tell Mr. Reynoso's life history and save his life.¹²³ Defense counsel never went to see his client at the jail.¹²⁴ He hired the mitigation specialist just three weeks before jury selection,¹²⁵ and she, in turn, went to the jail only once before trial. She spoke to just two witnesses,¹²⁶ Mr. Reynoso's mother and sister, by phone before trial.¹²⁷ Of the thirteen witnesses defense counsel put on at the punishment phase, one of whom was Mr. Reynoso, the mitigation specialist interviewed ten of them outside of the courtroom right before they took the stand.¹²⁸ Counsel never spoke to any of these witnesses and instead, conducted his direct examination from bullet points prepared by the mitigation specialist.¹²⁹ As a result, while witnesses touched on the issues of abandonment, drug use, and suicide, they described them in the most generalized and scattershot manner, without any real details.¹³⁰ The jury, for example, knew Mr. Reynoso was subject to some abuse, but never learned that his exposure to violence and abuse was chronic and lasted most of his life.¹³¹ Nor did any expert explain the impact that Mr. Reynoso's trauma and mental illness had on his life choices.¹³² And the jury heard no evidence of Mr. Reynoso's potential brain damage or serious mental illness at all, because defense counsel had done no investigation into either issue.¹³³ Instead, in closing, defense counsel stressed that everyone in the family was a "dope dealer," and "it cycles, it cycles through."¹³⁴

Tomas Gallo

Lawyers failed to properly object to scientifically invalid testimony on intellectual disability and failed to adequately present evidence of intellectual disability or introduce evidence of neglect, physical abuse, and sexual abuse; no available jail logs

In 2004, a jury sentenced Tomas Gallo to death for the capital murder of a child, although at trial the parties hotly contested the identity of the actual perpetrator.¹³⁵ Nearly twenty years later, the state has conceded that Mr. Gallo is intellectually disabled and cannot be executed.¹³⁶ The case is pending before the Texas Court of Criminal Appeals to see if it affirms this conclusion.

At trial, defense counsel did introduce evidence of Mr. Gallo's intellectual disability, presenting an expert who explained that Mr. Gallo's IQ score was perhaps as low as 68.¹³⁷ The expert also described Mr. Gallo's academic struggles as a child, where he consistently performed horribly on tests and struggled in school.¹³⁸

But defense counsel made a critical error by failing to object to the admission of the state's expert, who used his own brand-new, untested scoring system and adjusted Mr. Gallo's twenty-year-old score upward by several points to reach the conclusion that he was not intellectually disabled.¹³⁹ That expert has since been sanctioned by the Texas State Board of Psychologists for arbitrarily and inaccurately raising scores of intellectually disabled people facing death sentences—most of whom were people of color. He can no longer evaluate intellectual disability claims for death row defendants.¹⁴⁰ But instead of relying on clear legal precedent in existence since 1993¹⁴¹ to keep out junk science like this, the defense team said nothing. Thus, the state's testimony came in without meaningful challenge and ultimately, persuaded the jury.

Defense counsel also failed to introduce evidence of the extraordinary abuse and neglect Mr. Gallo experienced in his youth at the hands of the people who were supposed to love him. Mr. Gallo's mother physically abused her children, with a "belt or anything around the house she could find, including extension cords and a curling iron, to beat the kids."¹⁴² His mother suffered from drug addiction and often neglected her children.¹⁴³ Mr. Gallo ended up in the foster care system, where his foster parents physically abused him. According to a witness uncovered during the postconviction investigation, he also experienced sexual abuse while in the foster system.¹⁴⁴ The defense introduced none of this evidence at trial.

Damon Matthews

Lawyers failed to present evidence of fetal alcohol syndrome; zero visits from attorneys

A jury sentenced Damon Matthews to death on April 2, 2004,¹⁴⁵ for a murder committed when Mr. Matthews was only 18 years old.¹⁴⁶ Defense counsel waited until the last minute to prepare Mr. Matthews' case, making no court appearances until three weeks before jury selection.¹⁴⁷ The mitigation specialist hired by trial counsel began to question Mr. Matthews about his background and gather records only a month before jury selection.¹⁴⁸ Less than a month before jury selection began, the mitigation specialist had not obtained Mr. Matthews's juvenile records or interviewed his primary caregiver, and had just started to advise trial counsel on which mental health experts to consult.¹⁴⁹ Trial counsel did not even lay eyes on Mr. Matthews' family members until the first day of jury selection, remarking in an email to their mitigation specialist that his family was a "motley looking bunch of people."¹⁵⁰

Despite this late-stage investigation, the defense team had ample evidence of Mr. Matthews' potential exposure in utero to drugs and alcohol and his mental health issues,¹⁵¹ including a family member telling the mitigation specialist that Mr. Matthews' mother spent time in rehab *while pregnant with him*.¹⁵² Nonetheless, trial counsel failed to obtain any forensic psychological or

neuropsychological evaluations.¹⁵³ The only evidence they introduced about Mr. Matthews's possible fetal exposure to drugs and alcohol came through their clinical psychologist, who testified that his mother had substance abuse and had her youngest child taken away at birth because of being drug addicted in utero.¹⁵⁴ Defense counsel did not ask this expert to perform *any* testing of Mr. Matthews, despite obvious neurological impairments.¹⁵⁵

Had the defense team conducted a more robust investigation, the jury would have heard that Mr. Matthews suffered from serious mental health issues his entire life, stemming from his exposure to alcohol and drugs in utero by his addicted mother, which affected his judgment and impulse control.¹⁵⁶ The jury would have heard that Mr. Matthews never received any care for his fetal alcohol syndrome and multiple instances of serious head trauma, and thus self-medicated and became addicted to opiates.¹⁵⁷ Even more damning, had trial counsel obtained the appropriate expert to properly evaluate Mr. Matthews, his client would have been better able to assist trial counsel and may have not rejected the prosecution's offer of a life sentence.¹⁵⁸

Edgardo Rafael Cubas

Lawyers failed to present mental health evidence; zero first chair attorney visits, three second chair attorney visits

In 2004, a jury convicted Edgardo Cubas of a murder committed during an attempted sexual assault. At trial, his attorneys presented no evidence of any mental health problems. Less than a decade later, a judge withdrew an execution date in the face of a motion that argued Mr. Cubas was incompetent to be executed, a conclusion based on the unanimous agreement of evaluating experts and the agreement of the State. Incompetency to be executed is an extremely high standard that requires a finding that the individual either cannot "comprehen[d] the reasons" for his punishment or is "unaware of ... why [he is] to suffer it."¹⁵⁹ Witnesses described, under oath, Mr. Cubas talking about things that had no basis in reality; his postconviction attorney noted he had serious questions about Mr. Cubas' mental health from the beginning of his representation.¹⁶⁰

Postconviction investigation has largely been halted because of the competency finding, but as it proceeds, counsel will almost certainly shed more light on the huge amount of mental health evidence that could have been introduced at trial.

Elijah Joubert

Lawyers failed to present evidence of intellectual disability and neglect; seven first chair attorney visits, zero second chair attorney visits

A jury sentenced Elijah Joubert to death on October 11, 2004, for two murders—one of a police officer—that occurred during a robbery gone bad.¹⁶¹ Mr. Joubert may suffer from an intellectual disability that would make him ineligible for a death sentence, but the jury heard no evidence about it. IQ testing earlier in Mr. Joubert’s life revealed he had an IQ score that puts him in the range of intellectual disability.¹⁶² Though defense counsel retained an expert to conduct intelligence testing he did not present the results of that testing at trial, nor did he call to the stand the expert who conducted that previous testing. The judge ruled that the prior score was inadmissible hearsay without the conducting expert, and so the jury never heard about it.¹⁶³

The jury also never heard evidence that Mr. Joubert had other signs that indicated a neurological impairment or intellectual disability. He was slow to walk and did not learn how to speak until he was two.¹⁶⁴ At fifteen, he could read and perform arithmetic at only a third-grade level and spelled like a first grader.¹⁶⁵ His mother used drugs daily while pregnant with him, a risk factor for cognitive impairment. His school records also reflect a learning disability. A competent defense team would have presented all these facts to convince a jury that they should spare Mr. Joubert’s life.

Demetrius Smith

Lawyers failed to present evidence of mental illness and neglect; nine first chair attorney visits, one second chair attorney visit

In June 2006, a jury convicted Demetrius Smith of capital murder and sentenced him to death for the murder of his girlfriend and her daughter.¹⁶⁶ Both before trial and throughout it, Mr. Smith exhibited behavior that should have raised a very serious concern about his mental health and competency to stand trial.¹⁶⁷ At trial, for example, Mr. Smith took the stand to deny involvement in the crime, even though the jury had already convicted him.¹⁶⁸ He then asked: “Is it evening or morning outside? Is it evening or morning. I’m trying to say good morning or good evening.”¹⁶⁹

Readily available jail and prison records also show that from the moment he was incarcerated the first time at eighteen, he displayed signs of serious mental illness and was referred to the jail’s psychiatric unit because he struggled with delusions and auditory hallucinations.¹⁷⁰ He feared “being killed by a demon and complained of seeing ghosts.”¹⁷¹ He would rub a Bible on his chest, to “exorcise the demons.”¹⁷²

Yet defense counsel did not discuss Mr. Smith’s mental health at trial at all. His lawyer did not present any of the information in Mr. Smith’s extensive prison records documenting his psychiatric breaks, for example, nor did counsel present his family history of mental illness, despite having access to a wealth of information and witnesses who could recount both.¹⁷³

Had defense counsel conducted a thorough investigation, they could have shown that Mr. Smith grew up in an extremely unstable environment, with several relatives suffering from serious mental illness.¹⁷⁴ One uncle, for example, was institutionalized, another believed he saw spirits, and his cousin was diagnosed with schizophrenia.¹⁷⁵ Further, if defense counsel had learned about this information and then presented it to his mental health expert, the expert might have testified that Mr. Smith suffers from schizophrenia—a conclusion he reached during postconviction litigation after reviewing more extensive life history information.¹⁷⁶ But without that information, he rejected a mental health diagnosis at trial.

Roosevelt Smith

Lawyers failed to present evidence of intellectual disability, mental illness, physical and sexual abuse, and neglect; four first chair attorney visits, zero second chair attorney visits

In 2007, a jury convicted Roosevelt Smith of murder and robbery and sentenced him to death. During the penalty phase of trial, the defense presented less than one hour—only 44 minutes, to be exact¹⁷⁷—of evidence to try and save his life.

Five years later, during postconviction litigation, during which period Mr. Smith sat in solitary confinement on death row, *an expert for the prosecution* determined that he suffered from an intellectual disability—a categorical bar to execution that the Supreme Court announced in 2002, long before Mr. Smith’s trial.¹⁷⁸ The Texas Court of Criminal Appeals threw out Mr. Smith’s death sentence.¹⁷⁹ Mr. Smith’s own counsel had presented no evidence of their client’s intellectual disability to the jury.

Defense counsel also failed to present much of the available evidence detailing Mr. Smith’s lifetime suffering from physical and sexual abuse and neglect. That is because defense counsel missed the filing deadline to introduce records that documented that their client had been admitted to a hospital for people with mental illness; that he had undergone a medical examination that revealed he had been raped; that he could not read or write; that he consistently did poorly in school; that he had a history of mental illness in his family; that he was neglected as a child and would go days without eating; that he had only one pair of clothes; that sometimes he would not talk for a week or two at a time; that he appeared “at least mildly retarded” and obtained a non-verbal IQ of 69; and that he had been diagnosed with schizophrenia and “borderline mental retardation.”¹⁸⁰

Compounding the error, defense counsel also failed to successfully execute subpoenas to the numerous witnesses who could testify about Mr. Smith’s life.¹⁸¹ The witnesses who could have testified, had they been called, would have described, in vivid detail, a history of massive physical abuse. His mother,

for example, forced him to sleep outside in the freezing cold and hit him with a hose pipe, extension cord, and switches, and his father beat him until he was almost unconscious.¹⁸² Yet the jury heard none of these details.

Christopher Jackson

Lawyers failed to present evidence of mental illness, physical and sexual abuse, and neglect; no available jail logs

In 2007, a jury sentenced Christopher Jackson to death for a murder that occurred during a carjacking. In the punishment phase, counsel put on five witnesses who testified for less than two hours total, telling the jury that Mr. Jackson had a loving family but made his own bad choices, and was too much to handle so his mother had abandoned him.¹⁸³

The jury did not hear that Mr. Jackson is likely the offspring of an incestuous relationship between his severely mentally ill mother and her mentally ill brother.¹⁸⁴ A teen boy he lived with raped him for years, starting when he was 4.¹⁸⁵ His grandmother physically abused him until he blacked out, and at least one family member believed she sexually abused him.¹⁸⁶ She then gave him up to Child Protective Services (CPS) when he was 13.¹⁸⁷ He was medicated for psychotic mental illness throughout his life.¹⁸⁸ All of this information was readily available through witnesses and records, but defense counsel did not conduct those interviews, failing to even interview immediate family members or request those records.¹⁸⁹

Trial counsel also did not present meaningful evidence of Mr. Jackson's mental illness, even though he had spent over a year in the Harris County Jail pretrial, heavily medicated to abate his bizarre behavior. The partial CPS records handed over by the State said that Mr. Jackson had been on a "record breaking" number of psychiatric medications at a young age.¹⁹⁰ Counsel's mitigation specialist and experts also told counsel that Mr. Jackson may suffer from a serious mental illness.¹⁹¹

And yet counsel did not explore whether their client was mentally ill because one of his lawyers believed Mr. Jackson "was malingering and one of the least mentally ill defendants he had represented"—an opinion that might have changed had he gone to visit Mr. Jackson in jail more than once,¹⁹² or requested the records showing Mr. Jackson's decades-long struggle with symptoms of schizophrenia and bipolar disorder.¹⁹³

Throughout the course of their representation, both attorneys had too many appointments to conduct even a minimally adequate representation.¹⁹⁴ Whereas most recommended capital caseloads are capped at seven, the first chair attorney had over 300 active felony cases and was in trial all but four days for the month before Mr. Jackson's trial started.¹⁹⁵ The second chair

attorney had over 500 active felony cases during her representation of Mr. Jackson.¹⁹⁶

Garland Harper

Lawyers failed to present significant evidence of mental illness and neglect; zero first chair attorney visits, seven second chair attorney visits

Garland Harper was born into a family marked by mental illness and neglect.¹⁹⁷ His grandmother had psychiatric episodes, his mother attempted suicide at least twice while he was a child, and she suffered from extreme paranoia, keeping knives all over the house.¹⁹⁸ His mother also brought strange men into the home to trade sex for drugs.¹⁹⁹ His father was largely absent because he was in and out of prison.²⁰⁰

When Mr. Harper was six, his mother gave him Valium.²⁰¹ When he was a teenager, he started experiencing symptoms of mental illness and self-medicated with crack cocaine,²⁰² which he may have smoked with his mother.²⁰³ Mr. Harper also had a history of debilitating mental illness, documented in his Texas Department of Criminal Justice travel cards from the '90s.²⁰⁴

But defense counsel did not present witnesses to discuss his mental illness or the records documenting it.²⁰⁵ Instead, the lawyer merely presented a mental health expert, who he did not actually talk to until after jury selection began.²⁰⁶ The expert diagnosed Mr. Harper with schizoaffective disorder²⁰⁷ but did not provide any corroborating evidence about Mr. Harper's life history that supported that diagnosis, something that is typically expected to convince a jury of the accuracy of a diagnosis.²⁰⁸ The government persuasively argued he was making up his symptoms.²⁰⁹

Mabry Landor

Lawyers failed to present evidence of mental illness, physical and sexual abuse, and neglect; nine first chair attorney visits, four second chair attorney visits

In 2010, a jury convicted Mabry Landor for the shooting of a peace officer and sentenced him to death.²¹⁰ Defense counsel's mitigation case was sparse.²¹¹ Counsel presented minimal evidence suggesting that Mr. Landor suffered from depression,²¹² which ran in the family²¹³, and that his father struggled with alcohol.²¹⁴ Counsel largely focused on the theme that Mr. Landor was a loving father.²¹⁵

Had counsel conducted any meaningful investigation,²¹⁶ they could have showed that Mr. Landor experienced extensive physical and sexual abuse as a child²¹⁷ and suffered from mental illness.²¹⁸ His mother abandoned him for several months when he was a child.²¹⁹ His father physically abused his mother.²²⁰ His older brothers physically abused him,²²¹ and one of his brothers sexually abused him.²²² Mr. Landor also experienced several injuries as a child.²²³ Records also suggest that he has bipolar disorder²²⁴ and post-traumatic stress disorder.²²⁵

Mr. Landor's attorneys presented so little information because they did not gather it.²²⁶ His first chair attorney²²⁷—unqualified to take the case as he had never handled a death penalty case before²²⁸—visited Mr. Landor just a handful of times at the jail during the course of his representation, and most of these visits were extremely short, as jail logs show him visiting multiple clients over the course of an hour.²²⁹ The mitigation specialist on the case visited him just five times in the jail,²³⁰ perhaps because of the abysmal amount initially approved for the investigation—just \$2,000, far below what is necessary for a mitigation specialist to compile the thorough psycho-social history that requires investigating three generations of family history.²³¹ The specialist visited with family members rarely, and always in a group setting, which does not allow the specialist to build the strong relationships with the family necessary to unearth painful events.²³²

Joseph Jean

Lawyers failed to present evidence of intellectual disability, physical abuse, and neglect; four first chair attorney visits, three second chair attorney visits

In June 2010, the government indicted Joseph Jean for killing two women with a baseball bat.²³³ Defense counsel's presentation at the punishment phase lasted one day and focused on Mr. Jean's family background, his kind demeanor, and his love of children.²³⁴

Defense counsel totally missed Mr. Jean's intellectual disability, which renders him ineligible for the death penalty. Postconviction testing has shown that he has an IQ score of 69.²³⁵ Testing on adaptive deficits—another aspect of intellectual disability that evaluates a person's ability to function alone at an age-appropriate level—has now shown Mr. Jean in the bottom one percent of the population.²³⁶ Fortunately, Mr. Jean's postconviction lawyers discovered these issues, and in 2023, the Texas Court of Criminal Appeals ruled that Mr. Jean could not be executed because of his intellectual disability and resentenced him to life without parole.²³⁷

Jaime Piero Cole

Lawyers failed to present evidence of brain damage and neglect; seven first chair attorney visits, five second chair attorney visits

In 2011, a jury sentenced Jaime Cole to death for killing his estranged wife and her daughter. At the punishment phase, jurors heard from some of Mr. Cole's coworkers, family, and friends about how they loved him.²³⁸ They testified that he was a productive member of society.²³⁹

The jurors did not hear that Mr. Cole had a childhood replete with trauma and abandonment. Instead of two loving and supportive families, as the government claimed,²⁴⁰ he was wrested from his Ecuadorian family when he was seven and adopted by an American couple from Texas.²⁴¹ Mr. Cole believed his mother had sold him for money.²⁴² Eventually, his mother tried to take him back; when the court ordered him returned to his adoptive family, police pulled him out of his mother's arms.²⁴³ He struggled throughout school as he did not speak English,²⁴⁴ and his adoptive parents never helped him adequately transition to life in the United States.²⁴⁵ Mr. Cole also suffered from neurological impairments and may have organic brain damage, but the jury never heard about them, because defense counsel failed to have a neuropsychologist evaluate him.²⁴⁶

Teddrick Batiste

Lawyers failed to present evidence of serious neglect; three first chair attorney visits, one second chair attorney visit

In 2011, a jury convicted Teddrick Batiste for the 2009 murder of Horace Holiday during a robbery gone bad.²⁴⁷ At the punishment phase, his lawyers presented Mr. Batiste as a diligent worker, a good parent, and someone who was truly sorry for the pain he caused.²⁴⁸

What the jury never learned is that Mr. Batiste's childhood and upbringing scarred him severely. His biological father was never a part of his life, and his mother, who had Mr. Batiste at just fifteen,²⁴⁹ went through several physically and emotionally abusive relationships, all of which her young son witnessed.²⁵⁰ Many of her boyfriends were serious drug users, exposing Mr. Batiste to crack cocaine from a very young age.²⁵¹ The family also moved around constantly. Mr. Batiste attended seven different elementary schools and four different middle schools.²⁵² At sixteen, Mr. Batiste, charged with a non-violent offense, was sent from Houston to far west Texas to a juvenile facility that was eventually shut down in 2007 because of a sexual abuse scandal.²⁵³ He was housed with older and more dangerous individuals, factors known to increase an individual's risk of violence in subsequent years.²⁵⁴ Counsel also failed to uncover the frontal lobe damage in Mr. Batiste's brain, which affects judgment and impulse control.²⁵⁵

Obel Cruz-Garcia

Lawyers failed to introduce evidence of cognitive impairments and serious neglect; two first chair attorney visits, two second chair attorney visits

In 2013, a jury found Mr. Obel Cruz-Garcia guilty and sentenced him to death for the 1992 robbery, assault, and sexual assault of Arturo Rodrigez and Diana Garcia, along with the kidnapping and murder of Diana's six-year-old child.²⁵⁶ To prepare for both the guilt and penalty phase of trial, Mr. Cruz-Garcia's attorney visited him in jail just twice during the two years he represented Cruz-Garcia.²⁵⁷ The attorneys did not hire a mitigation specialist.²⁵⁸ The first chair attorney also admitted he never reviewed the prosecution's file, despite their repeated invitation to do so.²⁵⁹

As a result of this negligence, the attorneys missed a wealth of mitigating and exculpatory information.²⁶⁰ While he was growing up in the Dominican Republic,²⁶¹ Mr. Cruz-Garcia lived in abject poverty,²⁶² with no running water or electricity and no medical clinic or grocery store nearby.²⁶³ His father made Mr. Cruz-Garcia start drinking alcohol when he turned six²⁶⁴ and his mother abandoned the family when Cruz-Garcia was nine or ten.²⁶⁵ He barely received any education after he turned ten,²⁶⁶ because children were expected to work most of the day.²⁶⁷ He also suffered a head injury as a youth, which limited his ability to read and write at school.²⁶⁸ Around the age of 12, he became responsible for the care of his four younger siblings.²⁶⁹ He developed post-traumatic stress disorder²⁷⁰ and had seriously impaired cognitive and psychological functioning.²⁷¹ Mr. Cruz-Garcia self-medicated through drugs and alcohol.²⁷² Yet his defense attorneys discovered none of this because they did not conduct a meaningful mitigation investigation.

Posing a future danger is a necessary predicate for the imposition of the death penalty. Yet the attorneys did not present compelling evidence that Mr. Cruz-Garcia did not.²⁷³ Minimal investigation would have showed that during his seven years of incarceration in a Puerto Rican prison (after the murder he was charged with in the death penalty case, but before the police believed they solved the crime and arrested him),²⁷⁴ the guards gave him the keys to the chapel and offices because he was such a model inmate.²⁷⁵ He was also allowed to use power tools in his work as a carpenter.²⁷⁶ Four chaplains would have described him as one of the best behaved, most trusted, and well-respected individuals they had ever seen in the prison.²⁷⁷

Instead, the defense attorneys presented practically nothing at the punishment phase. Their defense of Mr. Cruz-Garcia lasted just one day²⁷⁸ and accounted for barely 70 pages of the transcript.²⁷⁹ One of the four defense witnesses who testified at the punishment phase had never been contacted by the defense—instead, he proactively showed up to court and asked to testify.²⁸⁰

At the time of Mr. Cruz-Garcia's trial, his first chair attorney had at least 21 capital cases and the District Attorney was seeking death in at least six of those cases. He was appointed to over 400 felony cases during his less-than-two-year representation of Mr. Cruz-Garcia. In 2012 alone, judges appointed him to 250 cases.²⁸¹

George Curry

Lawyers failed to introduce evidence of physical and sexual abuse and neglect; six first chair attorney visits, two second chair attorney visits

The District Attorney charged George Curry with capital murder for a robbery gone bad that occurred on May 1, 2009.²⁸² Four years later, the case went to trial. By the time of trial, the first chair had spent an abysmal 99.33 out-of-court hours on the case, and his co-counsel only 21.25 hours.²⁸³ An eyewitness identification formed the most significant evidence against Mr. Curry at trial, but defense counsel "prepared" their expert on the unreliability of eyewitness identification while "driving [on the way to court]" as the jury was waiting.²⁸⁴ At the punishment phase, defense counsel put on three mental health experts that they started working with just 72 hours before the experts took the stand.²⁸⁵ They testified that Mr. Curry was impaired by a neurocognitive disorder²⁸⁶, but their testimony was not well-developed,²⁸⁷ as none had met or evaluated Mr. Curry prior to the start of the trial,²⁸⁸ and one did not meet Mr. Curry at all.²⁸⁹ They also tried to describe some of the abuse and neglect that Mr. Curry experienced as a child, but it was all uncorroborated by any witnesses with firsthand knowledge about Mr. Curry's life.²⁹⁰

A robust investigation would have revealed that Mr. Curry was one of around 30 siblings,²⁹¹ (making it unfathomable that they could not find one person to testify at trial), nearly all of whom were abandoned by Mr. Curry's biological father. His mother had a volatile, abusive relationship with his father, which ultimately forced Mr. Curry and his mother to leave their home.²⁹² He was routinely physically abused by his alcoholic stepfather, who would beat him with a car fan belt.²⁹³ A babysitter sexually abused him,²⁹⁴ a fact many witnesses have now reported during postconviction investigation.²⁹⁵ But the jury heard none of this.²⁹⁶ Instead, they sentenced Mr. Curry to death.

Harlem Lewis III

Lawyers failed to present evidence of intellectual disability; one first chair attorney visit, 33 second chair attorney visits

Harlem Lewis III was just 21 years old when a jury sentenced him to death in 2014. Defense counsel could have easily raised an intellectual disability claim but did not.²⁹⁷ Before trial, two mental health experts concluded that Mr. Lewis

was intellectually disabled.²⁹⁸ One expert reported that Mr. Lewis has an IQ score of 71,²⁹⁹ well within the range of intellectual disability.³⁰⁰ Both experts asked to conduct collateral interviews that could shed light on Mr. Lewis' adaptive functioning. Inexplicably, defense counsel declined their request.³⁰¹

Had Mr. Lewis' lawyers pursued that line of investigation, they would have learned that Mr. Lewis had serious adaptive deficits—another requirement for an intellectual disability claim.³⁰² For example, a number of Mr. Lewis' grade school teachers reported inflating his grades and altering his coursework at the insistence of his father.³⁰³ Mr. Lewis enrolled in college despite extremely low test scores and though he registered for twenty-six credit hours, he failed to earn a single one.³⁰⁴ The only job Mr. Lewis was able to keep was at his father's auto-detailing shop; Mr. Lewis never successfully lived independently.³⁰⁵

Instead of pursuing a defense that would have made Mr. Lewis ineligible for a death sentence, defense counsel argued that he suffered from Klinefelter Syndrome,³⁰⁶ a disease that impairs executive function, judgment, and decision-making. However, one of the hallmarks of Klinefelter Syndrome is infertility, and Mr. Lewis is a father.³⁰⁷ And unlike intellectual disability, Klinefelter Syndrome is not a categorical bar to the death penalty.³⁰⁸

Mr. Lewis' lawyer ended the trial by saying the following to the jury: "I am going to sit down. The prosecutors are excellent lawyers. I don't have enough, I don't have enough to fight them, but we knew that coming in. I'm afraid that maybe I was not the best lawyer for Harlem Lewis. I'm afraid of that. I'm afraid he could have had a better lawyer."³⁰⁹

Warren Rivers

Lawyers failed to present significant evidence of mental illness, physical and sexual abuse, and neglect; ten first chair attorney visits, one second chair attorney visit

Warren Rivers, who a jury originally sentenced to death in 1988,³¹⁰ received a resentencing hearing in 2014.³¹¹ His resentencing trial attorneys barely prepared for the new punishment hearing and presented only a clinical version of a life marred by tragedy.³¹²

Mr. Rivers' mother, herself an extremely mentally ill woman essentially sold into slavery by her family as a child,³¹³ physically abused her children³¹⁴—who she began having at age 14.³¹⁵ She would fill the bathtub up with hot water and salt, for example, and make Rivers and his siblings sit in the tub while she whipped them.³¹⁶ She tied them up in a sack and "smoked" them,³¹⁷ as her mother had done to her by stripping her naked, tying her in a gunny sack, hoisting her in a tree, and lighting a fire underneath.³¹⁸ She would make them get down on their hands and knees on top of uncooked rice and beans.³¹⁹ She beat the kids with

extension cords and a sharp metal comb; she kept a broken broomstick next to the refrigerator for years to use in her beatings.³²⁰ She would also tie the children to the bed naked and then whip them, and she would beat the boys' penises with a broomstick.³²¹ Her use of violence was not limited to Mr. Rivers; when he was just 13, she shot and killed her husband.³²² She had also shot at her previous partner, wounding Mr. Rivers' older half-brother in the process.³²³

Mr. Rivers also experienced sexual abuse by his older brothers throughout his childhood.³²⁴ And starting at age 8, for five years, his mother looked the other way as a sexual predator in the neighborhood preyed on Mr. Rivers and one of his brothers.³²⁵ This predator made money creating homemade child pornography, but Mr. Rivers' mother asked no questions when the children came home and gave money from him to her.³²⁶

Mr. Rivers' counsel tried to present some testimony about the physical and sexual abuse through family members and their mental health expert, but the prosecution repeatedly objected on "hearsay" and "relevance" grounds.³²⁷ Counsel failed to provide appropriate legal arguments for why the judge had to admit this highly relevant testimony, and so any mitigating information came in at trial in a broken, unclear manner.³²⁸ This allowed the State to insinuate that his sexual abuse claim was fabricated to help his case at trial,³²⁹ even though those claims were reflected in numerous documents produced over the years.

Defense counsel also failed to introduce meaningful evidence of Mr. Rivers' mental illness and intellectual impairments (he failed, for example, both second and seventh grade).³³⁰ Unsurprisingly, the abuse Mr. Rivers experienced left him broken from a young age.³³¹ A mental health professional who saw him as a child remembered him as "*the most depressed child I have ever seen.*"³³² But defense counsel did not present this psychotherapist's testimony, or any other evidence that would have cast light on his struggles.³³³

Jeffery Prevost

Lawyers failed to present evidence of mental illness, physical and sexual abuse, and neglect; no available jail logs

In 2014, a jury convicted Jeffery Prevost of capital murder and sentenced him to death for intentionally killing his girlfriend and her son.³³⁴ At the punishment phase, his defense team told the jury that Mr. Prevost largely grew up in a loving and happy home.³³⁵ That was not true.

In reality, Mr. Prevost grew up exposed to and a victim of massive sexual and physical abuse. His grandmother used both her home and a bar she owned that catered to merchant seamen³³⁶ to sell sex.³³⁷ She also pushed her daughters—including Mr. Prevost's mother—into the sex trade.³³⁸ Both Mr. Prevost's grandmother and mother also trafficked the young girls in the family to local merchant seamen.³³⁹

When Mr. Prevost was 12, one of the women in the house raped him, and then continued to sexually assault him for years.³⁴⁰ His cousin suspected that other women working in the house did, as well.³⁴¹ Mr. Prevost knew that his sisters and cousins were also sexually abused by the adults that frequented the house.³⁴²

In addition to the sexual assaults he and his siblings and cousins suffered, Mr. Prevost also experienced physical and emotional abuse.³⁴³ His mother shot a gun at him multiple times, and when he cried, she dressed him up in “girls’ clothing” and mocked the way he looked.³⁴⁴ The jury never learned about any of these childhood traumas.

Jurors also never learned about the mental illness that Mr. Prevost struggled with as an adult. Because counsel did not seek a neurological evaluation of their client despite acknowledging during opening statements that “something is not wired right in [Mr. Prevost’s] head,”³⁴⁵ jurors never learned that Mr. Prevost had been diagnosed with Major Depressive Disorder with psychotic features and schizophrenia,³⁴⁶ or that he had a long history of psychiatric hospitalization.³⁴⁷

Juan Balderas

Lawyers failed to present significant evidence of mental illness, physical and sexual abuse, and neglect; 53 first chair attorney visits, two second chair attorney visits

In 2014, a jury convicted Juan Balderas for the 2005 murder and shooting of Eduardo Hernandez in an inter-gang dispute and sentenced him to death.³⁴⁸ Considerable evidence pointed to two other gang members as the culprits, but defense counsel did little to investigate this alternate-perpetrator defense.³⁴⁹ Defense counsel did not start preparing for the guilt phase of trial until the month before it began, and relied primarily on a legal secretary instead of an experienced investigator to conduct it.³⁵⁰ In the end, defense counsel presented just one witness in support of Mr. Balderas’ innocence—who they did not talk to until after trial started.³⁵¹

Defense counsel likewise presented only a perfunctory mitigation presentation at the penalty phase.³⁵² Mr. Balderas’ life history is rife with abuse.³⁵³ His stepfather repeatedly raped him,³⁵⁴ and his aunt sexually assaulted him.³⁵⁵ Both his stepfather and mother physically abused him, using hangers and belt buckles as weapons.³⁵⁶ But defense counsel merely introduced testimony from Mr. Balderas’ mother and father, who only discussed the discord between them.³⁵⁷ Defense counsel attempted to present testimony from two other relatives who lived in Mexico, via Skype, but technical difficulties cut off their testimony.³⁵⁸ Instead, defense counsel presented Mr. Balderas’ abuse through the testimony of expert witnesses,³⁵⁹ who limited their description of his life history to describing the sexual abuse and the impact it had on his mental state, and did not mention the physical abuse at all.³⁶⁰

Defense counsel also presented an incomplete and curtailed version of Mr. Balderas' serious mental illness, even though he had been diagnosed with bipolar syndrome and repeatedly reported hearing voices.³⁶¹ Defense counsel failed to give experts all his psychiatric records, making their evaluation of him incomplete.³⁶²

At the close of sentencing, one of Mr. Balderas' lawyers told the jury: "[My co-counsel]s don't know this. But I'm going to pick up my stuff in just a moment and I'm going to walk out of this courtroom and I'm not coming back. I'll never see the 12 or 14 of you again. I will not be here when you return your verdict."³⁶³ And indeed, in a case where this lawyer was tasked with convincing the jury it should have enough empathy for Mr. Balderas to spare his life, the jury sentenced his client to death in his absence while he joined his wife on a trip to Florida.³⁶⁴

William Mason

Lawyers failed to investigate neurological issues; no available jail logs

In 1992, a jury sentenced Billy Mason to death for killing his wife.³⁶⁵ The Texas Court of Criminal Appeals reversed that sentence on appeal, and he received a resentencing in 2015.³⁶⁶ The jury again sentenced him to death.³⁶⁷

Mr. Mason's mother experienced severe alcoholism throughout her life—his mother drank every day,³⁶⁸ frequently passing out.³⁶⁹ Billy himself started drinking alcohol at 10, which eventually progressed to sniffing glue, using heroin, and abusing prescription medication by the time he was 16.³⁷⁰

Unsurprisingly, given these facts, Mr. Mason suffers from Fetal Alcohol Syndrome Disorder,³⁷¹ a diagnosis confirmed by two experts hired by postconviction counsel.³⁷² FASD often causes aggression and other behavioral problems, and, along with the extraordinary physical abuse he experienced at the hands of his father before he even turned one,³⁷³ would have helped the jurors understand his behavior as an adult.

But defense counsel never bothered to look into the possibility of FASD.³⁷⁴ Instead, they hired mental health professionals used as "all-purpose experts" who testified that Mr. Mason had antisocial personality disorder.³⁷⁵ Unsurprisingly, the State used this diagnosis throughout their closing argument, saying for example: "You heard it from their own experts. He's a sociopath" and "Did he ever go express remorse? Did he ever tell anybody he was sorry? No, because he's incapable of it because he is a psychopath."³⁷⁶

Ali Irsan

Lawyers failed to present evidence of serious mental illness, physical abuse, and neglect; 11 first chair attorney visits, 13 second chair attorney visits

In 2018, a jury convicted Ali Irsan of capital murder and sentenced him to death.³⁷⁷ According to the government, Mr. Irsan killed his daughter's husband because he was not Muslim³⁷⁸ and was a white Christian.³⁷⁹ Ten months later, the prosecution alleged,³⁸⁰ he killed his daughter's friend, blaming her for helping his daughter run away from home.³⁸¹

Investigation in this case required a culturally competent defense team³⁸² that could examine his life history³⁸³ in a remote and extremely poor village of Jordan,³⁸⁴ understand his religion, and stop the prosecution from presenting inaccurate and offensive tropes about Muslim men and Arab culture.³⁸⁵ Instead, the prosecutors were allowed to portray Mr. Irsan as, in their words at closing, "a radical extremist Muslim who must be stopped," with little rebuttal from the defense.³⁸⁶

Had defense counsel adequately investigated Mr. Irsan's case, they would have learned that he suffered from severe trauma, abuse,³⁸⁷ and mental illness.³⁸⁸ They would have learned, for example, that Mr. Irsan grew up in a dilapidated town where he lacked electricity until his teenage years,³⁸⁹ that at one point the Palestinian Liberation Organization tried to kidnap him,³⁹⁰ and that he lived in a war zone where he regularly saw dead bodies on the street.³⁹¹ They would have learned that his father severely beat him and his siblings, both privately and publicly in the streets, and that the beatings lead to serious injury.³⁹² They also would have learned that Mr. Irsan exhibited early signs of mental illness, and that his family regularly referred to him as "majnun," the Arabic word for crazy,³⁹³ and that Mr. Irsan suffered from such serious delusions that he thought he could control natural disasters through his prayers to God.³⁹⁴ And with more extensive investigation and information given to experts, the lawyers might have uncovered that Mr. Irsan suffers from Delusional Disorder and potentially serious schizophrenia spectrum disorder.³⁹⁵ All of this evidence has been uncovered by his postconviction attorneys.³⁹⁶

Instead, only a few people who knew about Mr. Irsan's life testified,³⁹⁷ and they presented limited evidence.³⁹⁸ Specifically, a few witnesses testified over Zoom that his father beat him and that Mr. Irsan was a kind and generous individual,³⁹⁹ which entirely ignored his life history and mental illness.⁴⁰⁰

Lucky Ward

Lawyers failed to present evidence of serious mental illness; five first chair attorney visits, 56 second chair attorney visits

Lucky Ward,⁴⁰¹ who a jury sentenced to death in 2020, suffers from severe mental illness.⁴⁰² Doctors have diagnosed him with bipolar disorder,⁴⁰³ schizoaffective bipolar disorder,⁴⁰⁴ schizophrenia,⁴⁰⁵ and paranoid ideation⁴⁰⁶ at various points throughout his life. But according to his appellate lawyer, his attorneys did not put on a single mental health expert at trial to talk about Mr. Ward's diagnoses, despite the existence of thousands of pages of medical records documenting both the diagnoses and the symptoms he exhibited over decades.

Mr. Ward also exhibited signs that he was not competent to stand trial,⁴⁰⁷ but his attorneys did not investigate this until it was too late,⁴⁰⁸ and only raised the issue of competency when he tried to kill himself (again)⁴⁰⁹ in a holding cell outside of the courtroom.⁴¹⁰ Mr. Ward ended up missing most of his death-penalty trial because his flagrant mental illness prevented him from making any rational decisions.⁴¹¹

Incredibly, one of Mr. Ward's attorneys actively sabotaged his case.⁴¹² After representing Mr. Ward for about a year (during which time he never went to the jail and filed almost no motions),⁴¹³ one of his attorneys filed a motion to withdraw as counsel in response to Mr. Ward's request to represent himself.⁴¹⁴ Although the motion was labeled "ex parte," the lawyer failed to file it under seal, which meant the state had access to the entire motion, which included an array of unsupported allegations based on confidential information he had supposedly learned from the psychiatrist he had retained, and a litany of offenses he assumed his client had committed (but which had not been proven at trial or even investigated).⁴¹⁵ He also accused his client of being flagrantly incompetent and so dangerous he needed to be injected with psychotropic drugs.⁴¹⁶ It was a breach of attorney-client privilege and disloyal to the client, and to this date, the motion remains publicly available on the court docket.

Conclusion

In *Gideon v. Wainwright*, the Supreme Court made an important promise to this nation's poor, holding that they would not face the possibility of incarceration without an effective lawyer. But that promise, in many cases, has been more honored in the breach than in the observance. Without robust scaffolding to support the right to counsel, what should be a cornerstone of our criminal legal system is facing death by a thousand cuts—not enough lawyers, not enough hours, not enough money, and not enough oversight.

Our review of death sentences over the last twenty years has shown that poor defendants faced with the death penalty are not getting adequate representation.

In part 2 of this report, we examine more closely the reasons the right to counsel has floundered in Harris County.

We also propose a solution: The county should establish an independent office tasked with handling its capital cases, an office that is not dependent on the judges for resources, and which can train its own lawyers, investigators, and mitigation specialists. This may seem like a drastic solution, but it is one that has worked in many large places, including Virginia and Georgia. There is no reason Harris County cannot follow suit. And the alternative—allowing individuals to face the possibility of death knowing that the entire system of representation is broken—is no solution at all. It makes a mockery of not only *Gideon*, but the legal system.

Endnotes

- ¹ Gideon v. Wainwright, 372 U.S. 335 (1963).
- ² Phil McCausland, *Why Texas' 'Death Penalty Capital of the World' Stopped Executing People*, NBC NEWS (Dec. 16, 2017), <https://www.nbcnews.com/storyline/lethal-injection/why-texas-death-penalty-capital-world-stopped-executing-people-n830276>.
- ³ Mitigation specialists are tasked with interviewing the client's life history and potential mental illness or developmental disabilities while helping the lawyer explain to the jury why the defendant should receive mercy.
- ⁴ We relied largely on postconviction proceedings because, unlike in direct appeals, this is where counsel can conduct additional investigation and introduce previously undiscovered evidence. Because at the time of our review, postconviction pleadings had not been filed in two of the most recent death sentences in Harris County (Dennis Haskell and Robert Solis), we did not include them. We also did not include a few cases where postconviction litigation provided no meaningful insight into what occurred at trial, or where cases were so cold that postconviction pleadings were difficult to find. In another, the individual's death sentence was overturned because he was 17 at the time of the crime. In another, the postconviction judge stayed an execution date because he had "troubling concerns" about postconviction counsel. Other cases similarly lacked any detail about what happened at trial or about subsequent investigations. It is certainly possible that trial counsel performed incredibly thorough mitigation investigations in those cases, but we have no evidence to support or dispute that belief. We believe our findings are sufficiently consistent to support our conclusions.
- ⁵ To make this report more readable, we significantly condensed the summaries and focused on some of the most egregious examples of poor lawyering.
- ⁶ See Maurice Chammah, *The Mercy Workers*, THE MARSHALL PROJECT (Mar. 2, 2023), <https://www.themarshallproject.org/2023/03/02/death-penalty-mitigation-specialists-rare-look>.
- ⁷ See American Bar Association, *Guidelines for the Appointment and Performance of Defense Counsel in Death Penalty Cases*, 31 Hofstra L. REV. 913, 966-968; Gould et al, *Report to the Committee on Defender Services Judicial Conference of the United States Update on the Cost and Quality of Defense Representation in Federal Death Penalty Cases* (Sept. 2010), <https://www.uscourts.gov/sites/default/files/fdpc2010.pdf>.
- ⁸ For Warren Rivers, we only focused on the advocacy of his resentencing attorneys, so those are the visits included in this data set.
- ⁹ We limited our review of legal visits to those made by the first or second chair attorney on the case.
- ¹⁰ See Lincoln Caplan, *The Destruction of Defendants' Rights*, THE NEW YORKER (June 21, 2015), <https://www.newyorker.com/news/news-desk/the-destruction-of-defendants-rights>.
- ¹¹ Radley Balko, *In America's Leading Death-Penalty County, Judges Routinely Outsource Their Written Opinions to Prosecutors*, WASH. POST (June 26, 2018), <https://www.washingtonpost.com/news/the-watch/wp/2018/06/26/in-americas-leading-death-penalty-county-judges-routinely-outsource-their-written-opinions-to-prosecutors/>.
- ¹² Appl. for Postconviction Writ of Habeas Corpus under Tex. Code Crim. Proc. Art. 11.071 at v. 4 at p. 19, Ex Parte Irvan v. State of Texas, No. 75,428-01 (Dist. Ct. 180th Harris Cnty., Tex. July 30, 2012) [hereinafter Ivan State Habeas Appl.].
- ¹³ *Id.* at v. 4 p. 25.

¹⁴ *Id.* at v. 4 p. 26.
¹⁵ *Id.* at v. 1 p. 314.
¹⁶ *Id.*
¹⁷ *Id.*
¹⁸ *Id.*
¹⁹ *Id.* at v. 1 p. 16, 314.
²⁰ *Id.* at v. 1 p. 39.
²¹ *Id.* at v. 1 p. 21-22.
²² *Id.* at v. 1 p. 20-24.
²³ *Id.* at v.1 p. 24.
²⁴ *Id.* at v. 1 p. 26.
²⁵ *Id.* at v. 1 p. 26-28.
²⁶ *Id.* at v. 1, p. 28.
²⁷ *Id.* at v. 2 p. 37-38.
²⁸ *Id.* at v. 1 p. 309-310.
²⁹ First Am. Pet. for a Writ of Habeas Corpus at 2-3, *Sorto v. Thaler*, 4:10-cv-00613 (S.D. Tex. July 29, 2011) [hereinafter *Sorto Fed. Habeas Pet.*].
³⁰ *Id.* at 3.
³¹ *Id.* at 47.
³² *Id.* at 47, 49.
³³ *Id.* at 47-48, 60. An expert retained in postconviction explained that this overestimate was “well documented in peer reviewed literature” as “an unreliable measure of intelligence.” *Sorto Fed. Habeas Pet.* at Ex. 2.
³⁴ *Id.* at 60, Ex. 11.
³⁵ *Id.* at 50.
³⁶ *Id.*
³⁷ *Id.* at 50, 75.
³⁸ *Id.* at 52.
³⁹ *Id.* at 52-53.
⁴⁰ *Id.* at 52-53, 75.
⁴¹ *Id.* at 81-82.
⁴² *Id.* at 75.
⁴³ *Id.* at 19-20, 81.
⁴⁴ *Id.* at Ex. 13.
⁴⁵ *Id.*
⁴⁶ *Id.* at 20.
⁴⁷ *Id.* at 22.
⁴⁸ *Id.* at 80.
⁴⁹ *Id.*
⁵⁰ *Id.*
⁵¹ *Id.* at 83.
⁵² *Id.* at 83-84.
⁵³ *Id.* at 80.
⁵⁴ *Id.* at 77.
⁵⁵ *Id.* at 82.
⁵⁶ *Id.* at 3.
⁵⁷ *Id.* at 73-74.
⁵⁸ *Id.*
⁵⁹ Pet. for Writ of Habeas Corpus at 1-2, 4, *Freeney v. Stephens*, 4:14-cv-00373 (S.D. Tex. Jan. 26, 2015) [hereinafter *Freeney Fed. Habeas Pet.*]; Appl. for Writ of Habeas Corpus Pursuant to Article 11.071 of Tex. Code Crim. Proc. at 2, 3, 21, Ex Parte *Freeney*, No. 909843-A (D. Ct. 337th Harris Cnty., Tex. Jan. 24, 2005) [hereinafter *Freeney*]

State Habeas Appl.].

⁶⁰ Freeney State Habeas Appl. at 6-9, 20-23.

⁶¹ Freeney State Habeas Appl. at 20.

⁶² *Id.* at 17-18, 21 (Helen Kelley was also charged with assaulting her sister, who she hit over the head with a flowerpot).

⁶³ Freeney State Habeas Appl at 6-9.

⁶⁴ *Id.*

⁶⁵ Pet. for Writ of Cert. at 6-9, Freeney v. Davis, No. 18-7414 (U.S. Sup. Ct. Jan. 10, 2019).

⁶⁶ *Id.* at 6; Freeney State Habeas Appl. at 5; Freeney Fed. Habeas Pet. at 11.

⁶⁷ Appl. for Writ of Habeas Corpus Pursuant to Article 11.071 of Tex. Code Crim. Proc. at 7, Ex Parte Sales, No. 893161-A (D. Ct. 230th Harris Cnty., Tex. Oct. 9, 2004) [hereinafter Sales State Habeas Appl.]. Specifically, in a postconviction affidavit, shooter Herschel Ostine stated, "Shooting Butler was my idea alone. I thought it might make Sales protect me, since Butler was a witness against Sales in another case. The other case was not serious, though...There was no hiring of me or no asking me to do the Butler murder by Tarus Sales. I just decided on my own that killing Butler was a way for me to get Tarus to maybe vouch for me with Cecil back in Nashville so Cecil wouldn't kill me for losing his money." Pet. for Writ of Habeas Corpus at 38, Sales v. Stephens, 4:15-CV-00256 (S.D. Tex. Jan. 14, 2016) [hereinafter Sales Fed. Habeas Pet.].

⁶⁸ Sales State Habeas Appl. at 27.

⁶⁹ *Id.* at 27-28.

⁷⁰ *Id.*

⁷¹ *Id.* at 25; Sales Fed. Habeas Pet. at 86.

⁷² Sales State Habeas Appl. at 24.

⁷³ *Id.* at 26.

⁷⁴ *Id.* at 25.

⁷⁵ Russell v. State, 155 S.W.3d 176, 177 (Tex. Crim. App. 2005).

⁷⁶ Am. Pet. for Writ of Habeas Corpus at 9, Russell v. Davis, No. 4:13-CV-3636 (S.D. Tex. July 23, 2019) [hereinafter Russell Fed. Habeas Pet.].

⁷⁷ *Id.* at 10.

⁷⁸ *Id.* at 9.

⁷⁹ *Id.* at 10.

⁸⁰ *Id.*

⁸¹ Appl. for Writ of Habeas Corpus Pursuant to Article 11.071 of Tex. Code Crim. Proc. at 8, 20, 38, Ex Parte Russell, No. 898795-A (D. Ct. 262d Harris Cnty., Tex. Oct. 7, 2004) [hereinafter Russell State Habeas Appl.].

⁸² *Id.* at 25.

⁸³ Russell State Habeas Appl. at 5-6.

⁸⁴ *Id.* at 6-7, 11, 17.

⁸⁵ *Id.* at 2, 12, 19.

⁸⁶ *Id.* at 9, 16-20.

⁸⁷ *Id.* at 2, 10; See also Russell v. Lumpkin, 827 F. App'x 378, 393 (5th Cir. 2020).

⁸⁸ Russell State Habeas Appl. at 2.

⁸⁹ *Id.* at 9.

⁹⁰ *Id.* at 23-25.

⁹¹ *Id.* at 6-8, 30.

⁹² Pet. for Writ of Habeas Corpus at 3, Marshall v. Stephens, 4:14-CV-3438 (S.D. Tex, Nov. 19, 2015) [hereinafter Marshall Fed. Habeas Pet.].

⁹³ Appl. for Writ of Habeas Corpus Pursuant to Article 11.071 of Tex. Code Crim. Proc., Ex Parte Marshall, No. 948591 (D. Ct. 180th Harris Cnty., Tex. Oct. 7, 2021) [hereinafter Marshall State Habeas Appl.].

⁹⁴ *Id.* at 185-88.
⁹⁵ *Id.* at 186.
⁹⁶ Marshall Fed. Habeas Pet. at 110.
⁹⁷ Marshall State Habeas Appl. at 208-10.
⁹⁸ Marshall Fed. Habeas Pet. at 110-11.
⁹⁹ *Id.*
¹⁰⁰ *Id.* at 123.
¹⁰¹ Marshall Fed. Habeas Pet. at 28-29. One of the people in the holding cell eventually became a witness against Mr. Marshall based on what he overheard during a meeting between Mr. Marshall and his lawyer.
¹⁰² *Id.* at 30.
¹⁰³ *Id.* at 123-127.
¹⁰⁴ *Id.*
¹⁰⁵ *Id.* at 124.
¹⁰⁶ *Id.* at 126.
¹⁰⁷ First Am. Pet. for Writ of Habeas Corpus at 11, Juan Reynoso, 4:09-cv-02103 (S.D. Tex. Jan. 27, 2011) [hereinafter Reynoso Fed. Habeas Pet.].
¹⁰⁸ *Id.* at 13-14.
¹⁰⁹ *Id.*
¹¹⁰ *Id.* at 13.
¹¹¹ Reynoso v. Davis, 2020 WL 2596785, U.S. Dist. Ct. (May 21, 2020); Reynoso Fed. Habeas Pet. at 39.
¹¹² *Id.* at 34.
¹¹³ *Id.* at 24.
¹¹⁴ *Id.*
¹¹⁵ *Id.* at 34.
¹¹⁶ *Id.* at 55.
¹¹⁷ *Id.*
¹¹⁸ *Id.* at 14.
¹¹⁹ *Id.* at 55.
¹²⁰ *Id.*
¹²¹ Pet. for Writ of Cert. at 5-8, Reynoso v. Lumpkin, No. 21-6846 (U.S. Sup. Ct. Jan. 11, 2022) [hereinafter Reynoso Cert. Pet.].
¹²² Reynoso Fed. Habeas Pet. at 35, 53-56.
¹²³ *Id.* at 52-53.
¹²⁴ *Id.* at 19.
¹²⁵ *Id.* at 20.
¹²⁶ Reply and Response to Respondent's Answer and Mot. for Summary Judgment at 26, Reynoso v. Thaler, 4:09-cv-2103 (S.D. Tex. Nov. 1, 2011) [hereinafter Reynoso Reply].
¹²⁷ Reynoso Fed. Habeas Pet. at 13, 19-20.
¹²⁸ Reynoso Cert. Pet. at 4.
¹²⁹ Reynoso Fed. Habeas Pet. at 13.
¹³⁰ Reynoso Reply at 26.
¹³¹ Appl. for a Certificate of Appealability from the S.D. Tex. at 42, Reynoso v. Lumpkin, No. 4:09-cv-2103 (5th Cir. Mar. 23, 2021) [hereinafter Reynoso COA].
¹³² Reynoso Fed. Habeas Pet. at 16, 52.
¹³³ *Id.* at 52-53.
¹³⁴ Reynoso COA at 17.
¹³⁵ Appl. for Writ of Habeas Corpus Pursuant to Article 11.071 of Tex. Code Crim. Proc. at 3-5, Ex Parte Gallo, No. 74,900 (D. Ct. 182nd Harris Cnty., Tex. March 26, 2007) [hereinafter Gallo State Habeas Appl.].

¹³⁶ Agreed Proposed Findings of Fact, Ex Parte Gallo, No. 74,900 (D.Ct. 182nd Harris Cnty., Tex. April 4, 2023) [hereinafter Gallo Findings of Fact].

¹³⁷ Subs. Appl. for Writ of Habeas Corpus Pursuant to Article 11.071 of Tex. Code Crim. Proc. at 59-60, Ex Parte Gallo, WR-77,940-03 (D. Ct. 182nd Harris Cnty., Tex. Nov. 7, 2016) [hereinafter Gallo Subs. State Habeas Appl.].

¹³⁸ *Id.*

¹³⁹ Gallo Findings of Fact at 21-22.

¹⁴⁰ Jed Bickman, *Death Row Psychologist Reprimanded*, TYPE INVESTIGATIONS (Apr. 18, 2011), <https://www.typeinvestigations.org/impact/2011/04/18/death-row-psychologist-reprimanded/>

¹⁴¹ *Daubert v. Merrell Dow Pharmaceuticals, Inc.*, 509 U.S. 579 (1993); *see also* *Nenno v. State*, 970 S.W.2d 549, 561 (Tex. Crim. App. 1998).

¹⁴² Gallo Subs. State Habeas Appl. at 220; Gallo State Habeas Appl. at 185.

¹⁴³ Gallo Subs. State Habeas Appl. at 218; Gallo State Habeas Appl. at 27.

¹⁴⁴ Gallo Subs. State Habeas Appl. at 217-219; Gallo State Habeas Appl. at 26.

¹⁴⁵ Am. Pet. for Writ of Habeas Corpus at 34-35, *Matthews v. Stephens*, 4:12-cv-01939 (S.D. Tex. Feb. 17, 2014) [hereinafter *Matthews Fed. Habeas Pet.*].

¹⁴⁶ *Id.* at 24.

¹⁴⁷ *Id.* at 21.

¹⁴⁸ *Id.* at 22.

¹⁴⁹ *Id.*

¹⁵⁰ *Id.* at 22-23.

¹⁵¹ *Id.* at 21-23.

¹⁵² *Id.* at 23.

¹⁵³ *Id.* at 13.

¹⁵⁴ *Id.* at 11.

¹⁵⁵ *Id.*

¹⁵⁶ *Id.* at 17-18.

¹⁵⁷ *Id.* at 9-10.

¹⁵⁸ *Id.* at 26.

¹⁵⁹ *Panetti v. Quarterman*, 551 U.S. 930, 959 (2007).

¹⁶⁰ *See* Defendant's First V. Mot. to Determine Competency to Be Executed Pursuant to Art. 46.05, *Tex. v. Cubas*, No. 981,079 (D. Ct. 184th Harris Cnty., Tex. Nov. 27, 2013).

¹⁶¹ Ex Parte Joubert, 2021 WL 2560170 (Tex. Ct. Crim. App. June 23, 2021) (per curium) (not reported).

¹⁶² 2nd Am. Pet. for Writ of Habeas Corpus at 129-30, *Joubert v. Lumpkin*, 4:13-cv-3002 (S.D. Tex. July 13, 2022) [hereinafter *Joubert Fed. Habeas Pet.*]; *see also* Lisa Trahan et. al., *The Flynn Effect: A Meta-Analysis*, 140 PSYCHOL. BULL. 1332-1360 (2014).

¹⁶³ Appl. for Writ of Habeas Corpus Pursuant to Article 11.071 of Tex. Code Crim. Proc. at 78-89, Ex Parte Joubert, No. 944756-B (D. Ct. 351st Harris Cnty., Tex. May 17, 2016) [hereinafter *Joubert State Habeas Appl.*].

¹⁶⁴ *Id.* at 78-89, 94-95.

¹⁶⁵ *Joubert Fed. Habeas Pet.* at 129.

¹⁶⁶ *Smith v. State*, 297 S.W.3d 260, 264-265 (Tex. Crim. App. 2009).

¹⁶⁷ Appl. for Writ of Habeas Corpus Pursuant to Article 11.071 of Tex. Code Crim. Proc. at 1-2, Ex Parte Demetrius Smith, No. 1021168 (D. Ct. 183rd Harris Cnty., Tex. May 4, 2009) [hereinafter *D. Smith State Habeas Appl.*].

¹⁶⁸ *D. Smith State Habeas Appl.* at 9-10.

¹⁶⁹ Pet. for Writ of Habeas Corpus at 13, *Smith v. Stephens*, 4:15-cv-707 (S.D. Tex. Feb. 5, 2016) [hereinafter *D. Smith Fed. Habeas Pet.*].

¹⁷⁰ *Id.* at 6-8, 11; *Smith v. Davis*, 927 F.3d 313, 334 (5th Cir. 2019).

¹⁷¹ *Smith*, 927 F.3d at 334 (5th Cir. 2019).

172 *Id.*
173 D. Smith State Habeas Appl. at 2, 16-18; D. Smith Fed. Habeas Pet. at 4, 6, 11.
174 D. Smith State Habeas Appl. at 16-19.
175 *Id.* at 16- 19, 55-57; Smith, 927 F.3d at 335-36.
176 D. Smith Fed. Habeas Pet. at 7 (An expert retained by postconviction counsel has also diagnosed Mr. Smith with paranoid schizophrenia).
177 Appl. for Writ of Habeas Corpus Pursuant to Article 11.071 of Tex. Code Crim. Proc. at 4, Ex Parte Smith, No. 1045419-A (D. Ct. 263d Harris Cnty., Tex. Nov. 7, 2012) [hereinafter R. Smith State Habeas Appl.].
178 *Atkins v. Virginia*, 536 U.S. 304 (2002).
179 *Roosevelt v. Texas*, 2012 WL 5450895, No. AP-76, 906 (Tex. Ct. Crim. App. Nov. 7, 2012) (unpublished).
180 R. Smith State Habeas Appl. at 46-50.
181 *Id.* at 53-55.
182 *Id.* at 55-57.
183 First Am. Pet. for a Writ of Habeas Corpus at 9-10, *Jackson v. Davis*, 4:15-cv-00208 (S.D. Tex. May 12, 2017) [hereinafter Jackson Fed. Habeas Pet.].
184 *Id.* at 14.
185 *Id.* at 110.
186 *Id.* at 106.
187 *Id.* at 107.
188 *Id.* at 46.
189 *Id.* at 47-55, 108.
190 *Id.* at 55.
191 *Id.* at 56.
192 *Id.* at 57.
193 *Id.* at 60.
194 *Id.* at 35.
195 *Id.* at 41.
196 *Id.*
197 Pet. for Writ of Habeas Corpus at 122-23, *Harper v. Stephens*, 4:16-cv-00762 (S.D. Tex. Feb. 23, 2017) [hereinafter Harper Fed. Habeas Pet.].
198 *Id.* at 121-23.
199 *Id.* at 126.
200 *Id.* at 122.
201 *Id.* at 126.
202 *Id.* at 124.
203 *Id.* at 126-27
204 *Id.* at 86.
205 *Id.* at 92-103.
206 *Id.* at 77.
207 *Id.* at 8.
208 *Id.* at 76-77.
209 *Id.* at 3.
210 Pet. for Writ of Habeas Corpus at 1, 6-7, *Mabry Landor III v. Davis*, 4:16-cv-03384 (S.D. Tex. Oct. 31, 2017) [hereinafter Landor Fed. Habeas Pet.].
211 Appl. for Writ of Habeas Corpus Pursuant to Article 11.071 of Tex. Code Crim. Proc. at 45, Ex Parte Landor, No. 1194597-A (D. Ct. 209th Harris Cnty., Tex. Apr. 8, 2011) [hereinafter Landor State Habeas Appl.].
212 *Id.* at 53.
213 Landor Fed. Habeas Pet. at 22.
214 *Id.* at 75.

²¹⁵ Landor State Habeas Appl. at 21-22.
²¹⁶ Landor Fed. Habeas Pet. at 71.
²¹⁷ *Id.*
²¹⁸ *Id.*
²¹⁹ *Id.* at 75.
²²⁰ *Id.*
²²¹ *Id.*
²²² *Id.*
²²³ *Id.*
²²⁴ *Id.* at 73.
²²⁵ *Id.* at 72-77.
²²⁶ *Id.* at 80-5.
²²⁷ *Id.* at 47.
²²⁸ *Id.*
²²⁹ *Id.* at 26.
²³⁰ *Id.* at 50.
²³¹ *Id.* at 24.
²³² *Id.* at 28, 72.
²³³ Appl. for Writ of Habeas Corpus Pursuant to Article 11.071 of Tex. Code Crim. Proc. at 6, Ex Parte Jean, No. 1302120-A (D. Ct. 230th Harris Cnty., Tex.) [hereinafter Jean State Habeas Appl.].
²³⁴ *Id.* at 19, 23.
²³⁵ *Id.* at 125.
²³⁶ *Id.* at 125-26.
²³⁷ Trial counsel also missed that Mr. Jean experienced serious familial abuse as a child. His father regularly beat his mother, and he twice abandoned the family. *Id.* at 135.
²³⁸ Appl. for Writ of Habeas Corpus Pursuant to Article 11.071 of Tex. Code Crim. Proc. at 55-56, Ex Parte Cole, No. 1250754-A (D. Ct. 230th Harris Cnty., Tex. Dec. 12, 2014) [hereinafter Cole State Habeas Appl.].
²³⁹ *Id.* at 56.
²⁴⁰ *Id.* at 55.
²⁴¹ *Id.* at 69.
²⁴² *Id.* at 69, 82.
²⁴³ *Id.* at 66.
²⁴⁴ *Id.* at 67.
²⁴⁵ *Id.* at 67-68-77.
²⁴⁶ *Id.* at 39-53.
²⁴⁷ First Am. Pet. for Writ of Habeas Corpus at 9-10, *Batiste v. Stephens*, 4:15-cv-01258 (S.D. Tex. Apr. 28, 2016) [hereinafter *Batiste Fed. Habeas Pet.*].
²⁴⁸ *Id.* at 12.
²⁴⁹ *Id.* at 61-62, 70.
²⁵⁰ *Id.* at 38.
²⁵¹ *Id.* at 72.
²⁵² *Id.* at 73.
²⁵³ *Id.* at 43-44.
²⁵⁴ *Id.* at 45-46; see also Benjamin Steiner et. al., *Assessing the Relationship between Exposure to Violence and Inmate Maladjustment within and across State Correctional Facilities* (2013), <https://www.ojp.gov/pdffiles1/nij/grants/243901.pdf>.
²⁵⁵ *Batiste Fed. Habeas Pet.* at 4.
²⁵⁶ See *Cruz-Garcia v. State*, 2015 WL 6528727 (Tex. Ct. Crim. App. Oct. 28, 2015).
²⁵⁷ Sub. Appl. for Writ of Habeas Corpus Pursuant to Article 11.071 of Tex. Code Crim. Proc. at 183, Ex Parte Cruz-Garcia, No. 1384794 (D. Ct. 337th Harris Cnty., Tex. Apr. 9.

2021) [hereinafter Cruz-Garcia Sub. State Habeas Appl.].
258 Pet. for Writ of Habeas Corpus at 10-12, Cruz-Garcia v. Davis, 4:17-cv-03621 (S.D. Tex. Oct. 31, 2018) [hereinafter Cruz-Garcia Fed. Habeas Pet.].
259 *Id.* at 51-52.
260 *Id.* at 3, 52.
261 Appl. for Writ of Habeas Corpus Pursuant to Article 11.071 of Tex. Code Crim. Proc. at 8, Ex Parte Cruz-Garcia, No. 1384794-A (D. Ct. 337th Harris Cnty., Tex. Aug. 28, 2015) [hereinafter Cruz-Garcia State Habeas Appl.].
262 *Id.* at 7-8.
263 *Id.*
264 Cruz-Garcia Fed. Habeas Pet. at 80.
265 Cruz-Garcia Sub. State Habeas Appl. at 222.
266 First Am. Pet. for Writ of Habeas Corpus at 80, Cruz-Garcia v. Davis, 4:17-cv-03621 (S.D. Tex. July 1, 2019) [hereinafter Cruz-Garcia Am. Fed. Habeas Pet.]; Cruz-Garcia Fed. Habeas Pet. at 80.
267 Cruz-Garcia Am. Fed. Habeas Pet. at 80.
268 *Id.* at 65.
269 *Id.* at 68.
270 *Id.* at 76.
271 *Id.*
272 *Id.* at 66; Cruz-Garcia Sub. State Habeas Appl. at 86.
273 Cruz-Garcia State Habeas Appl. at 42-43.
274 *Id.* at 53.
275 *Id.* at 58-59.
276 *Id.* at 59.
277 *Id.* at 57-58.
278 Cruz-Garcia Fed. Habeas Pet. at 7-8.
279 *Id.* at 46.
280 *Id.* at 45 n.7.
281 Cruz-Garcia Sub. State Habeas Appl. at 120-123.
282 Appl. for Writ of Habeas Corpus Pursuant to Article 11.071 of Tex. Code Crim. Proc. at 7, Ex Parte Curry, No. 1223596 (D. Ct. 209th Harris Cnty., Tex. Dec. 16, 2016) [hereinafter Curry State Habeas Appl.].
283 *Id.* at 1.
284 *Id.* at 2.
285 *Id.*
286 *Id.* at 10.
287 *Id.* at 180-85.
288 *Id.* at 46-47.
289 *Id.*
290 *Id.* at 29.
291 *Id.* at 4.
292 *Id.* at 235.
293 *Id.* at 246-47.
294 *Id.* at 43.
295 *Id.*
296 *Id.*
297 Appl. for Writ of Habeas Corpus Pursuant to Article 11.071 of Tex. Code Crim. Proc. at 18, Ex Parte Lewis, No. 1428102 (D. Ct. 351st Harris Cnty., Tex. Sept. 28, 2016) [hereinafter Lewis State Habeas Appl.].
298 *Id.* at 123-24.
299 *Id.* at 24.

300 *Id.*
301 *Id.* at 120-23.
302 *Id.* at 32-33.
303 *Id.* at 26.
304 *Id.* at 32.
305 *Id.* at 37.
306 *Id.* at 124.
307 *Id.*
308 *Id.* at 125.
309 *Id.* at 146.
310 Appl. for Writ of Habeas Corpus Pursuant to Article 11.071 of Tex. Code Crim. Proc.
at 23, Ex Parte Rivers, No. 0475-122 (D. Ct. 228th Harris Cnty., Tex. Jan 16, 2017)
[hereinafter Rivers State Habeas Appl.].
311 *Id.* at 346.
312 *Id.* at 11.
313 *Id.* at 100-05.
314 *Id.* at 97.
315 *Id.* at 116.
316 *Id.*
317 *Id.*
318 *Id.* at 102.
319 *Id.* at 116.
320 *Id.* at 116-17.
321 *Id.* at 117.
322 *Id.* at 134.
323 *Id.* at 176.
324 *Id.* at 119-20.
325 *Id.* at 130-31.
326 *Id.*
327 *Id.* at 62-72.
328 *Id.*
329 Tr. of Record Vol. 35 at 74, Rivers v. Texas, No. 475122 (D. Ct. 228th Harris Cnty., Tex.
Nov. 18, 2014).
330 Rivers State Habeas Appl. at 122, 132.
331 *Id.* at 127.
332 *Id.*
333 *Id.* at 127-30.
334 Prevost v. State, No. AP-77,039, 1 (Tex. Crim. App. Feb. 24, 2016).
335 Appl. for Writ of Habeas Corpus Pursuant to Article 11.071 of Tex. Code Crim. Proc.
at 6, 110, Ex Parte Prevost, No. 1414421-A (D. Ct. 351st Harris Cnty., Tex. Jan. 26, 2016)
[hereinafter Prevost State Habeas Appl.].
336 *Id.* at 28.
337 *Id.*
338 *Id.* at 28-29-41.
339 *Id.* at 28, 30, 32, 111.
340 *Id.* at 30.
341 *Id.*
342 *Id.* at 28-29, 32, 37.
343 *Id.* at 34-35, 112 (Mr. Prevost also suffered abuse at the hands of his grandmother
and her husband).
344 *Id.* at 22, 42, 84, 111.
345 *Id.* at 103-104.
346 *Id.* at 104 (prison records detailed diagnoses and hospitalizations resulting from

mental illness).

³⁴⁷ *Id.* at 106 (“Trial counsel’s mitigation presentation was devoid of any evidence of Mr. Prevost’s cognitive and neuropsychological deficits and symptoms.”).

³⁴⁸ Appl. for Writ of Habeas Corpus Pursuant to Article 11.071 of Tex. Code Crim. Proc. at 2, 4-5, Ex Parte Balderas, No. 1412826 (D. Ct. 179th Harris Cnty., Tex. Jan. 15, 2016).

³⁴⁹ *Id.* at 46, 71.

³⁵⁰ *Id.* at 49, 71.

³⁵¹ *Id.* at 50.

³⁵² *Id.* at 193.

³⁵³ *Id.* at 13.

³⁵⁴ *Id.*

³⁵⁵ *Id.* at 216-18.

³⁵⁶ *Id.* at 204.

³⁵⁷ *Id.* at 8.

³⁵⁸ *Id.* at 8.

³⁵⁹ *Id.* at 8-9.

³⁶⁰ *Id.*

³⁶¹ *Id.* at 210-12.

³⁶² *Id.* at 214.

³⁶³ *Id.* at 261.

³⁶⁴ *Id.*

³⁶⁵ Appl. for Writ of Habeas Corpus Pursuant to Article 11.071 of Tex. Code Crim. Proc. at 12-13, Ex Parte Mason, No. 0620074-E (D. Ct. 228th Harris Cnty., Tex. Nov. 20, 2017) [hereinafter Mason State Habeas Appl.].

³⁶⁶ *Id.* at 1.

³⁶⁷ *Id.*

³⁶⁸ *Id.* at 6.

³⁶⁹ *Id.* at 5-6.

³⁷⁰ Appellant’s Brief at 15-16, Mason v. Texas, No. AP-77,064 (Ct. Crim. App. Nov. 16, 2016).

³⁷¹ Mason State Habeas Appl. at 49.

³⁷² *Id.* at 50.

³⁷³ *Id.* at 21.

³⁷⁴ *Id.* at 48-49.

³⁷⁵ *Id.*

³⁷⁶ *Id.* at 49.

³⁷⁷ Corrected Appl. for Writ of Habeas Corpus Pursuant to Article 11.071 of Tex. Code Crim. Proc. at 2, Ex Parte Irsan, No. 1465709 (D. Ct. 184th Harris Cnty., Tex. July 6, 2023) [hereinafter Irsan State Habeas Appl.].

³⁷⁸ *Id.* at 31.

³⁷⁹ *Id.* at 228.

³⁸⁰ *Id.* at 27-28.

³⁸¹ *Id.* at 64-65.

³⁸² *Id.*

³⁸³ *Id.* at 39.

³⁸⁴ *Id.* at 5-6.

³⁸⁵ *Id.* at 43-47.

³⁸⁶ *Id.* at 58-59.

³⁸⁷ *Id.* at 17.

³⁸⁸ *Id.* at 16.

³⁸⁹ *Id.* at 7.

³⁹⁰ *Id.* at 14.

³⁹¹ *Id.* at 13.

³⁹² *Id.* at 17.

³⁹³ *Id.* at 16.

³⁹⁴ *Id.* at 2-3.

³⁹⁵ *Id.* at 67.

³⁹⁶ *Id.* at 67-68.

³⁹⁷ *Id.* at 4.

³⁹⁸ *Id.*

³⁹⁹ *Id.* at 60.

⁴⁰⁰ *Id.*

⁴⁰¹ State postconviction pleadings have not yet been filed. This synopsis is derived from the state appellate briefs.

⁴⁰² Direct Appeal at 99, *Ward v. Texas*, Direct Appeal No. AP-77,096 (D.Ct. 183rd Harris Cnty., Tex. July 20, 2022).

⁴⁰³ *Id.* at 2.

⁴⁰⁴ *Id.*

⁴⁰⁵ *Id.* at 117.

⁴⁰⁶ *Id.*

⁴⁰⁷ *Id.* at 101.

⁴⁰⁸ *Id.* at 112-13.

⁴⁰⁹ *Id.*

⁴¹⁰ *Id.*

⁴¹¹ *Id.* at 164.

⁴¹² *Id.* at 77-80.

⁴¹³ *Id.*

⁴¹⁴ *Id.*

⁴¹⁵ *Id.*

⁴¹⁶ *Id.*



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