

LIFE-HISTORY BASED FORENSIC EVALUATIONS IN DEATH PENALTY CASES

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Summary

The sentence of death versus life without parole often comes down to the extent and quality of mitigation evidence. Dr. Mendel has evaluated defendants in approximately 170 cases, most of which have been death penalty cases involving defendants with histories of childhood abuse or trauma. In his experience, mitigation is often minimally assessed or is presented in a haphazard manner. Dr. Mendel argues that assessment based on a thorough understanding of the life history of the defendant, rather than on results of psychological testing, provides the most comprehensive – and comprehensible to the jury – view of the person charged with the murder.

Mitigation

As a result of a series of Supreme Court cases culminating in the *Wiggins v. Smith* (2003), defendants in capital cases have a constitutional right to a thorough investigation of potentially mitigating factors. In order to provide adequate assistance, their attorneys are required to conduct (or hire someone to conduct) an investigation of the defendant's childhood background, to explore issues including physical, emotional and sexual abuse; poverty; domestic violence; violence in the environment; drug abuse in the home and environment; and anything else that could be considered mitigating.

Dr. Mendel primarily works on pre-trial cases. However, over the past several years, he has worked more and more on appellate cases because of the frequency of appeals on the basis of

Biography

Dr. Matthew Mendel is a clinical psychologist and an expert witness with a private practice in Raleigh, North Carolina. He is the author of *The Male Survivor: Impact of Sexual Abuse* (Sage Publications, 1995). He has been retained in over 170 forensic cases in seventeen states and in federal jurisdiction. Most of his forensic work is in death penalty cases in which it is known or suspected that the defendant was sexually abused or otherwise traumatized during his childhood. Dr. Mendel evaluates these defendants, with a focus on their childhood traumas, and then tells their story, helping those involved in the disposition of the case understand the individual accused of the crime. Dr. Mendel is a pioneer in "life-history" based forensic evaluations, as opposed to more traditional evaluations in the forensic field, which rely heavily upon psychological testing.

Inadequate Assistance of Counsel (IAC) due to the failure of the attorney to **adequately** present mitigating evidence. Common mistakes:

- Information is simply presented to the jury, or to the DA, in a matter-of-fact manner: “This defendant was sexually abused during his childhood.” Or, “this defendant’s parents both drank heavily during his childhood.” This may be presented by a layman – a friend, relative, pastor, or teacher of the defendant.
- Mitigating evidence may be presented by an expert, but without any personalization and specificity. This is often meaningless to a jury because evidence is presented using academic language that are not easily understandable by general audience.

Every Life Deserves a Biography

Even though the reports provided with case documentation can be superb and worthy of publication in a peer reviewed journal, it is rare that they truly give a picture of the person charged with the crime; they can be too dry and academic. Dr. Mendel believes that reports

Dr. Mendel’s Past Testimonies in Court

1. 2017 Texas v. Miguel Hernandez, 1379618D
2. 2017 State of North Carolina v. William Long 15CRS50302
3. 2017 State of Arkansas v. Karl D. Roberts CASE NO. CR 99.70
4. 2016 Arizona v. Dustin Kurt Coleman CR 2012-008340
5. 2016. State of Mississippi v. Alan Dale Walker 1:97-cv-00029-KS
6. 2014 Texas v. Harlem Lewis Cause Nos 1372134 & 1372135
7. 2014 North Carolina v. Jonathan Richardson 10 CRS 3981-83; 54369; 54426; 11 CRS 3021-22
8. 2014 Texas v. Juan Balderas Cause Nos 1050630 & 1064857
9. 2013 Arizona v. Kyle Loretto Alegria CR20092397
10. 2013 Texas v. Willie Ray Jenkins CR10-1063
11. 2013 Texas v. Stanley Robertson CR10-4337
12. 2011 North Carolina v. Danny Thomas 06CRS6250-67
13. 2011 Texas v. Travis Mullis CR08-0333
14. 2010 North Carolina v. Samuel Cooper 07CR82072
15. 2008 North Carolina v. Jakiem Wilson 07CRS11060
16. 2008 North Carolina v. Antonio Chance 06CRS74131
17. 2007 United States Air Force Court-Martial against Airman Darrin E. Jones, Jr.
18. 2005 California v. Alejandro Avila 02CF1862
19. 1999 North Carolina v. Clifton White 89CRS31887, 41217-18, 56389, 56391
20. 1997 North Carolina v. John Williams 97CRS8000-01, 8388, 17582-84, 17587-88, 17590-91, 88750

should be “mini-biographies” of the defendant, painting a picture of the defendant in a way that is easily understandable and emotional compelling to a jury and/or D.A.

STEPS:

1. Review as many records as possible, particularly anything to do with the defendant’s childhood: school records; psychological/psychiatric records; criminal history, including juvenile detention; CPS records; and reports from other experts.
2. Never interview defendant only one day. Always interview defendant in person for at least two consecutive days. Two days allows time for defendant to open up and talk about the most embarrassing, shame-inducing set of events in his life.
3. Read as much as possible of interviews conducted by mitigation specialists with family members, friends, and acquaintances of the defendant. Consider requesting to interview several of these individuals as well.
4. Write mini-biography.

Have an Honest Conversation about Childhood Abuses

Quote from an attorney: The defendant has been dreading talking with you about this, trouble sleeping for last week or so. He has told several people about the abuse, but never gone into detail: just says, “He sexually abused me, so I killed him.”

Informal, interactive, friendly conversational style that is probably not appropriate during administration of formal psychological tests helps break down the walls between a defendant and a psychologist. As a result, defendants feel more willing to talk about these most embarrassing aspects of their life and the impact of these events upon them – more fully and in more detail than they ever have before. For a few, they have never told anyone before about the abuse; for many, they have told only one or two people, most typically a girlfriend or wife, in my experience, or perhaps a therapist. For virtually all, the disclosure has been only about the basics of the event: what happened, who did it, when it happened. The impact of the abuse on them covers most areas of their lives, including their relationships, their ability to trust, their sense of their own sexuality and sexual orientation, their sense of their masculinity, their history of drug and alcohol use, aggressive behavior and criminal behavior, among other topics.

For many men, their sense that the sexual abuse of males is extremely rare and that they are the only one this has ever happened to makes them feel far more isolated and stigmatized. Knowing that Dr. Mendel has written a book about the topic and spoken to hundreds of men who were sexually abused in childhood goes a long way toward helping them feel safe speaking about their experiences.

Do not Judge

No matter how open minded a person is, he or she still carries some prejudices in their heart. It’s important to leave stereotypes of drug dealers, abusers, white supremacists and gang members outside the interview room in order to facilitate deep, comprehensive conversations about past childhood abuses. The honest communication is bidirectional: “Boy, I was not expecting East Coast academic psychologist with cool glasses to be so into fantasy football!”, said one defendant, a member of Aryan Brotherhood.

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References

The Importance of Recognizing Trauma Throughout Capital Mitigation Investigations and Presentations

KATHLEEN WAYLAND

Wayland, Kathleen (2008) "The Importance of Recognizing Trauma Throughout Capital Mitigation Investigations and Presentations," Hofstra Law Review: Vol. 36 : Iss. 3 , Article 11. Available at: <https://scholarlycommons.law.hofstra.edu/hlr/vol36/iss3/11>

ABSTRACT

This article appears in the Hofstra Law Review symposium issue on the Supplementary Guidelines for the Mitigation Function of Defense Teams in Death Penalty cases.

A PhD. in psychology, the author formerly served on the faculty of Duke University Medical Center, where her primary emphasis was on traumatic stress syndromes and the psychological consequences of chronic exposure to interpersonal violence. For the last fifteen years she has been assisting capital defender organizations in integrating mental health themes into mitigation narratives. This article presents the current state of scientific knowledge about trauma, treating the subject from these dual perspectives.

The inevitable existence of trauma among all of those affected by a murder - including the client, his family members, survivors, and witnesses being interviewed about the crime or the client - is a critical barrier that the defense team must recognize as it investigates. On the other hand, the almost equally invariable presence of traumatic factors in the client's background frequently provides powerful mitigating material, as the Supreme Court has held several times in recent years. The defense team must accordingly gather and use this material effectively.

Adverse Childhood Experience studies

BY CDC & KAISER PERMANENTE

Reference: <https://www.cdc.gov/violenceprevention/acestudy/index.html>

The Adverse Childhood Experiences (ACE) studies conducted by the CDC and Kaiser Permanente clearly demonstrates that childhood traumas are strongly correlated with negative outcomes in adulthood. The more of these factors an individual has experienced, the more negative the prognosis. Childhood factors assessed by these studies include:

Childhood Factors Assessed

| Abuse | Household Challenges | Neglect |
|--------------|-----------------------------------|--------------|
| A. Emotional | A. Mother treated violently | A. Emotional |
| B. Physical | B. Household substance abuse | B. Physical |
| C. Sexual | C. Mental illness in household | |
| | D. Parental separation or divorce | |
| | E. Criminal household member | |

As the number of ACEs increases so does the risk for multiple types of problems, including medical illnesses, alcoholism, drug abuse, depression, poor work performance, poor academic performance, intimate partner violence, early initiation of sexual activity, multiple sexual partners, STD's, smoking, suicide attempts, unintended pregnancies, teen pregnancy, and sexual victimization.

Wiggins v. Smith Supreme Court Decision (2003)

Wiggins v. Smith, 539 U.S. 510 (2003) is a case in which the [United States Supreme Court](#) spelled out standards for "effectiveness" in the [constitutional right to legal counsel](#) guaranteed by the [Sixth Amendment](#). Previously the court had determined that the Sixth Amendment included the right to "effective assistance" of legal counsel, but it did not specify what constitutes "effective", thus leaving the standards for effectiveness vague. In *Wiggins v. Smith*, the court set forth the [American Bar Association Guidelines for the Appointment and Performance of Defense Counsel in Death Penalty Cases](#) Guideline 11.8.6.(1989), as a specific guideline by which to measure effectiveness and competence of legal counsel.^[1]

The Supreme Court attempted to improve on the vague and generalized language in *Strickland v. Washington* by adding an American Bar Association Guideline 11.8.6. This guideline suggests the content of counsel's investigative efforts should contain "medical history, educational history, employment and training history, family and social history, prior adult and juvenile correctional experience, and religious and cultural influences." This clarification allows for the presentation of psychological analysis without the presence of specific diagnosis.

After trial, Wiggins elected to have a [jury](#) decide the sentence on the murder conviction. Counsel's investigation of Wiggins' background was rudimentary and contained only a superficial knowledge of his history from a few sources, omitting the information in detailed social service reports of severe physical and sexual abuse. The record of the sentencing proceedings suggests that counsels' failure to investigate the defendant's background stemmed from inattention, not strategic judgment. Counsel failed to follow the [American Bar Association](#) guidelines in not gathering all such information. Counsel said they had been intent on proving the defendant did not kill the victim with his own hand and had not prepared for the sentencing phase.^[1] Counsel presented no [mitigating evidence](#) to the jury at the sentencing phase. The jury concluded that the defendant was a principal in the [first degree murder](#) of the victim and sentenced Wiggins to [death](#).^[4]

Wiggins obtained new counsel and sought post-conviction relief on the grounds that his trial counsel was ineffective by failing to investigate and present mitigating evidence of his dysfunctional background. He presented expert testimony by a forensic mental health specialist who described his personal history including the severe physical and sexual abuse he had endured and its effect upon him.