

Socio-Historical Analysis of Juvenile Offenders on Death Row

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Abstract

This paper reviews all current eighty death row inmates who were sixteen and seventeen at the time of capital offense commission, focusing on their socio-historical backgrounds, searching for common themes among these individuals. Socio-historical factors include poverty, mental health/psychiatric disorders, abuse/neglect, family dysfunction, organic brain damage, drug and/or alcohol addictions, school failure/MRDD, and child welfare/juvenile justice involvement. Records were obtained through all available resources including published reports, court and trial documents, current and past defense attorneys, advocacy groups, and the inmates/families themselves. The paper's first thesis is that these youth "never had a chance" because of their socio-historical background factors. The paper's second thesis is that the systems designed to support at-risk youth (family, education, mental health, juvenile justice, and child welfare) failed for these juveniles. Executing these juvenile offenders is against their legal rights because jury trials are not presented this mitigating evidence of their childhood and adolescent socio-historical backgrounds. This study finds systemic incompetence of counsel. These juvenile offenders' legal rights are not upheld within the current death penalty system. The death penalty should be abolished for sixteen and seventeen year-old offenders.

Introduction

The childhood and adolescent experiences of juvenile offenders currently on death row were extremely difficult. Severe abuse and neglect, impoverished backgrounds, psychiatric disorders, disorganized family structures, substance abuse addictions, mental retardation, significant school failure rates, and brain damage mark these offenders' histories. These adolescents received little support in avoiding their ultimate death row sentence, even with significant involvement in the child welfare and juvenile justice systems.

Socio-historical background information must be presented at the mitigation phase of a death penalty case. Sentencing juries too often have not considered and/or been offered the breadth and depth of the mitigating factors in these juvenile offenders' childhoods. Recently,

the United States Supreme Court found state authorized killing of mentally retarded death row inmates unconstitutional.¹ Many of the juvenile offenders referred to are mentally retarded and suffer from additional childhood traumas. The research presented here systematically expands the search for these mitigating factors of the current juvenile offender death row population and leads to the conclusion that these individuals are not sufficiently blameworthy and should not be put to death.

Organization

First, this paper reviews the background of the juvenile death penalty. Second, juvenile offenders' mitigating history literature is reviewed. Third, the paper organizes what knowledge of these eighty juvenile offenders is known and explores the following thematic concurrences: histories of abuse and neglect; family dysfunction; poverty; mental health/psychiatric disorders; mental retardation/developmental disabilities/school failure; brain damage; drug and alcohol addictions; involvement in the child welfare system; and involvement in the juvenile justice system.

This review of the relevant history of juvenile offenders currently on death row shows extremely difficult and often tragic childhood/adolescent experiences. This paper reveals that many of the offenders' trial sentencing juries did not have this information when determining a death sentence. Death sentenced juvenile offenders with the types of childhood experiences disclosed here should not be considered fully blameworthy for their actions.

I. Background

¹ Atkins v. Virginia, 122 S.Ct. 2242 (2002).

The death penalty has been used to execute juveniles for over 300 years for varying offenses. Today, the offense must be first-degree (or aggravated) murder.² On average, there has been one execution of a juvenile per year since the founding of the United States.³

Currently, five states have a minimum age of execution of seventeen,⁴ and seventeen states have a minimum age of sixteen.⁵ As of November 2002, there were eighty death row inmates awaiting execution who committed their offending crimes at the age of sixteen or seventeen.⁶

The United States Supreme Court has found the execution of juvenile offenders to be constitutional,⁷ but does not allow the execution of any offender younger than sixteen.⁸ The Court requires that state law permit individualized consideration of mitigating factors under the Eighth and Fourteenth Amendments.⁹ Sentencing juries must consider these mitigating factors when presented at trial.¹⁰

There have been twenty-one juvenile offenders executed since 1976.¹¹ Currently, there are eighty juvenile offenders on death row residing in fourteen state death row prisons.¹² These states include: Texas (thirty offenders), Alabama (thirteen), Mississippi (six), Arizona

² See Victor L. Streib, Ohio Northern University, The Juvenile Death Penalty Report, Death Sentences and Executions for Juvenile Crimes, at <http://www.law.onu.edu/faculty/streib> [hereinafter, Streib, Juvenile Death Penalty Today]; Mirah A. Horowitz, *Kids Who Kill: A Critique of How the American Legal System Deals with Juveniles who Commit Homicide*, Law and Contemp. Probs. 135 (2000); Susan D. Strater, *The Juvenile Death Penalty: In the Best Interests of the Child?* 26 LOYOLA UNIVERSITY of CHI. L. REV. 150, 151 (Winter, 1995).

³ See Streib, *supra* note 2 (Streib is one of the leading experts in this research area).

⁴ See Streib, *supra* note 2. These states are Florida, Georgia, New Hampshire, North Carolina and Texas.

⁵ See Streib, *supra* note 2. These states are Alabama, Arizona, Arkansas, Delaware, Idaho, Kentucky, Louisiana, Mississippi, Missouri, Nevada, Oklahoma, Pennsylvania, South Carolina, South Dakota, Utah, Virginia and Wyoming.

⁶ See Victor Streib, *Moratorium on the Death Penalty for Juveniles*, 61 LAW & CONTEMP. PROBS. 55, 69 (1998); Death Penalty Organization Reports, at <http://www.deathpenaltyinfo.org>.

⁷ *Stanford v. Kentucky*, 492 U.S. 361 (1989).

⁸ *Thompson v. Oklahoma*, 487 U.S. 815 (1989). (The Court held this to be an Eighth Amendment violation)

⁹ *Lockett v. Ohio*, 438 U.S. 586 (1978).

¹⁰ *Eddings v. Oklahoma*, 455 U.S. 104 (1982).

¹¹ Amnesty International Juvenile Death Penalty Reports, at <http://www.amnestyusa.org/abolish/juve>.

¹² See Streib, *supra* note 2, at App. B.

(five), Louisiana (five), Florida (four), Pennsylvania (four), North Carolina (three), South Carolina (three), Georgia (two), Missouri (two), Kentucky (one), Nevada (one), and Oklahoma (one).¹³

II. Literature Review

Research literature focused on juvenile death row offenders is relatively sparse. It is known that all juveniles executed over the past thirty years, and those currently on death row, were convicted of committing first-degree murder.¹⁴ Although research in this area is limited and sample sizes are generally small, the research outcomes have increased over the past twenty years.¹⁵

¹³ *Id.*

¹⁴ *Id.*

¹⁵ See Horowitz, *supra* note 2, at 153; J.C. Rowley, C.P. Ewing, & S.I. Singer, *Juvenile Homicide: The Need for an Interdisciplinary Approach*, 5(1) BEHAVIORAL SCIENCES & the LAW, 1,4 (1987). (The sample size and subjects studied did not allow reliable generalization of results to the larger first-degree homicide convicted population. More reliable and valid research is needed to draw clearer conclusions); Tony D. Crespi & Sandra A. Riagzio-Digillio, *Adolescent Homicide and Family Pathology: Implications for Research and Treatment with Adolescents*, 31 ADOLESCENCE 350, 353 (1996); Victor L. Streib, *Death Penalty for Juveniles* (Indiana University Press 1987); Shirley Dicks, *Young Blood: Juvenile Justice and the Death Penalty* (Prometheus Books 1995); See Dorothy Otnow Lewis, *From Abuse to Violence: Psychophysiological Consequences of Maltreatment*, 31 J. AM. ACAD. CHILD ADOLESCENT PSYCHIATRY 383 (1992); American Bar Association Juvenile Justice Death Penalty Report, at <http://www.abanet.org/crimjus/juvjust/juvdp.html>; Amnesty International Juvenile Death Penalty Reports, at <http://www.amnestyusa.org/abolish/juve>; Burr, *supra* note, at 40; Dorothy Otnow Lewis, *Guilty by Reason of Insanity: A Psychiatrist Explores the Minds of Killers* (Fawcett Columbine Publishers 1998); Dinah A. Robinson, & Otis H. Stephens, *Patterns of Mitigating Factors in Juvenile Death Penalty Cases*, 28 CRIM. L. BULLETIN 246 (1992); Victor L. Streib, *Excluding Juveniles from New York's Impendent Death Penalty*, 54 ALB. L. REV. 625 (1990); James Garbarino, *Children in Danger, Coping with the Consequences of Community Violence* (Jossey-Bass Publishers 1992); James Garbarino, Edna Guttman & Janis Wilson Seeley, *The Psychologically Battered Child* (Jossey-Bass Publishers 1986); James Garbarino, Cynthia J. Schellenbach & Janet M. Sebes, *Troubled Youth, Troubled Families, Understanding Families At-Risk for Adolescent Maltreatment* (Aldine Publishing Co. 1986); James Garbarino & Anne C. Garbarino, *Maltreatment of Adolescents* (National Committee for Prevention of Child Abuse 1982); Raymond H. Staff, Jr. et. al., *Life-Span Developmental Outcomes of Child Maltreatment*, in *The Effects of Child Abuse and Neglect* 1, 21 (Raymond H. Staff, Jr. and David A. Wolfe eds., 1991); James Garbarino, Patrick E. Brookhouse, & Karen U. Authier, *Special Children, Special Risk: The Maltreatment of Children with Disabilities* (University Press 1987).

Juvenile death row inmates have deprived and/or unstable backgrounds, with many offenders' parents having histories of mental illness and addictions that the juveniles emulate.¹⁶ In one review, researchers found five of fourteen offenders had been sodomized by relatives, nine had grown up witnessing parental violence, twelve were victims of physical abuse, and seven suffered from psychotic disorders antedating incarceration.¹⁷

This physical and psychological maltreatment, as documented by other researchers,¹⁸ is associated with aggressive behaviors.¹⁹ Children who have been physically abused tend to be more aggressive in their behaviors compared to those not abused.²⁰ These violently abused children showed significant paranoid ideation and misperceptions.²¹ Toddlers who experience physical abuse show a lack of empathy, a self-protective devise to avoid past painful experiences.²²

When more than one abusive factor or childhood limitation exists,²³ this is characterized as a matrix of violence.²⁴ When cognitive expressive deficits coexist with

¹⁶ See Dicks, *supra* note 15, at 118; Victor L. Streib, *Death Penalty for Juveniles* (Indiana University Press 1987); Shirley Dicks, *Young Blood: Juvenile Justice and the Death Penalty* (Prometheus Books 1995); Lewis, *supra* note 15, at 589; American Bar Association Juvenile Justice Death Penalty Report, at <http://www.abanet.org/crimjus/juvjust/juvdp.html>; Amnesty International Juvenile Death Penalty Reports, at <http://www.amnestyusa.org/abolish/juve>; Burr, *supra* note 15, at 40; Dorothy Otnow Lewis, *Guilty by Reason of Insanity: A Psychiatrist Explores the Minds of Killers* (Fawcett Columbine Publishers 1998); Dinah A. Robinson, & Otis H. Stephens, *Patterns of Mitigating Factors in Juvenile Death Penalty Cases*, 28 CRIM. L. BULLETIN 246 (1992); Victor L. Streib, *Excluding Juveniles from New York's Impendent Death Penalty*, 54 ALB. L. REV. 625 (1990).

¹⁷ See Lewis, *supra* note 16, at 487-488.

¹⁸ See D.O. Lewis, J. H. Pincus, B. Bard, E. Richardson, L.S. Prichep, M. Feldman, & C. Yeager, *Neuropsychiatric, Psychoeducational, and Family Characteristics of 14 Juveniles Condemned to Death in the United States*, 145 AM. J. of PSYCHIATRY 588 (1988); Barbara Frey, *International Standards and the Execution of Juvenile Defendants*, in *Machinery of Death* 80 (Enid Harlow et al. eds., 1995), at 17.

¹⁹ See Lewis, *supra* note 15, at 383.

²⁰ See *id.*, at 384.

²¹ *Id.*

²² See *id.*, at 385.

²³ See *supra* note 15.

²⁴ See Lewis, *supra* note 15, at 388.

impulsivity and hypervigilance, the psychological stage is set for violence.²⁵ Cognitive deficits impair judgment and diminish the ability to express feelings,²⁶ while brain dysfunction is often associated with impatience and irritability.²⁷ Paranoid ideation and misperceptions increase fearfulness and retaliation, and are correlated with other psychiatric disorders.²⁸

Severe punishment, central nervous system disorders, delinquency, and larger family size correlate to increased maltreatment and future childhood aggression.²⁹ Correlative effects of childhood abuse and adult murder have been reviewed.³⁰ Long-standing psychological and behavioral impairments are often the outcomes of physical abuse.³¹ Other outcomes of this childhood physical maltreatment include long-term substance abuse, mental disorders, and brain damage.³² The individualized factors of a defendant's background should make the commission of murder more understandable to a jury.³³ The defendant's goal is to demonstrate how he became the person able to commit a murder and that his judgment and behavior were not entirely of his own making.³⁴

In studying the adult death row population, a history of childhood abuse often was present and accompanied with factors such as impoverished environments, mental retardation, substance abuse, mental disorders, and/or a combination of these factors.³⁵ "The nexus between poverty, childhood abuse and neglect, social and emotional dysfunction, alcohol and

²⁵ *Id.*

²⁶ *Id.*

²⁷ *Id.*

²⁸ *Id.*

²⁹ See Garbarino, *supra* note 15.

³⁰ See Phyllis L. Crocker, Childhood Abuse and Adult Murder: Implications for the Death Penalty, 77 N.C. L. REV. 1143 (1999).

³¹ See *id.*, at 1145.

³² See *id.*, at 1162-1164.

³³ See *id.*, at 1148.

³⁴ See *id.*, at 1155 (the male vernacular is used because all juvenile offenders currently on death row are male).

³⁵ See *id.*, at 1172-1173.

drug abuse, and crime is so tight in the lives of many capital defendants as to form a kind of social historical profile”.³⁶

In 1992, two researchers searched for mitigating factors in the lives of juvenile death row inmates (for years covering 1973 to 1991).³⁷ The authors found five mitigating circumstances for juvenile offender death row inmates. These included 1) troubled family history and social background, 2) psychological disturbance, 3) mental retardation, 4) indigence, and 5) substance abuse.³⁸ This study limited the search of mitigating factors to those recognized by trial courts as having been established by the evidence.³⁹ It found that forty-five of the ninety-one defendants were characterized as troubled.⁴⁰ Psychological disturbance, determined through psychiatric diagnosis and symptom identification, was found in twenty-nine of the juvenile offenders.⁴¹ Indigence, determined by the courts, was designated for forty-eight of the ninety-one youth.⁴² Substance abuse was present in a number of the youths’ histories.⁴³ Overall, one or more of the mitigating factors appeared in sixty-one of the ninety-one cases reviewed and most of the juvenile offenders sentenced to death were profoundly and multiply disadvantaged.⁴⁴ Only eleven of the ninety-one juvenile offenders reviewed are still currently on death row.

III. Field Research

³⁶ See *id.*, at 1174, quoting Craig Haney, *The Social Context of Capital Murder: Social Histories and the Logic of Mitigation*, 35 SANTA CLARA L. REV. 547, 580 (1995).

³⁷ See Robinson, *supra* note 16, at 246.

³⁸ See *id.*, at 263.

³⁹ See *id.*, at 252.

⁴⁰ See *id.*, at 253.

⁴¹ See *id.*, at 255.

⁴² See *id.*, at 257.

⁴³ See *id.*, at 259.

⁴⁴ *Id.*

A. Field Design

The current project updates the research literature on the question of socio-historical background information for all current juvenile offenders on death row and those recently executed (post-1973). Groups such as the American Bar Association and Amnesty International have published significant mitigating background reports of those offenders executed over the past decade, and are reviewed in the following section. Compilation of executed juveniles' biographical histories has not been compiled for systemic analysis until this author's effort.

The second part of this research is a review of the eighty juvenile offenders currently on death row. It is also a research work in progress. Pre-study conversations were held with various experts in the field and leading death penalty advocate groups.⁴⁵ Conversations also were completed with the network of various state advocacy groups.⁴⁶ These state advocacy groups also utilized internet list-servers in seeking information.⁴⁷ These individuals and groups confirmed that only limited knowledge had been gathered with regard to these juveniles' pre-offense childhood and adolescent backgrounds.

⁴⁵ These conversations included Victor Streib, leading expert, currently Professor at Ohio Northern law School (419-772-2207); Mary Berkheiser, Associate Professor and Director of Thomas Mack Legal Clinic, Williams S. Boyd School of Law, University of Nevada Las Vegas who is conducting parallel research looking at the group offending nature of adolescent crime for these juveniles; Peggy King, Research Assistant to Mary Berkheiser, has performed significant compilation of data material from some of the death penalty case proceedings and their work has been informative and referenced in areas of home environments, past offenses and mental deficiencies; Elizabeth Gladden leads the Juvenile Justice Death Penalty Reports at the American Bar Association; Lucia Penland at the Alabama Prison Project; Eilene Welch at Amnesty International; Bryan Stevenson at Equal Justice of Alabama; National Coalition to Abolish the Death Penalty; Southern Center for Human Rights; Southern Poverty Law Center.

⁴⁶ Jill Gibson at Public Interest Litigation Clinic in Kansas City; Tom Block at Missourians Against the Death Penalty; Louisiana Coalition to Abolish the Death Penalty; Abraham Bonowitz at the Floridians for Alternatives to the Death Penalty; ACLU of Pennsylvania; Georgians for Alternatives to the Death Penalty; Coalition of Arizonans to Abolish the Death Penalty; Kim Barker, paralegal at Texas Defenders Services who provided current attorney information representing juvenile offenders in Texas.

⁴⁷ These list-servers lead to numerous conversations with family members, pen pals and other lay persons interested in the project and offers of assistance.

The juveniles' current prison locations, prison identification numbers, and addresses were used to correspond by mail with each juvenile offender on death row and his counsel.⁴⁸ Death row inmates and family members provided historical information and identified current defense counsel. Counsel and trial documents were utilized to corroborate inmate and family reports. Court documents in the public domain were reviewed for mitigating socio-historical backgrounds.⁴⁹ Numerous conversations with past and current defense attorneys for these juvenile offenders led to a clearer historical picture of these youth on death row.

B. Juveniles Executed since 1973

An exhaustive literature search identified much of the information for those juvenile offenders already executed.⁵⁰ With the exception of one juvenile,⁵¹ there has been more thorough documentation of youth already executed compared to those currently serving on death row.⁵²

⁴⁸ Sixty-eight of the eighty juvenile offenders were located and corresponded with at this research stage. Death row information from Arizona and Louisiana was not identified at this stage, and were pursued through other leads to representing attorneys. There are currently no available resources identifying the current list of attorneys representing death row juveniles outside of the Texas Defender Services.

⁴⁹ Collaboration with research being performed by Mary Berkheiser, Associate Professor and Director of Thomas Mack Legal Clinic, Williams S. Boyd School of Law, University of Nevada Las Vegas and her research assistant, Peggy King, was very helpful with a number of the offender's histories. This research provided some data on home environments, mental deficiencies and past offenses.

⁵⁰ Information and previous researchers were successful in their advocacy and literature efforts in more fully documenting these executed juvenile histories. The dearth of published literature on current death row offenders was a methodological challenge requiring extensive review of case histories and decisions, networking, phone calls to attorneys and work with various other advocacy groups.

⁵¹ There was no identified information for Robert Cantu, executed 8/24/1993 in Texas.

⁵² See Robinson, *supra* note 15; Dicks, *supra* note 16; Susan Hill, *United States: A World Leader in Executing Juveniles*, Human Rights Watch, (March, 1995); See Burr & Welch, *supra* note 16; Lewis, *supra* note 16; Streib, *supra* note 16; www.web.amnesty.org/ai.nsf/Index/AMR511392000; www.amnestyuse.org/abolish/act500298; www.abanet.org/crimjust/juvjus/jones.html; www.wcl.american.edu/humright/deahtpenalty/mitchell.html; www.abanet.org/crimjust/juvjus/patterson.html; www.abanet.org/crimjust/kivkis/beasley.html.

The mitigating factors of the defendant's youth reviewed for this project often were not presented at trial.⁵³ Indeed, such factors were presented in only seven of the twenty trials, with a majority of these presentations limited to the offender's status as a juvenile.⁵⁴ Obviously, the trial juries did not find these offenders' backgrounds to be sufficiently mitigating when weighed against the aggravating factors.⁵⁵ These youths' backgrounds included serious physical and/or sexual abuse; and/or regular abuse of drugs or alcohol from an early age; and/or historical family abuse of drugs and/or alcohol; and/or mental illness, brain damage, and mental retardation.⁵⁶ Most of these youth had long histories of these factors and long histories of psychiatric illness dating from early childhood.⁵⁷ A majority also fell within borderline mentally retarded ranges, with illiteracy and school failure common.⁵⁸ On average, these twenty executed juvenile offenders suffered from five of the nine traumatic life-determinant factors during their childhood.⁵⁹

Nine of the juveniles put to death had brain damage,⁶⁰ often a result of long-term abuse.⁶¹ At the trial sentencing phase, the jury heard only two of these nine brain damage histories.⁶²

Of these twenty youth, twelve children or adolescents experienced significant abuse or neglect, leading to seven of these families' involvement with the child welfare system.⁶³ For

⁵³ See *infra* note 56.

⁵⁴ *Id.*

⁵⁵ *Id.*

⁵⁶ *Id.*; www.web.amnesty.org/ai.nsf/Index/AMR511392000.

⁵⁷ *Id.*, at 11.

⁵⁸ *Id.*

⁵⁹ The exact mean equaled 5.6.

⁶⁰ See Lewis, *supra* note 16 (Dorothy Otnow Lewis and Jonathan Pincus's results mirrored this finding when in 1988 they interviewed fourteen of the then current death row inmates, identifying that seven of those juvenile offenders showed clear evidence of brain damage, evidenced by significant organic dysfunction).

⁶¹ See Crocker, *supra* note 30, at 1164.

⁶² See *supra* note 11.

example, Joseph Cannon's stepfather severely sexually abused him at the age of seven or eight, and as an adolescent his grandfather similarly sodomized him over a seven-year period.⁶⁴ Robert Carter's mother and stepfather beat him with belts and electric cords for most of the years he lived with them.⁶⁵

The juvenile justice system's failure to deter these adolescents was evident. Nine of the twenty youth experienced histories of felony, misdemeanor, or both type of convictions, with a majority spending time in locked institutions. Fourteen of the twenty youth had serious school environment issues including high absenteeism, failure of numerous grade levels, learning disabilities and mental retardation.⁶⁶ Failure in one life environment (home, school, neighborhood) often is associated with failure in other environments.

In addition to a majority of youth being victims of abuse and neglect, fourteen of these twenty youth grew up in poverty.⁶⁷ David Blue's family, for example, comprised twenty-one people living in the same small house with no beds.⁶⁸ Family dysfunction, often correlated to poverty environments, existed in seventeen of the twenty histories.⁶⁹ Glen McGinnis was born to a crack-addicted mother who used their one-bedroom apartment to work as a prostitute. Glen McGinnis also received repeated beatings from his stepfather.⁷⁰

Twelve of the twenty youth were involved with, or addicted to, drugs and/or alcohol during their adolescence. Joseph Cannon, described earlier as a victim of sexual abuse,

⁶³ See, *supra* note 11; The youth included Joseph Cannon, Johnny Garrett, Gary Graham, Glen McGinnis, Dalton Prejean, Steve Roach and Christopher Thomas. It was not possible to review child welfare files for juveniles due to lack of consent from custodial agents and length of time that has passed.

⁶⁴ See Hill, *supra* note 52, at 15.

⁶⁵ See Amnesty Org., *supra* note 52.

⁶⁶ A number of these youth discontinued their schooling in middle school.

⁶⁷ Only Sean Sellers can be identified as economically "middle-class".

⁶⁸ See Hill, *supra* note 52, at 14.

⁶⁹ Only Napoleon Beazley, Gerald Mitchell and Jay Pinkerton were not noted as growing up within family dysfunction (See App. A).

⁷⁰ See Amnesty Org., *supra* note 52.

sniffed so much glue, gasoline, and other solvents later in his childhood that it caused brain damage.⁷¹ Distinct mental health disorders were found and diagnosed in thirteen of these twenty youth. These disorders ranged from psychosis and childhood schizophrenia to depression and severe conduct disorders.⁷²

These executed juvenile offenders suffered from multiple traumatic life-determinant factors during childhood. Six of these juveniles suffered from seven or more of the nine factors.⁷³ Most children and adolescents in society do not experience even one of these life-determinant traumatic factors. The correlative effect of these multiple factors is overwhelming.⁷⁴ This was the situation for every juvenile offender, bar one, who has been executed in the United States since 1973.⁷⁵ Napoleon Beazley was the one exception.⁷⁶ Mr. Beazley did not suffer from more than one trauma.⁷⁷

C. Current Eighty Juvenile Offenders on Death Row

Overview

Sufficient socio-historical background information was available for analysis of fifty-three of the eighty death sentenced juvenile offenders.⁷⁸ This information was compiled from twenty-six of the fifty-three individuals' trial and post conviction records,⁷⁹ conversations and

⁷¹ See Burr, *supra* note 52, at 934.

⁷² See *supra* note 52.

⁷³ Dwight Wright, James Roach, Dalton Prejean, T.J. Jones, Johnny Garrett and Joseph Cannon (*See* App. A).

⁷⁴ See Lewis, *supra* note 16.

⁷⁵ See App. A.

⁷⁶ *Id.*

⁷⁷ *Id.*

⁷⁸ Determination for exclusion was based on if there existed such limited information that a clearer picture of the juvenile's history was not garnered through the data received, then this individual was not included in the final analysis (*See* App. A for list of fifty-three included and twenty-seven excluded individuals).

⁷⁹ See *State v. Adams*, 439 S.E.2d 760 (N.C. 1994) (reversing sentencing); 490 S.E.2d 220 (N.C. 1997) (after new sentencing hearing), cert denied, 1998 U.S. LEXIS 756 (Jan. 26, 1998); *Alvarado v. State*, 912 S.W.2d 199 (Tex. Crim. App. 1995); *Arroyo v. State*, 73,117 (Tex. Crim. App. 2001); *Arthur v. State*, 73,045 (Tex. Crim. App. March 15, 2000); *Bernal v. State*, 72,095 (Tex. Crim. App. 1999); *Blue v. State*, 674 So. 2d 1184 (Miss.

correspondence with twenty-seven trial and appellate attorneys currently or, in the past, having represented these individuals,⁸⁰ and other public records.⁸¹ A significant number of

1996); Ex parte Taurus Carroll, 2002 Ala. LEXIS 235 (July 26, 2002); Carroll v. State, 1999 Ala. Crim. App. LEXIS 204 (Aug. 27, 1999); State v. Comeaux, 699 So. 2d 16 (La. 1997), cert denied, 1998 U.S. LEXIS 1528 (Mar. 2, 1998); State v. Conyers, 487 S.E.2d 181 (S.C. 1997); Davis v. State, 554 So.2d 1094 (Ala. App. 1986); Dickens v. Johnson, 2001 U.S. Dist. LEXIS 21692 (N.D. Tex. Mar. 13, 2001); Duke v. State, 2002 Ala. Crim. App. LEXIS 115 (May 31, 2002); Duncan v. State, 1999 Ala. Crim. App. LEXIS 224 (Sept. 17, 1999); Eskridge v. State, 765 So. 2d 508 (Miss. 2000), cert denied, 2001 U.S. LEXIS 1279 (Feb. 20, 2001); Foster v. State, 639 So. 2d 1263 (Miss. 1994) (direct appeal); Foster v. State, 687 P.2d 1124 (Miss. 1996); Gibson v. State, 404 S.E. 2d 781 (Ga. 1991); State v. Golphin, 533 S.E.2d 168 (2000); Hain v. Gibson, 287 F.3d 1224 (10th Cir. 2002); Hain v. State, 962 P.2d 649 (Ok. App. 1998) (affirming denial of state post-conviction relief); 919 P.2d 1130 (Ok. App. 1996) (resentencing); Hain v. State, 852 P.2d 744 (Ok. App. 1993) (direct appeal); Ex parte Gary Davis Hart II, 612 So. 2d 536 (Ala. 1992), affirming Davis v. State, 612 So.2d 520 (Ala. App. 1992) (direct appeal); State v. Howard, 751 So. 2d 783 (La. 1999), cert. denied, 528 U.S. 974 (1999); State v. Hughes, 493 S.E.2d 821 (1997); State v. Hughes, 555 A.2d 1264 (1989); State v. Jackson, 918 P.2d 1038 (Ariz. 1996); State v. Laird, 920 P.2d 769 (Ariz. 1996); LeCroy v. Dugger, 727 So.2d 236 (Fla. 1998); LeCroy v. State, 533 So. 2d 750 (Fla. 1988) (direct appeal); Commonwealth v. Ligons, 73 A.2d 1231 (Pa. 2001); Ex parte Loggins, 771 So. 2d 1093 (Ala. 2000) (direct appeal); Slaton v. State, 680 So. 2d 879 (Ala. App. 1995), aff'd, 680 So.2d 909 (Ala. 1996); Stanford v. Commonwealth, 734 S.W.2d 781 (Ky. 1987) (direct appeal); Wilson v. State, 71 S.W.3d 346 (Tex. App. 2002) (direct appeal).

⁸⁰ Personal communication with Matthew Dekoatz (Steven Alvarado), trial attorney, 10-15-02; Federal and state appellate writs provided by Katherine Drew, attorney (Mauro Barraza); Personal communication with Mike Rollo, appellate attorney (James Bonifay), 9-27-02; Personal communication with Mark Upton, trial attorney (Dale Craig), 9-30-02; Personal communication with Scott Smith, attorney (John Dewberry), 9-25-02; Personal communication with Jan Hemphill, attorney (Justin Dickens), 9-22-02; Personal communication with Andre Degruy, state post-conviction attorney (Ron Foster), 10-15-02; Karen Zellers provided habeas writ (Derek Guillen), 9-25-02; Personal communication with Robin Maher, appellate attorney (Gary Hart), 10-22-02; Personal communication with Toby Wilkinson, appellate attorney (Patrick Horn), 10-16-02; Personal communication with Terry Huffstutler, trial attorney (James Hyde), 9-27-02; Lydia Brandt, appellate attorney (Eddie Johnson) provided writ of habeas corpus, 10-1-02; Richard Burr, appellate attorney (Anzel Jones) provided writ of habeas corpus, 10-1-02; Personal communication with Garrett Simpson, trial attorney (Kenneth Laird), 10-15-02; Personal communication with Scott Sullivan, appellate attorney (Leo Little), 9-20-02; Thomas Morgan, appellate attorney (Michael Lopez) provided writ of habeas corpus, 9-24-02; Personal communication with Elisa Vasquez & Mike Charlton, appellate attorneys (Ryan Matthews), 9-23-02; Personal communication with Robert Dudek, state appellate attorney (Ted Powers), 10-4-02; Personal communication with Gina Battisti, trial attorney (Antonio Richardson), 10-15-02; Personal communication with Jeff Haas, habeas attorney (Christopher Simmons), 10-17-02; Personal communication with David LaPatista, appellate attorney (Martin Soto-Fong), 10-1-02; Personal communication with John Wynne, appellate attorney (Raul Villareal), 10-15-02; Personal communication with Robert Morrow, appellate attorney (Geno Wilson), 10-17-02; Personal communication with Bill Kiminos, appellate attorney (Shaber Wimberly), 9-27-02; Personal communication with Fred Lawton, appellate attorney (Gregory Wynn), 10-1-02.

⁸¹ See *Supra* notes 45 & 79; Peggy King and Mary Berkheiser from the University of Nevada at Las Vegas Law School were very helpful in sharing some unpublished research they are performing on the group offending nature of adolescent crime for these juveniles. Their work was significant in providing an additional list of past attorneys who represented some of these juveniles who were called for this research project, and their compiled case citations saved research time for this project.

juvenile offenders' trial and post conviction records revealed no socio-historical information.⁸²

Each juvenile offender on death row experienced on average four separate (five for those already executed) traumatic life-determinant factors during their childhood and/or adolescence.⁸³ As stated earlier, most children and adolescents do not experience even one of these defined areas of trauma. Eight of these youth experienced seven, eight, even all nine areas of childhood/adolescent difficulties.⁸⁴ Eight additional youth experienced six incapacitating areas of childhood/adolescent impairment.⁸⁵ Only fourteen of these youth were impaired with as few as one or two categorical difficulties.⁸⁶ The reported histories of these

⁸² See *Ex parte Mauro Morris Barraza*, No. 38,672-01 (Tex. Crim. App. Dec. 9, 1998); *Bonifay v. State*, 626 So.2d 1310 (Fla. 1993); *Bonifay v. State*, 680 So.2d 413 (Fla. 1996); *Capetillo v. State*, 72,316 (May 6, 1998); *Cobb v. State*, 2002 Tex. Crim. App. LEXIS 111 (Tex. 2002); *State v. Craig*, 699 So. 2d 865 (S. Ct. of La. 1997); *Dewberry v. State*, 4 S.W.3d 435 (Tex.Crim.App. 1999); *Holly v. State*, 716 So.2d 979 (Miss. 1998); *Holly v. State*, 671 So. 2d 32 (Miss. 1996) (direct appeal); *Hyde v. State*, 778 So. 2d 199 (Ala. App. 1998), *aff'd Ex parte Hyde*, 778 So.2d 237 (Ala. 2000); *Jenkins v. State*, 498 S.E.2d 502 (Ga. 1998); *Johnson v. State*, No. 72,946 (Tex. Crim. App. June 21, 200); *Johnson v. Commonwealth*, 529 S.E.2d 769 (Va. 2000) (direct appeal); *Jones v. State*, No. 72,500 (Tex. Crim. App. June 23, 1999); *Jones v. State*, 944 S.W.2d 642 (Tex. App. 1996); *Commonwealth v. Lee*, 662 A.2d 645 (Pa. 1995); *Lopez v State*, No. 73,536 (Tex. Crim. App. April 10, 2002); *Hayes v State*, 806 So. 2d 816 (La.App. 2001); *McGilberry v. State*, 741 So.2d 894 (Miss. 1999); *Monterrubio v State*, No. 72,028 (Tex. Crim. App. Sept. 11, 1996); *Perez v. State*, No. 72,021 (Tex. Crim. App. Oct. 23, 1996); *State v. Powers*, 501 S.E.2d 116 (S.C. 1998), cert. denied, 1998 U.S. LEXIS 7989 (Dec. 7, 1998); *Pressley v. State*, 770 So. 2d 115 (Ala. App. 1999), *aff'd, Ex parte Pressley*, 770 So.2d 143 (Ala. 2000), cert. denied, 531 U.S. 931 (2000); *Missouri v. Richardson*, 923 S.W.2d 301 (Mo. 1996) (direct appeal); *Richardson v. Bowersox*, 188 F.3d 973 (8th Cir. 1999), cert. denied, 529 U.S. 1113 (2000); *State v. Simmons*, 944 S.W.2d 165 (Mo. 1997) (direct appeal); *Simmons v. Bowersox*, 235 F.3 1124 (8th Cir. 2001) (affirming habeas dismissal); *Solomon v. State*, 49 S.W.3d 356 (Tex. Crim. App. 2001); *Soriano v State* no. 71,914 (Tex. Crim. App. Sept. 18, 1996); *State v. Soto-Fong*, 928 P.2d 610 (Ariz. 1996); *Villareal v State*, No. 71,995 (Tex. Crim. App. Nov. 27, 1996); *Williams v. State*, 368 S.E.2d 742 (Ga. 1988) (direct appeal); *Williams v. Head*, 185 F.3d 1223 (11th Cir. 1999); *Williams v. Head*, 533 S.E.2d 714 (Ga. 2000); *Williams v. State*, No. 73,686 (Tex. Crim. App. March 6, 2002); *Wimberly v. State*, 759 So.2d 568 (Ala. App 1999); cert denied, *Ex parte State*, 759 So.2d 574 (Ala. 2000) (denying state's petition for a writ of certiorari); *Wynn v. State*, 804 So.2d 1122 (Ala. App. 2000) (direct appeal); 2000 Ala. Crim. App. LEXIS 196 (Dec. 1, 2000) (affirmance after remand); cert denied, *Ex parte Wynn*, 804 So.2d 1152 (Ala. 2001).

⁸³ The exact mean equaled 4.38.

⁸⁴ This included Steven Alvarado, James Bonifay, Dale Craig, Justin Dickens, Eddie Johnson, Kenneth Laird, Michael Lopez and Shaber Wimberly.

⁸⁵ This included Mauro Barraza, John Dewberry, Ron Foster, Derek Guillen, Levi Jackson, Kevin Stanford, and Bruce Lee Williams.

⁸⁶ This included Mark Arthur, Johnnie Bernal, Taurus Carroll, Mark Anthony Duke, Trace Duncan, Gary Davis Hart, Patrick Horn, Antione Ligons, Kenneth Loggins, Ryan Matthews, Nathan Slaton, Christopher Solomon, and Raul Villareal.

juvenile offenders were often wrenchingly difficult.⁸⁷ Trial juries heard these childhood and adolescent narratives less than fifty percent of the time, and when presented, it was only in a cursory manner.⁸⁸ Five of these mitigating background reports to the trial jury noted only that the individual was a juvenile.⁸⁹

1. Family Dysfunction⁹⁰

Thirty-nine of the fifty-three juvenile offenders experienced family dysfunction during their childhood and/or adolescence.⁹¹ Dale Craig, for example, was raised by a learning disabled mother, with no other parental figures in the home, who tried to support the family on the subsistence of a Social Security disability check.⁹² James Matthew Hyde left his neglectful and divorcing parents to live in a trailer home on his own by the age of fifteen.⁹³ Exzavious Gibson's mother was murdered when he was two; he was sent to live with his father. His aunt then took him unbeknownst to the family and filed for custodial guardianship in another state.⁹⁴ Justin Dickens came from a broken home and lived with an abusive

⁸⁷ See App. A.

⁸⁸ See *infra* note 156.

⁸⁹ This included Mauro Barraza, Taurus Carroll, Adam Comeaux, Trace Duncan and Ted Powers.

⁹⁰ Family dysfunction is defined as evidence of severe family turmoil at times marked by homelessness, constant family discord/conflict (harmful divorces, separations, etc); significant number of adults living in family household; overcrowding situations; and involvement in the child welfare system without state custody. This category may also include significant signs of emotional abuse or neglect.

⁹¹ This included Steven Alvarado, Randy Arroyo, Mario Barraza, David Blue, James Bonifay, Robert Conyers, Dale Craig, John Dewberry, Justin Dickens, Mark Anthony Duke, Ron Chris Foster, Exzavious Gibson, Kevin Golphin, Derek Guillen, Scott Allan Hain, Gary Davis Hart, William Holly, Patrick Horn, Herman Hughes, Kevin Hughes, James Matthew Hyde, Levi Jackson, Eddie Johnson, Kenneth Laird, Cleo LeCroy, Antoine Ligons, Leo Little, Michael Lopez, Ryan Matthews, Jose Monterrubio, Ted Powers, Christopher Simmons, Martin Soto-Fong, Kevin Stanford, Bruce Lee Williams, Nanon Williams, Geno Wilson, and Shaber Wimberly.

⁹² Personal communication with Mark Upton, appellate attorney, 9-30-02.

⁹³ Personal communication with Terry Huffstutter, trial attorney, 9-30-02.

⁹⁴ Written communication from Exzavious Gibson, 9-12-02; corroborated in *Gibson v. State*, 404 S.E. 2d 781 (Ga. 1991).

stepfather in a drug ridden house.⁹⁵ Robert Conyer's parents had frequent marital separations; he was at times cared for by his grandmothers and grew up with little adult supervision.⁹⁶

These examples are typical of the death row juvenile offenders reviewed.

2. Mental Health Disorders⁹⁷

Almost one out of two juvenile offenders had a diagnosed mental health disorder.⁹⁸ Nationally, only one out of ten adolescents will experience a mental health disorder during childhood and adolescence.⁹⁹ The juveniles studied here experienced mental health disorders at a rate over 400% of the general adolescent population.¹⁰⁰ Twenty-three of the fifty-three had a diagnosed psychiatric disorder,¹⁰¹ among them borderline personality disorder, conduct disorder, schizophrenia, post-traumatic stress disorder, neurosis, attention deficit hyperactivity disorder, psychosis, and intermittent explosive disorder.¹⁰²

Christopher Simmons began a downward spiral beginning at age thirteen and suffered from schizotypal personality disorder, a debilitating personality disorder.¹⁰³ David Blue's psychologist testified during the penalty phase that his chance for recovery from mental health

⁹⁵ Written communication from Justin Dickens, 9-17-02, corroborated by personal communication with Jan Hemphill, attorney, 9-22-02.

⁹⁶ Conyers v. Moore (No. 97-Cp-14-506).

⁹⁷ Evidenced by a psychiatric diagnosis, or severe symptomology, based on the Diagnostic and Statistical Manual of Mental Disorders, See American Psychiatric Ass'n., Diagnostic and Statistical Manual of Mental Disorders IV (APA Press 1994). An adult abused as a child may also manifest mental disorders including post-traumatic stress and dissociation Crocker, *see supra* note 30 at 1163.

⁹⁸ The exact mean equaled 43.4%.

⁹⁹ See *Mental Health: A Report of the Surgeon General*, Jan. 2002, at <http://www.nimh.nih.gov/mhsgrpt/home.html>.

¹⁰⁰ *Id.*

¹⁰¹ This included Thomas Adams, Steven Alvarado, Randy Arroyo, David Blue, James Bonifay, Taurus Carroll, Adam Comeaux, Dale Craig, Timothy Davis, Exzavious Gibson, William Hurt, Kevin Hughes, Levi Jackson, Eddie Johnson, Anzel Jones, Kenneth Laird, Cleo LeCroy, Kenneth Loggins, Christopher Simmons, Nathan Slaton, Kevin Stanford, Bruce Lee Williams, and Shaber Wimberly.

¹⁰² *Id.*

¹⁰³ See www.abanet *supra* note 52.

difficulties, even with treatment, was not good.¹⁰⁴ Steven Alvarado suffered from antisocial personality disorder as well as paranoid schizophrenia.¹⁰⁵ Thomas Adams was afflicted with borderline personality disorder with dependent and histrionic traits.¹⁰⁶ Nathan Slaton was found to be under severe emotional disturbance at the time of his crime and was found to be suffering from intermittent explosive disorder and temporal lobe epilepsy.¹⁰⁷ These examples are typical of death row juvenile offenders.

3. Abuse/Neglect¹⁰⁸

Thirty-two of the fifty-three children and/or adolescents were victims of abuse and/or neglect.¹⁰⁹ Kevin Stanford, for example, was first molested at the age of five and was a victim of abuse by his stepfather's nephew for over three years.¹¹⁰ Robert Conyers was physically and emotionally abused by his father, described as a volatile and unpredictable man.¹¹¹ Robert's family was often reported to the local Department of Social Services for neglect.¹¹² Herman Hughes was abandoned by his parents and placed for adoption, but not before Herman witnessed his father beating his mother for a period of years.¹¹³ Michael Lopez was placed with the local Department of Social Services for medical neglect and later

¹⁰⁴ Blue v. State, 674 So. 2d at 1192.

¹⁰⁵ Alvarado v. State, 912 S.W.2d at 212.

¹⁰⁶ State v. Adams, 439 S.E.2d at 768.

¹⁰⁷ Slaton v. State, 680 So. 2d at 884.

¹⁰⁸ Abuse/neglect is defined as corroborated evidence in written, published and/or publicly available sources as to sustained neglect, physical abuse or sexual abuse during these youth's life histories. Physical abuse and neglect are long-term conditions occurring over a number of years. Emotional abuse and neglect are significantly more difficult to identify, but will be noted also in the "family dysfunction" category.

¹⁰⁹ This included Mauro Barraza, James Bonifay, Robert Conyers, Dale Craig, John Dewberry, Justin Dickens, Mark Anthony Duke, Ron Foster, Exzavious Gibson, Kevin Golphin, Derek Guillen, William Holly, Patrick Horn, Herman Hughes, Kevin Hughes, James Matthew Hyde, Levi Jackson, Eddie Johnson, Kenneth Laird, Cleo LeCroy, Antoine Ligons, Michael Lopez, Jose Monterrubio, Christopher Simmons, Martin Soto-Fong, Kevin Stanford, Raul Villareal, Bruce Lee Williams, Nanon Williams, Geno Wilson, Shaber Wimberly and Gregory Wynn.

¹¹⁰ See www.wcl.american.edu *supra* note 52.

¹¹¹ See www.scaec.org *supra* note 52.

¹¹² *Id.*

¹¹³ *Id.*

as a youth witnessed significant spousal abuse between his parents.¹¹⁴ Eddie Johnson experienced neglect and significant abuse throughout his youth.¹¹⁵

4. MRDD/School Failure¹¹⁶

Thirty-seven of the fifty-three juvenile offenders experienced school failure and/or were mentally retarded/developmentally delayed (MRDD), learning disabled (LD), or severely emotionally disturbed (SED).¹¹⁷ Sixteen of these thirty-seven adolescents dropped out of school by the ninth grade,¹¹⁸ and thirteen were identified early in their school years as MR/DD, SED, or LD.¹¹⁹ Antonio Richardson, for example, was identified as a child with significant learning disabilities and poor academic performance. Testing showed Antonio to be mentally retarded with significant impairment in concentration, judgment, problem solving, speech and language skills, and spatial ability.¹²⁰ Cedric Howard, not atypical of the group, was a sixteen year-old seventh grade student with an IQ of eighty-one.¹²¹ Randy Arroyo was placed in classes for severely emotionally disturbed children.¹²²

¹¹⁴ Personal communication with Tom Moran, appellate attorney, 9-24-02.

¹¹⁵ Personal communication with Lydia Brandt, appellate attorney, 9-24-02.

¹¹⁶ School failure is defined in two distinct and/or interrelated categories. One, the youth was a minimum of three years behind chronological grade level or dropped out of school. Two, youth was identified as mentally retarded/developmentally delayed by criterion used by the local school system or MR/DD Association (often times the same). See *Atkins*, 122 S.Ct. at 2242 (utilizing the standard WAIS-III definition IQ of 70 or less to be mentally retarded).

¹¹⁷ This included Steven Alvarado, Randy Arroyo, Mauro Barraza, Johnnie Bernal, David Blue, James Bonifay, Adam Comeaux, Robert Conyers, Dale Craig, Timothy Davis, John Dewberry, Justin Dickens, Trace Duncan, Ron Foster, Derek Guillen, William Holly, Cedric Howard, Herman Hughes, Kevin Hughes, James Hyde, Levi Jackson, Eddie Johnson, Anzel Jones, Kenneth Laird, Cleo LeCroy, Leo Little, Michael Lopez, Jose Monterrubio, Ted Powers, Antonio Richardson, Christopher Simmons, Raul Villareal, Bruce Lee Williams, Nanon Williams, Geno Wilson, Shaber Wimberly, and Gregory Wynn.

¹¹⁸ This included Steven Alvarado, Mauro Barraza, Johnnie Bernal, Dale Craig, John Dewberry, Justin Dickens, Ron Foster, Derek Guillen, Cedric Howard, Eddie Johnson, Anzel Jones, Michael Lopez, Jose Monterrubio, Raul Villareal, Bruce Lee Williams, and Geno Wilson.

¹¹⁹ This included Randy Arroyo, David Blue, James Bonifay, Adam Comeaux, Robert Conyers, Justin Dickens, Trace Duncan, Herman Hughes, Kenneth Laird, Ted Powers, Antonio Richardson, Bruce Lee Williams and Gregory Wynn.

¹²⁰ See www.abanet.org *supra* note 52.

¹²¹ See *supra* note 46.

5. Drug/Alcohol Addictions¹²³

Twenty of the fifty-three juvenile offenders suffered from drug and/or alcohol addictions as children and/or adolescents.¹²⁴ An additional three juveniles were strongly believed to have suffered from drug and/or alcohol addictions.¹²⁵ Geno Wilson drank alcohol, smoked marijuana, “fry”,¹²⁶ and snorted cocaine while living with a functional alcoholic mother.¹²⁷ Kevin Stanford began to use drugs and alcohol daily in early adolescence.¹²⁸ Maura Barraza’s mother was a drug dealer; he, in turn, would roll the pot and was involved in the drug trade.¹²⁹ James Matthew was introduced to cocaine and crystalmeth¹³⁰ by older peers and was addicted by age fifteen.¹³¹ Leo Little spent years huffing glues, paint thinner, and freon from air-conditioning units.¹³² These examples were typical of the juvenile offender group.

6. Poverty¹³³

¹²² *Id.*

¹²³ Evidence of drug and/or alcohol addiction was present for the youth. Whether sporadic or chronic, impairment in daily functioning is found. *See* APA, *supra* note 97. Long-term substance abuse problems have correlations to childhood abuse, *see* Crocker, *supra* note 30 at 1163.

¹²⁴ This included Thomas Adams, Steven Alvarado, Mauro Barraza, Robert Conyers, Dale Craig, John Dewberry, Justin Dickens, Derek Guillen, Scott Allan Hain, James Hyde, Eddie Johnson, Kenneth Laird, Leo Little, Michael Lopez, Jose Monterrubio, Christopher Simmons, Kevin Stanford, Nanon Williams, Geno Wilson and Shaber Wimberly.

¹²⁵ This included Ron Foster, Gary Davis Hart and Raul Villareal.

¹²⁶ “Fry” is a mix of marijuana with other drugs for a more potent and addictive high.

¹²⁷ Written correspondence from Robert Morrow, attorney, 10-16-02.

¹²⁸ *See* www.wcl.american.edu *supra* note 52.

¹²⁹ Personal communication with Bob Abbott, attorney, 10-1-02.

¹³⁰ Chrystalmeth is a metha-amphetamine, highly addictive.

¹³¹ Personal communication with Terry Huffstutter, trial attorney, 9-30-02.

¹³² Personal communication with Scott Sullivan, attorney, 10-15-02.

¹³³ Evidenced by a judicial determination that the youth and family is indigent, or other findings that the family lived below federal poverty thresholds, impacting their daily functioning, *see* <http://aspe.hhs.gov/poverty/01poverty.htm> for current U.S. Census poverty guidelines.

Twenty of the fifty-three adolescents grew up or lived in poverty.¹³⁴ The national poverty rate equals only 11.8% as of October 2002.¹³⁵ These adolescents had about four times the chance of experiencing poverty than the adolescent population norm. Many of these juveniles lived on public assistance, food assistance, and/or subsidized housing.¹³⁶ Jose Monterrubio, for example, lived in a small house with thirteen siblings.¹³⁷

7. Child Welfare¹³⁸

Eight of the fifty-three juvenile offenders were involved in the child welfare system during their childhood or adolescence.¹³⁹ Antonio Richardson, for example, moved between family members and the child welfare system during most of his childhood.¹⁴⁰ Justin Dickens and Eddie Johnson did not experience stable home lives due to continued child welfare involvement and movement between family and out-of-home placement.¹⁴¹

¹³⁴ This included Steven Alvarado, Mauro Barraza, David Blue, James Bonifay, Dale Craig, John Dewberry, Justin Dickens, Ron Foster, Derek Guillen, Gary Davis Hart, Kevin Hughes, James Hyde, Eddie Johnson, Michael Lopez, Jose Monterrubio, Antonio Richardson, Martin Soto-Fong, Kevin Stanford, Nanon Williams and Shaber Wimberly.

¹³⁵ See *supra* note 133.

¹³⁶ This included Steven Alvarado, Mauro Barraza, David Blue, James Bonifay, Dale Craig, John Dewberry, Justin Dickens, Ron Foster, Derek Guillen, Kevin Hughes, James Hyde, Eddie Johnson, Jose Monterrubio, Antonio Richardson, Kevin Stanford, Nanon Williams and Shaber Wimberly.

¹³⁷ Personal communication with Elisa Vasquez, attorney, 9-23-02.

¹³⁸ Defined as evidence that the youth had spent time in child welfare state custody. Different states have differing categorical criterion in determining whether custody is continued with the family or transferred to the state. More recent federal legislation (the 1997 Adoption Assistance Act) has continued the trend of decreasing custodial transfers nationwide. However, during the time of most of these offender's childhood and adolescence, custody and state intervention was more common. Categories of custody can include temporary (not officially transferred), emergency and permanent custodial arrangements.

¹³⁹ This included Robert Conyers, Dale Craig, Justin Dickens, Exzavious Gibson, Eddie Johnson, Kenneth Laird, Michael Lopez and Antonio Richardson.

¹⁴⁰ Personal communication with Gina Battista, trial attorney, 10-15-02.

¹⁴¹ See Brandt, *supra* note 80.

8. Juvenile Justice¹⁴²

Thirty-four of the fifty-three juvenile offenders were involved in the juvenile justice system prior to committing their capital crimes¹⁴³ The juvenile justice system clearly did not deter the commission of future crimes for a majority of these juveniles. Taurus Carroll, for example, was adjudicated four times for armed burglary and had just been released from a youth penitentiary four months prior to his capital crime.¹⁴⁴ Adam Comeaux was adjudicated as a juvenile for attempted forcible rape at age fourteen and placed in a juvenile facility from ages fourteen to seventeen.¹⁴⁵ John Dewberry had a prior juvenile record including twelve referrals for burglaries, other property crimes, and drug offenses, and was committed to the Texas Youth Commission.¹⁴⁶ Larry Jenkins was adjudicated for armed robbery, kidnapping, and theft as a juvenile.¹⁴⁷

9. Organic Brain Damage¹⁴⁸

Nine of the fifty-three juvenile offenders suffered from organic brain damage.¹⁴⁹ Two additional individuals' attorneys are addressing this issue during post-conviction.¹⁵⁰

¹⁴² This is defined as evidence that the youth was involved with the juvenile justice system. This includes prior misdemeanor or felony adjudications and juvenile justice institutional placement. Does not include juveniles transferred to the adult correctional system.

¹⁴³ This included Thomas Adams, Steven Alvarado, Randy Arroyo, Mark Arthur, Mauro Barraza, Johnnie Bernal, David Blue, James Bonifay, Taurus Carroll, Adam Comeaux, Dale Craig, Timothy Davis, John Dewberry, Justin Dickens Ron Foster, Kevin Golphin, Derek Guillen, Scott Hain, Cedric Howard, Herman Hughes, Levi Jackson, Eddie Johnson, Kenneth Laird, Leo Little, Michael Lopez, Ryan Matthews, Ted Powers, Nathan Slaton, Martin Soto-Fong, Kevin Stanford, Bruce Williams, Nanon Williams, Geno Wilson and Shaber Wimberly.

¹⁴⁴ See *supra* note 79.

¹⁴⁵ *Id.*

¹⁴⁶ *Id.*

¹⁴⁷ *Id.*

¹⁴⁸ Defined as evidence that organic brain damage was diagnosed or significantly determined to have occurred according to expert opinion. Often times this was identified from early trauma due to abuse or accidents. Significant dysfunction in numerous environments was also identified. Neurophysiological makeup of the brain may be altered as a result of physical abuse and trauma, see Crocker, *supra* note 30 at 1164.

Neuropsychological testing revealed significant organic brain damage in Antonio Richardson's frontal lobes and brain stem areas.¹⁵¹ Herman Hughes has brain damage as a result of congenital syphilis.¹⁵² Congenital syphilis is known to cause mental retardation, diffuse brain damage and behavioral regression.¹⁵³ James Bonifay also suffered from congenital syphilis causing organic brain damage, linked to his impulsive and erratic behavior.¹⁵⁴

10. Mitigating Evidence to Jury¹⁵⁵

Twenty-six of the fifty-three juvenile offenders' socio-historical backgrounds were not presented at trial.¹⁵⁶ Of the twenty-five individuals with socio-historical mitigating evidence presented, five juries heard only that they were juveniles, with no other background information presented.¹⁵⁷

Sixteen juvenile offenders experienced six or more distinct areas of childhood and/or adolescent trauma.¹⁵⁸ No evidence of their extremely difficult and traumatic childhoods and/or adolescence was presented to the trial jury for twelve of these fourteen individuals.¹⁵⁹

¹⁴⁹ This included Steven Alvarado, James Bonifay, Ron Foster, Cedric Howard, Herman Hughes, Levi Jackson, Anzel Jones, Ted Powers and Antonio Richardson.

¹⁵⁰ This includes Dale Craig and Leo Little.

¹⁵¹ See *supra* note 79.

¹⁵² See www.scaec.org *supra* note 52.

¹⁵³ *Id.*

¹⁵⁴ Personal communication with Mike Rollo, appellate attorney, 9-27-02.

¹⁵⁵ What mitigating evidence as described in these childhood and adolescent socio-historical backgrounds was presented to the sentencing juries?

¹⁵⁶ These included Mauro Barraza, Taurus Carroll, Adam Comeaux, Robert Conyers, John Dewberry, Trace Duncan, Ron Foster, Exzavious Gibson, Derek Guillen, Scott Hain, Gary Dais Hart, William Holly, Herman Hughes, Levi Jackson, Eddie Johnson, Anzel Jones, Kenneth Laird, Cleo LeCroy, Kenneth Loggins Michael Lopez, Jose Monterrubio, Ted Powers, Antonio Richardson, Christopher Simmons, Raul Villareal, Geno Wilson, and Shaber Wimberly.

¹⁵⁷ These included Mauro Barraza, Taurus Carroll, Adam Comeaux, Trace Duncan and Ted Powers.

¹⁵⁸ See *supra* notes 79 & 80.

¹⁵⁹ *Id.* (this could not be determined for Kevin Stanford and Nanon Williams).

The other two of these sixteen juries learned only that the offender was a juvenile at the time of the crime.¹⁶⁰

IV. Closing

A. Conclusion

Adolescence is a difficult transition life period for all young people. Identity formation, individuation from parental and authority figures, peer influences, and general life skill development activities by themselves may overwhelm an adolescent. The vast majority of children and adolescents develop within environments that are supportive and nurturing with authority/parental figures who have the best interests of the child and family in their decision-making and care. Unfortunately, this is not true for all children and especially so for the juveniles described here.

There are families without positive child-raising skills; families who know only how to harm their children through discipline; and families who perpetuate physical and sexual abuse upon their children because that is all these parents have experienced. There are families who actually teach their children criminal activity, for that is all these families know; families mired in severe poverty with no hope of escaping; and families who are broken beyond repair. Indeed, perhaps the term “family” does not apply here; perhaps these are simply aggregates of individuals related by blood and destined to destroy each other – and others.

¹⁶⁰ This was Mauro Barrazo.

The education, juvenile justice, mental health and child welfare systems have shown to be ineffective with these at-risk youth and shattered family environments. While these systems are designed to coordinate services and supports for these youth and families, too often they are under-funded and, arguably, generally ineffective.¹⁶¹ In the present study, almost two-thirds of the at-risk youth were involved in a juvenile justice system that was not effective in deterring these youth who ended up on death row.

Justice Stevens believes that the issue of putting to death juvenile offenders, in light of the general consensus among states and the international community, should be revisited.¹⁶² Justice Stevens furthers that there are important differences in adolescents' brain development, maturity and cognitive control that should be recognized.¹⁶³

The Supreme Court has affirmed this perspective and stated that minors lack the judgment and experience expected of adults and this group is most susceptible to influence and psychological damage.¹⁶⁴ The Court furthered that adolescents are more vulnerable, impulsive, and deserve less punishment because of this lower capacity, finding that family, school, and other systems should share responsibility for youth development.¹⁶⁵

Justice Brennan finds that immaturity should operate as a bar to a disproportionate death sentence.¹⁶⁶ Justice Powell concurs that the background and mental/emotional development of juvenile offenders should be considered in sentencing.¹⁶⁷

¹⁶¹ See *supra* note 99; Sheila Pires, Mary Armstrong & Beth Stroul, Health Care Reform, Tracking Project, Tracking State Managed Care Reforms as they Affect Children and Adolescents with Behavioral Health Disorders and their Families (University of South Florida Publishers, 2000) (finding that access to mental health services are increasingly limited throughout the twenty-two states studied and that cost shifting of service delivery occurred toward the juvenile justice and child welfare systems).

¹⁶² See *supra* note 8, at 817.

¹⁶³ See Ronald Tabak, *Executing Juveniles Demeans our Justice System*, Associated Press, August 27, 2002.

¹⁶⁴ See *supra* note 8, at 816.

¹⁶⁵ *Id.*

¹⁶⁶ See *Stanford*, 492 U.S. at 397.

¹⁶⁷ See *supra* note 10, at 106.

The American Bar Association, in 1983, took action to oppose the death penalty for juvenile offenders.¹⁶⁸ Others argue that the state has a duty to protect children and maintain a “best interest of the child” standard, and executing juvenile offenders conflicts with this duty.¹⁶⁹ “While retribution is seemingly the only current objective in criminal law, correcting the social conditions under which so many of these young children live is the only thing that will ‘work’ in the long run.”¹⁷⁰

B. Recommendations

Since 1976, the United States Supreme Court has not once held that relevant mitigating factors may be ignored in capital sentencing decisions.¹⁷¹ The Court has consistently found that individualized consideration of relevant mitigating factors must precede imposition of a death sentence.¹⁷² The Court’s insistence on weighing mitigating factors underscores the distinct functions of bifurcated capital trial and sentencing phases.¹⁷³ The Court has found that capital punishment is different from non-capital offenses and a determination that death is appropriate must be arrived at by a weighing and balancing process not required for other criminal sentences.¹⁷⁴

These mitigating factors must be permitted and considered at death sentencing. The present study found that socio-historical mitigating evidence was presented in less than half of the juvenile offenders’ trials. Twenty percent of these juries heard only that the offender was

¹⁶⁸ See Victor L. Streib, *Moratorium on the Death Penalty for Juveniles*, 61 LAW & CONTEMP. PROBS. 56 (1998).

¹⁶⁹ See Strater, *supra* note 2, at 150.

¹⁷⁰ See Victor L. Streib, *The Efficacy of Harsh Punishments for Teenage Violence*, 31 VAL. U. L. REV., 428 (Spring, 1997).

¹⁷¹ See Robinson, *supra* note 16, at 248.

¹⁷² See *supra* note 9, at 587.

¹⁷³ *Id.* at 588.

¹⁷⁴ *Id.*

a juvenile.¹⁷⁵ The present research finds that a majority of the current death row juvenile offenders were not given this legal consideration before being sentenced to death. This study finds systemic incompetence by these juvenile offenders' counsel. It is counsels' legal duty to investigate and present this mitigating evidence to the jury prior to death sentencing. The current death penalty system does not protect these juvenile offenders' legal rights. The death penalty should be abolished for sixteen and seventeen year-old offenders.

C. Limitations

This project is a work in progress. At this time, fifty-three of the current eighty, and twenty of the twenty-one executed juvenile offenders are included in this research. Twenty-six of the current offenders were not included due to a dearth of available information.¹⁷⁶ One juvenile offender's execution was stayed during this research period.¹⁷⁷

There is significant information that the writer was unable to obtain. Complete histories of involvement in the child welfare system were very difficult to obtain and is considered incomplete.¹⁷⁸ Determinations of just what mitigating evidence went to the trial juries are not complete.¹⁷⁹

Many attempts were made to access available sources in accumulating information for this project. Many offenders on death row did not respond to the invitation to be involved in this research project. Many offenders, through their current counsel, also declined the invitation. A smaller number of current attorneys declined on their clients' behalf. Not all

¹⁷⁵ See *supra* note 156.

¹⁷⁶ *Id.*

¹⁷⁷ Willie Roy Burgess's execution was stayed in Alabama during Sept., 2002.

¹⁷⁸ See App. A.

¹⁷⁹ App. A "Jury Evidence" column lists "n/a" response when not able to be determined what if any evidence went to the trial jury. This included twenty-three juvenile offender trial histories.

past or current attorneys could be identified or contacted. A limited number of attorneys never responded to written or phone inquiries. The inclusion rate for this study equals two-thirds of all current juvenile offenders on death row.¹⁸⁰

What is presented, however, even with these limitations, is powerful evidence of a non-functioning system. The failure of counsel to present the type of evidence reviewed here is beyond reasonable explanation.

Understanding why someone does something is not necessarily to excuse the conduct. The “why” question, however, is a powerful factor in assigning the degree of culpability. This study shows a number of “whys” in the lives of these juveniles, and raises serious doubts about the appropriateness of the death penalty in these cases.

¹⁸⁰ The exact mean equals 66.25% (53 of the current 80 offenders on death row).

