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EXPERIENCE

UNIVERSITY OF WISCONSIN LAW SCHOOL 2012 – present
Madison, Wisconsin

CLINICAL ASSOCIATE PROFESSOR 2017 – present
CLINICAL ASSISTANT PROFESSOR 2012 – 2017

Legal Assistance to Incarcerated People 2014 – present
Criminal Appeals Project 2012 – 2014

TEXAS DEFENDER SERVICE 1995 – 2012
DIRECTOR, POST-CONVICTION PROJECT
Houston, Austin, San Francisco

- Co-founded Texas Defender Service in 1995, after Congress defunded all death penalty resource centers in the United States.

TDS is a Section 501(c)(3) nonprofit law firm dedicated to improving the quality of representation to those persons facing the death penalty or sentenced to death in Texas. TDS seeks to accomplish its mission in four ways: (1) post-conviction representation; (2) trial representation; (3) attorney training and consultation; and (4) policy reform, including issue advocacy, research, and public education.

- As Director of TDS's Post-conviction Project, responsible for developing the litigation strategy for two dozen capital habeas cases in which TDS staff attorneys provided direct representation.
- Consulted closely with appointed attorneys on state and federal capital post-conviction matters, including targeting cases that involved issues with potential widespread impact or important issues of first impression.

- Intervened in numerous crisis cases, where those on death row had been abandoned by counsel as their execution dates approached.

TEXAS RESOURCE CENTER 1993 – 1995
STAFF ATTORNEY
Houston, Texas

- Represented people on Texas's death row and provided legal assistance to appointed counsel in state and federal post-conviction proceedings.

UNITED STATES DISTRICT COURT 1992 – 1993
JUDGE JERRY BUCHMEYER
LAW CLERK
Dallas, Texas

MIDWAY WELDING REPAIR & FABRICATION, INC. 1986 – 1989
MANAGER AND WELDER
Plymouth, Michigan

EDUCATION

WASHINGTON & LEE UNIVERSITY SCHOOL OF LAW
Lexington, Virginia
J.D., *cum laude*, 1992

Honors: Washington & Lee Law Review
Articles Editor

Dean Roy L. Steinheimer Award (Best Note)
*Eviction without Conviction: Public Housing
Leasehold Forfeiture under 21 U.S.C. § 881,*
48 Wash. & Lee L. Rev. 1409 (1991).

UNIVERSITY OF NOTRE DAME
South Bend, Indiana
B.A., Government, *cum laude*, 1986

NOTABLE LITIGATION ACHIEVEMENTS

NON-CAPITAL CASES

Larry Dunn v. Smith, 430 F. Supp. 3d 568 (E.D. Wis. 2019).

The federal district court held that the Wisconsin state courts' rejection of the claim that trial counsel was deficient in failing to investigate the manner of the victim's death and call an expert in forensic pathology to testify in support of a no-causation defense was an unreasonable application of *Strickland v. Washington*. The district court also concluded that the state courts' rejection of the claim that counsel was deficient in refusing to seek a continuance based on the prosecution's disclosure of exculpatory findings of the co-defendant's medical experts was an unreasonable application of *Strickland*. The district court held that trial counsel's deficient performance prejudiced Larry Dunn and ordered the State to grant him a new trial.

Larry Dunn v. Jess, 981 F.3d 582 (7th Cir. 2020).

The Seventh Circuit affirmed the district court's decision, holding that trial counsel performed deficiently by failing to adequately pursue and present a no-causation defense, and that counsel's performance deprived Larry Dunn of his Sixth Amendment right to the effective assistance of counsel.

State of Wisconsin ex rel. Ezequiel Lopez-Quintero v. Dittmann, 2019 WI 58, 387 Wis. 2d 50, 928 N.W.2d 480.

The Supreme Court of Wisconsin held that the Court of Appeals may not deny an otherwise sufficiently pled petition for writ of habeas corpus *ex parte*—without a hearing or a response from the State—on the ground the petitioner failed to demonstrate they sought relief in a prompt and speedy manner. The Supreme Court concluded that the State, rather than the Court of Appeals *sua sponte*, must raise any equitable concerns regarding substantial delay through the affirmative defense of laches. The Supreme Court overruled precedent denying a habeas petition *ex parte* for failing to allege facts demonstrating that the petitioner sought prompt and speedy relief. The Supreme Court held that Ezequiel Lopez-Quintero sufficiently pled his habeas claim seeking reinstatement of his right to file a direct appeal based on trial counsel's ineffectiveness, even though he filed the claim nearly ten years after his conviction.

CAPITAL CASES

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

The Supreme Court of the United States held that: (1) a claim of execution competency under *Ford v. Wainwright*, 477 U.S. 399 (1986), is not “second or successive” if brought for the first time when execution is imminent; (2) by refusing to allow Scott Panetti the opportunity to rebut the court-appointed experts’ findings with his own mental health expert, the state court violated Mr. Panetti’s federal due process rights; and (3) the Fifth Circuit’s standard for determining competency was unconstitutional, because it did not consider whether Mr. Panetti’s symptoms of psychosis interfered with his ability to rationally understand the causal connection between his crime and his punishment.

Federal and state courts have cited *Panetti* over 3,000 times. Secondary sources have referred to the decision over 500 times. The case name appears in the title of 21 law review and journal articles.

Panetti v. Davis, 863 F.3d 366 (5th Cir. 2017).

The Fifth Circuit found that the state-court process for seeking a determination of competency for execution was ineffective to protect Scott Panetti’s right to be free from cruel and unusual punishment. Because of the inadequate state process, the Fifth Circuit held that the district court erred in refusing to appoint counsel, provide funding for expert assistance, and stay Scott Panetti’s execution so that he could raise a *Ford-Panetti* claim in federal court.

Ramon Mata v. Johnson, 210 F.3d 324 (5th Cir. 2000).

After the district court allowed Ramon Mata to waive post-conviction review, the Fifth Circuit held that: (1) when a person on death row seeks to waive collateral review, the district court must conduct an inquiry into the person’s mental capacity, either *sua sponte* or in response to a motion by counsel, if the evidence raises a *bona fide* doubt as to competency; and (2) the court can meet the requirements of due process by ordering and reviewing a current examination by a qualified mental health expert, allowing the parties to present any other evidence relevant to competency and, on the record and in open court, questioning the person concerning the knowing and voluntary nature of his decision to waive further proceedings.

Mata has been cited with approval by eight federal circuit courts of appeal.

In re Hearn, 376 F.3d 447 (5th Cir. 2004).

The Fifth Circuit held that Yokamon Hearn was entitled to a stay of execution and the appointment of counsel to investigate and prepare a motion for authorization to file a successive petition raising a claim that he was intellectually disabled and, therefore, ineligible for capital punishment under *Atkins v. Virginia*, 536 U.S. 304 (2002).

Garza v. Lappin, 253 F.3d 918 (7th Cir. 2001).

The Inter-American Commission on Human Rights (IACHR) found that the prosecution's introduction at sentencing of four unadjudicated murders that federal death row inmate Juan Raul Garza was alleged to have committed in Mexico violated his right to life, his right to a fair trial, and his right to due process. The IACHR recommended that the United States provide Mr. Garza with an effective remedy, including commutation of his sentence. The Seventh Circuit found that the district court had improperly recharacterized Mr. Garza's habeas corpus petition as an impermissible successive petition. Although the Seventh Circuit held that Mr. Garza was entitled to seek post-conviction relief, the court refused to grant a stay of execution, because (1) the treaty at issue did not create any judicially enforceable private rights; (2) the IACHR was authorized to make non-binding recommendations only; and (3) the United States did not ratify the convention providing that the decisions of the IACHR were binding.

Mata v. Johnson, 99 F.3d 1261 (5th Cir. 1996).

The Fifth Circuit held that the State of Texas did not qualify for the "opt-in" provisions of the Antiterrorism and Effective Death Penalty Act intended to streamline federal habeas corpus review.

DEATH SENTENCE REVERSALS

Staley v. State, 420 S.W.3d 785 (Tex. Crim. App. 2013).

The Texas Court of Criminal Appeals held that the trial court did not have the authority to order Steven Staley to be involuntarily medicated in an attempt to restore him to competency for execution. More important, the CCA found that, but for forcibly medicating Mr. Staley, he would have been found incompetent for execution.

Ex parte Marcus Druery, 412 S.W.3d 523 (Tex. Crim. App. 2013).

After the state trial court found that Marcus Druery had not made a substantial threshold showing of incompetency for execution, the Texas Court of Criminal Appeals reversed and remanded, relying on *Panetti v. Quarterman*. On remand, the trial court found that Mr. Druery is incompetent to be executed.

Ex parte Charles Hood, 304 S.W.3d 397 (Tex. Crim. App. 2010).

The Texas Court of Criminal Appeals reversed Charles Hood's death sentence based on *Penry v. Lynaugh*, 492 U.S. 302 (1989), and held that the sentencing instructions did not provide a constitutionally adequate vehicle for the jury to consider mitigating evidence.

Eric Moore v. Quarterman, 533 F.3d 338 (5th Cir. 2008) (*en banc*).

Eric Moore v. Quarterman, 342 Fed. Appx. 65 (5th Cir. 2009) (op. on reh'g).

After the district court determined that Eric Moore was intellectually disabled and ineligible for execution under *Atkins v. Virginia*, 536 U.S. 304 (2002), the Fifth Circuit dismissed the claim without prejudice for failure to exhaust. I filed a petition for rehearing *en banc*. After the petition remained pending for nearly a year, the Fifth Circuit panel withdrew its earlier decision and submitted a new one—this time dismissing the claim *with* prejudice. I then filed a second petition for rehearing *en banc*. The court granted the petition. In a *per curiam* opinion, the *en banc* court unanimously held that Mr. Moore had demonstrated “cause and prejudice” based on the failure of the State of Texas to articulate standards for making a *prima facie* showing of intellectual disability under *Atkins*. The *en banc* court returned the case to the original panel for a review of the merits of the district court's decision.

On remand, the panel affirmed the district court's finding that Mr. Moore was intellectually disabled and ineligible for execution. Mr. Moore was removed from death row and placed in a prison for persons who are intellectually disabled.

Ex parte Brian Davis, AP-76,263 (Tex. Crim. App. Nov. 18, 2009).

The Texas Court of Criminal Appeals reversed Brian Davis's death sentence based on *Penry v. Lynaugh*, 492 U.S. 302 (1989). The CCA held that the sentencing instructions did not provide a constitutionally adequate vehicle for the jury to consider mitigating evidence.

Ex parte Willie Mack Modden, 147 S.W.3d 293 (Tex. Crim. App. 2004).

I obtained a stay of execution for Willie Mack Modden from the Supreme Court while *Atkins* was pending. After the Supreme Court remanded the case to the state courts for further proceedings, I persuaded the District Attorney to agree that Mr. Modden was intellectually disabled. The Texas Court of Criminal Appeals adopted the agreed findings and reformed Mr. Modden's death sentence to life in prison. Mr. Modden was removed from death row and placed in a prison for persons who are intellectually disabled.

Wayne East v. Johnson, 123 F.3d 235 (5th Cir. 1997).

The Fifth Circuit vacated Wayne East's death sentence because the prosecution failed to provide defense counsel with a material witness's criminal history. The Fifth Circuit ordered the State to resentence Mr. East. One week before jury selection for the resentencing trial was scheduled to begin, I persuaded the District Attorney to offer Mr. East a life sentence. Mr. East accepted the offer. He was eventually released on parole in 2011.

SELECTED PRESENTATIONS

Scott Panetti: Cowboy Costumes and the Jesus Subpoena
Mental Health and the Law
Sturm College of Law
Denver, Colorado (2019–2022).

Litigating Ford-Panetti Execution Competency Claims
The American Death Penalty
Northwestern Pritzker School of Law
Chicago, Illinois (Nov. 9, 2017).

Litigating Permanent Incompetency and Ford Claims Post-Conviction
Capital Case Defense Seminar
California Attorneys for Criminal Justice (CACJ)
San Diego, California (Feb. 19, 2017).

How to Litigate Execution Competency Claims
Office of the State Public Defender, California Appellate Project,
and the Habeas Corpus Resource Center
San Francisco, California (Nov. 14, 2016).

Inside the Federal Capital Clemency Process: The Defense Perspective
Federal Capital Habeas Project, Bring Your Own Case Training,
Indianapolis, Indiana (2011).

Litigating Competency Claims
15th Annual National Habeas Corpus Seminar
Cleveland, Ohio (2010).

Process, Process, Process: Litigating Ford Claims after Panetti
13th Annual Federal Habeas Corpus Seminar
St. Louis, Missouri (2008).

Taking Advantage of Panetti: Litigating Execution Competency Claims
12th Annual National Habeas Corpus Seminar
Nashville, Tennessee (2007).

Competency in the Courts: Updates on the Law and the Science
NAACP Legal Defense and Education Fund
28th Annual Capital Punishment Training Conference
Warrenton, Virginia (2007).

PUBLICATIONS

The Extraordinary Execution of Billy Vickers, the Banality of Death, and the Demise of Post-Conviction Review, 13 Wm. & Mary Bill Rts. J. 521 (2004) (co-author).

Eviction without Conviction: Public Housing Leasehold Forfeiture under 21 U.S.C. § 881, 48 Wash. & Lee L. Rev. 1409 (1991).

SELECTED MEDIA

Greg Wiercioch Continues Along ‘Unprecedented’ Path in Texas Death Penalty Case, Law School News (Nov. 2, 2022).

https://apps.law.wisc.edu/newsletter/Features/Greg_Wiercioch_Continues_Along_U_2022-11-02

Jolie McCullough, *Texas Tries Again to Prove that Scott Panetti is Just Sane Enough to Be Executed*, Tex. Trib. (Oct. 28, 2022).

<https://www.texastribune.org/2022/10/28/texas-execution-scott-panetti/>

Mia Armstrong-López, *The Problem with How Courts Decide Whether Someone Can Be Executed*, Slate (Oct. 24, 2022).

<https://slate.com/technology/2022/10/scott-panetti-death-penalty-texas-execution-supreme-court.html>

Peter Slevin, *Witnessing a Federal Execution*, The New Yorker (Sept. 4, 2019).

<https://www.newyorker.com/news/news-desk/witnessing-a-federal-execution>

Greg Wiercioch Wins Competency Review for Death Row Client, Law School News (Aug. 3, 2017).

https://apps.law.wisc.edu/newsletter/Articles/Greg_Wiercioch_wins_competency_r_2017-07-26

Eric M. Johnson, *U.S. Court Orders Evaluation for Mentally Ill Texas Death Row Inmate*, Reuters (July 12, 2017).

<https://www.reuters.com/article/texas-execution-idUSL1N1K30AF>

John Council, *Panetti Case Continues as Fifth Circuit Orders New Lawyer, Mental Health Expert for Death Row Inmate*, Tex. Lawyer (July 12, 2017).

<https://www.law.com/texaslawyer/almID/1202792831301/>

Jolie McCullough, *Texas Death Row Inmate Scott Panetti to Get Further Competency Review*, Tex. Trib. (July 11, 2017).

<https://www.texastribune.org/2017/07/11/texas-death-row-inmate-scott-panetti-get-further-competency-review/>

OTHER NOTABLE ACHIEVEMENTS

Guidelines for Collaboration and Engagement: Prosecutors and Defense Counsel Working Together in Joint Post-Conviction Investigations
Quattrone Center for the Fair Administration of Justice
University of Pennsylvania Carey Law School
Defense Counsel Participant (2021–2022).

<https://www.law.upenn.edu/institutes/quattronecenter/guidelines-for-collaboration-and-engagement.php>

Guidelines and Standards for Texas Capital Counsel
State Bar of Texas
Principal Author (2006).

Testimony before Texas Legislature about the need for promulgating a statute setting out procedures for determining a condemned person's competency for execution, eventually leading to the passage of Tex. Code Crim. Proc. art. 46.05 (1995).

ACKNOWLEDGEMENTS AND REFERENCES

Carol S. Steiker and Jordan M. Steiker
COURTING DEATH: THE SUPREME COURT AND CAPITAL PUNISHMENT
Harvard University Press (2016).

Wesley Kendall and Joseph M. Siracusa
THE DEATH PENALTY AND U.S. DIPLOMACY: HOW FOREIGN NATIONS AND INTERNATIONAL ORGANIZATIONS INFLUENCE U.S. POLICY
Rowman & Littlefield Publishers, Inc. (2013).

J. Amy Dillard
"Madness Alone Punishes the Madman": The Search for Moral Dignity in the Court's Competency Doctrine as Applied in Capital Cases
79 Tenn. L. Rev. 461 (2012).

David R. Dow
THE AUTOBIOGRAPHY OF AN EXECUTION
Twelve (2010).

Andrew Hammel
ENDING THE DEATH PENALTY: THE EUROPEAN EXPERIENCE IN GLOBAL
PERSPECTIVE
Palgrave Macmillan (2010).

David R. Dow
EXECUTED ON A TECHNICALITY: LETHAL INJUSTICE ON AMERICA'S DEATH ROW
Beacon Press (2005).

Jennifer J. Van Dulmen-Krantz
*The Changing Face of the Death Penalty in America: The Strengths and
Weaknesses of Atkins v. Virginia and Policy Considerations for States
Reacting to the Supreme Court's Eighth Amendment Interpretation*
24 Hamline J. Pub. L. & Pol'y 185 (2002).

HONORS AND AWARDS

Clinical Professor of the Year
University of Wisconsin Law School (2022).

Light of Justice Award
Texas Defender Service (2015).

Order of the Coif
Washington & Lee University School of Law (2002).