

Secondary Trauma in Capital Trial Defense Practice for Indigent Clients

by

Kyoko Yoshida Tavassoli

A Dissertation Presented by Partial Fulfillment  
of the Requirements for the Degree  
Doctor of Philosophy

Approved April 2016 by the  
Graduate Supervisory Committee

Lynn C. Holley, Chair  
Ann E. MacEachron  
Luis E. Zayas

ARIZONA STATE UNIVERSITY

May 2016



## ABSTRACT

This exploratory qualitative study is the first to examine secondary trauma experiences among capital trial defense practitioners, including attorneys, mitigation specialists, paralegals, and investigators, who work as a team in representing indigent clients facing a charge of capital murder which may result in the death penalty. Death penalty jurisprudence has been critically examined in numerous ways, and the negative psychological effects on those who are involved in the process is one of the issues that limited studies have documented. However, no systemic investigation of secondary trauma associated with capital trial defense practice for indigent clients has been conducted to date, and this dissertation aims to address this gap in knowledge.

Data were collected through semi-structured individual interviews using an interview guide, which allows participants to express their experiences in their own words in depth, while the researcher can stay focused on the research questions of the study. Data were analyzed using a constructivist phenomenological approach, and thematic identifications were conducted under overarching categories that were closely related to research questions including (1) motivation to engage in capital trial defense practice for indigent clients, (2) challenges in defending clients who face the death penalty, (3) emotional reactions to clients receiving death verdicts, (4) effects of the stress on the practitioners, (5) coping strategies, and (6) support system.

The findings indicate that a significant number of the participants had secondary traumatic experiences because of their engagement in capital trial defense practice for indigent clients. A death verdict for clients was perceived as a traumatic experience by the participants because of their long-term empathetic engagement with their clients and

their family members as well as the dehumanization against their clients in death penalty jurisprudence. The participants often experienced stigmatization in their communities that was associated with their work, while organizational support in recognizing their emotional pain and attendance to psychological needs was unavailable. The findings of this study suggest that the human cost of the death penalty should be re-examined and organizational effects be made to address the negative psychological effects associated with capital trial defense practice for indigent clients.

## TABLE OF CONTENTS

	Page
LIST OF TABLES.....	x
PROLOGUE.....	xi
INTRODUCTION.....	1
Problem Statement.....	1
Purpose of this Study and Research Questions.....	4
Relevance of this Study to the Field of Social Work.....	5
REVIEW OF LITERATURE.....	8
Secondary Trauma as “Cost of Caring”.....	8
Professional Burnout.....	10
Trauma-related Stress.....	12
Vicarious Trauma .....	13
Secondary Traumatic Stress.....	16
Compassion Fatigue.....	17
Secondary Trauma and the Death Penalty.....	19
Family Members of Murder Victims.....	20
Family Members of Capital Defendants/Death Row Inmates.....	22
Correctional Officers Involved in Executions.....	24
Journalists Who Report and Witness Executions.....	25
Capital Jurors.....	26
Capital Defense Practitioners.....	27
THEORETICAL FRAMEWORK.....	30

	Page
Critical Theory and Systemic Dehumanization.....	30
Therapeutic Jurisprudence.....	36
Therapeutic Jurisprudence and Social Work Values.....	39
Therapeutic Jurisprudence and Capital Trial Defense Practice.....	42
METHODOLOGY.....	44
Research Design.....	44
The Epistemological Standpoint.....	44
Constructivist Phenomenological Approach.....	45
Guiding Theoretical and Conceptual Lenses.....	47
Sampling and Recruitment.....	47
Sampling Strategies.....	47
Recruitment Procedures.....	49
Sampling Size.....	50
Description of the Study Participants.....	50
Data Collection and Instrumentation.....	52
Semi-Structured Individual Interviewing.....	52
Instrumentation.....	53
Data Collection Procedures.....	54
Data Analysis.....	56
Data Management.....	56
Phenomenological Analysis.....	56
Strategies for Trustworthiness.....	61

	Page
Ethical Consideration.....	64
FINDINGS.....	65
Motivation.....	65
Clients.....	65
<i>“It’s about That Client”</i> .....	66
<i>“Meaningful Relationships” Built with Clients</i> .....	66
<i>“Empathy” and “Compassion” for Clients</i> .....	67
<i>“He Wasn’t Born a Killer”</i> .....	68
<i>“I Am against the Death Penalty”</i> .....	70
<i>“The Death Penalty is Unjust”</i> .....	70
<i>“Human Life Has Value”</i> .....	72
<i>“They Deserve to Have a Fair Trial”</i> .....	72
<i>“Fight for the Defenseless,” “Speak for the Voiceless”</i> .....	73
<i>“It’s My Calling”</i> .....	74
Capital Litigations as “Intellectually Stimulating”.....	75
The “Pinnacle” of Being a Criminal Defense Attorney.....	76
<i>“Give Them Some Comfort” as a Black Attorney</i> .....	77
Salary Increase.....	77
Challenges in Defending Clients Who Face the Death Penalty.....	79
<i>“If We Lose, Our Clients Get Killed”</i> .....	79
<i>“Their Life Is At Stake”</i> .....	79
<i>“They Depend on You”</i> .....	80

	Page
The Death Penalty Trial.....	81
<i>“You Are the Lone Voice for Your Client”</i> .....	81
<i>Prosecutors “Painting Your Client as the Worst Monster”</i> .....	82
<i>“People on the Jury That Have No Compassion”</i> .....	83
<i>Capital Jury Selection</i> .....	84
<i>Waiting to Hear a Verdict</i> .....	86
<i>The Death Penalty Trial as “Extremely Draining”</i> .....	86
The Criminal Justice System.....	87
<i>“The Law Is Designed to Kill People Who Kill”</i> .....	87
<i>Scrutiny for Ineffective Assistance of Counsel</i> .....	90
<i>The “Victims’ Bill of Rights”</i> .....	90
Negative Community Responses.....	91
Clients.....	93
<i>“You Have to Earn Their Trust”</i> .....	93
<i>“They Are Desperate People”</i> .....	95
<i>“Why Couldn’t I Get Him Take the Deal?”</i> .....	96
<i>Feeling “Torn” about Clients</i> .....	97
<i>“The Client Wanting Death”</i> .....	98
<i>“Other Inmates Killed Him”</i> .....	98
<i>Clients Who “Are around the Age of My Children</i> .....	98
Clients’ Family Members.....	99
<i>The Emotional ‘Turmoil’ of the Clients’ Family Members</i> .....	99



	Page
<i>Interviewing Clients' Family Members</i> .....	100
<i>"They're Being Victimized Too"</i> .....	101
<i>"No Formal Services" for Clients' Family Members</i> .....	102
Compassion for Victims and Surviving Family Members.....	103
Violence and Trauma in Capital Cases.....	105
Emotional Reactions to Clients Receiving Death Verdicts.....	107
Clients Receiving Death Verdicts as Being Traumatic.....	107
Anger Evoked by Death Verdicts of Clients.....	112
Effects of the Stress.....	115
Negative Changes in Physical and/or Mental Health.....	115
<i>Sleep Disturbances</i> .....	115
<i>Negative Effects on Moods and Mental State</i> .....	117
<i>Physical and Mental Exhaustion</i> .....	120
<i>Physical Health Complications</i> .....	122
Diminished Trust, Faith, and Sense of Security.....	123
<i>Diminished Trust in Other People and the World</i> .....	123
<i>Shaken Faith in God</i> .....	124
<i>Diminished Sense of Security in the Community</i> .....	125
Negative Effects on Personal Relationships.....	126
Diminished Motivation and Sense of Burning Out.....	127
Deepened Self-Reflection on One's Own Values and Perspectives.....	128
Coping Strategies.....	130

	Page
Balancing Personal and Professional Life.....	130
Taking Care of Health Conditions.....	135
Enjoying Activities that Rejuvenate Oneself.....	136
Utilizing Inner Resources.....	148
Spiritual Coping.....	140
Use of Food and/or Alcohol for Comfort or Relaxation.....	141
Support Systems.....	142
Support System within the Personal Contexts.....	143
<i>Family and/or Significant Others</i> .....	143
<i>Friends Outside of the Work</i> .....	146
<i>Faith or Religious Community</i> .....	147
Support System within the Working Environment.....	147
<i>Colleagues in the Capital Unit</i> .....	148
<i>Capital Trial Defense Team</i> .....	153
<i>Management</i> .....	160
DISCUSSION AND IMPLICATIONS.....	167
Summary of Findings and Discussion.....	167
Motivation.....	167
Challenges in Defending Clients Who Face the Death Penalty.....	168
Emotional Reactions to Clients Receiving Death Verdicts.....	172
Effects of the Stress.....	173
Coping Strategies.....	174

	Page
Support Systems.....	176
Concluding Summary.....	177
Study Limitations and Strengths.....	178
Implications for Social Work.....	180
Implications for Individual and Family Intervention.....	180
Implications for Organizational Changes.....	181
Implications for Community Organizing and Advocacy.....	183
Implications for Social Work Education.....	184
Implications for Social Work Research.....	184
Conclusion.....	185
REFERENCES.....	187

## LIST OF TABLES

Table	Page
1 Participants' Roles and Experience of Client Receiving a Death Verdict.....	51
2 Reflective Questions for the Iterative Framework of Data Analysis.....	60
3 Epistemological Foundation, Approach, and Methodology of This Study.....	61

## PROLOGUE

The inception of this study emerged from my very personal experience. It was over ten years ago, one day in a book store, I happened to pick up the book, *Waiting to Die*, written by Mr. Richard Rossi, who was on death row. My partner and I started corresponding with Mr. Rossi until he died from complications due to his deteriorating health. This was my first experience to get to know a person on death row personally. I eventually started attending clemency hearings for death row inmates where capital habeas attorneys spoke up for their clients whose execution dates were already set. I got to know several attorneys and mitigation specialists who were involved in capital habeas proceedings. They told me, “We become traumatized too, but nobody understands.”

Several years after Mr. Rossi’s death, my partner started working as a capital trial defense attorney for indigent clients. Two of his clients received a death verdict. I witnessed his emotional pain that stayed with him for a long time. And he said the same thing, “I got traumatized, but nobody understands.” When our society denies the human dignity of capital defendants and death row inmates, it disenfranchises the experiences of their family members and those who speak up for their lives.

As a social worker, I have worked with marginalized individuals who often had only a scant voice for a decade. I touched the lives of many undocumented women who suffered from human trafficking, rape, and forced prostitution. Helping them find their voice and restoring their human dignity were my primary duties. Mainstream society saw these women as “criminals,” who committed an “illegal entry”; however, they were also survivors of violence and oppression. Through my work with them, I learned that there

were multiple realities: That reality could be perceived differently, depending on one's standpoint, and which lens he or she uses to see the phenomenon.

My personal and professional experiences ignited my desire to learn more about ways to capture the alternative reality through the lived experiences of the marginalized, in order to pose social issues from their standpoint that were otherwise ignored or unrecognized. This guided my endeavor to be a trained social work researcher and educator, and a critical thinker.

In this study, I tried to capture the lived experiences of capital trial defense practitioners who represented indigent clients facing a charge of the capital murder which may have resulted in the death penalty. I wanted to search for the meanings of my partner and friends' words, "We become traumatized, but nobody understood." I wanted to understand what and how they experienced their work, and what meanings they gave for their experiences as a collective experience associated with engaging in capital defense practice for indigent clients. I felt a sense of connection to their experiences as a social worker because we are both committed to the lives of the marginalized and disenfranchised, and this study was my way to express my solidarity.

## INTRODUCTION

### **Problem Statement**

Defending indigent clients who face the death penalty is the ultimate in advocacy (Bright, 1997). The defense team often finds that they are a lone voice for their clients to restore their humanity and to spare their lives. Capital defense work involves negative psychological ramifications (Adcock, 2010). First, murder itself is a traumatic event resulting in the death of a human-being. Second, the mitigation investigation, one of the hallmarks of capital defense work, leads capital defense practitioners to extensively learn about the traumatic life experiences of their clients. Third, the capital trial, especially the penalty phase, frequently turns into a forum for the dehumanization of their clients, as part of a prosecutorial strategy. A death verdict following the dehumanization of their clients may haunt capital trial defense practitioners for significant periods of time. These experiences are believed to create secondary trauma among the defense team members (Adcock, 2010).

The death penalty was declared unconstitutional with the U.S. Supreme Court opinion of *Furman v. Georgia* (408 U.S. 238) in 1972. The court decision found the death penalty to be arbitrary and discriminatory, and therefore constituted cruel and unusual punishment. In response to *Furman*, amendments to death penalty statutes were proposed in Georgia, Florida, Texas, North Carolina and Louisiana, with new sentencing procedures. As a result, the death penalty was reinstated in the United States in 1976 (*Gregg v. Georgia*, 428 U.S. 153) and is currently practiced in 31 states, as well as in the U. S. federal courts and the U.S. military courts (Death Penalty Information Center, February 18, 2016).

The nature of capital defense work has transformed significantly ever since the U.S. Supreme Court found that a state statute attempting to limit the introduction of mitigation evidence at trial was unconstitutional in *Lockett v. Ohio*, 438 U.S. 536 (1978). The importance of the introduction of mitigation evidence was further emphasized. In *Wiggins v. Smith*, 539 U.S. 510 (2003), for example, the U.S. Supreme Court established a duty for defense counsel in capital trials to investigate mitigation evidence for their clients who face a charge of the death penalty. Furthermore, what constitutes mitigation evidence has also evolved over the time. Currently, the American Bar Association Supplemental Guidelines (2008) articulates a definition as follows:

Mitigation evidence includes, but is not limited to, compassionate factors stemming from the diverse frailties of humankind, the ability to make a positive adjustment to incarceration, the realities of incarceration and the actual meaning of a life sentence, capacity for redemption, remorse, execution impact, vulnerabilities related to mental health, explanations of patterns of behavior, negation of aggravating evidence regardless of its designation as an aggravating factor, positive acts or qualities, responsible conduct in other areas of life (e.g. employment, education, military service, as a family member), any evidence bearing on the degree of moral culpability, and any other reason for a sentence less than death (p. 679).

This duty of defense counsel to investigate mitigation evidence inevitably leads capital defense practitioners to get to know about clients' lives in depth in order to "humanize the client in the eyes of those who will decide his fate" (Freedman, 2008, p. 663). During the mitigation investigation, capital trial defense practitioners often learn



about the extensive traumatic life experiences of their clients and the clients' struggles in such abject circumstances (Adcock, 2010; Haney, 1995, 2008; Wayland, 2008).

Furthermore, capital defense practitioners who represent clients at the trial level must argue persuasively against the prosecutors who frequently utilize systematic dehumanization of their clients as a prosecutorial strategy, and those who represent indigent clients are more likely to face a death verdict for their clients (Bright, 1992, 1997).

The death penalty has been one of the most controversial public policies in U.S. criminal jurisprudence to date, and its legitimacy has been examined from various perspectives. Recent studies have raised concerns about the possible harmful psychological effects, also known as "secondary trauma," related to the death penalty, on those who are involved in its implementation. Literature has documented secondary trauma experiences among family members of murder victims (Lanier & Acker, 2004; King, 2006; New Jersey Death Penalty Study Commission, 2007), capital jurors (Antonio, 2006; Bienen, 1993; Robertson & Nettleingham, 2009; Schuman, Hamilton, & Daley, 1996), family members of condemned and death row inmates (Beck, Blackwell, Leonard, & Mears, 2003; Jones & Beck, 2007; King, 2006; King & Norgard, 1999; Radelet, Vandiver, & Berardo, 2003; Smykla, 1987), journalists who have witnessed executions (Barnett, 1995; Freinkel, Koopman, & Spiegel, 1994), and officers of the Department of Correction who have engaged in actual executions (Del Lilly, 2014; Gil, Johnson, & Johnson, 2006; Osofsky & Osofsky, 2002; Vasquez, 1993).

A few anecdotal accounts (Adcock, 2010; Mello, 1997) describe the psychologically devastating experiences among capital defense practitioners who

represent clients after the conviction of the death penalty; however, no systematic investigation of such psychological effects on capital trial defense practitioners who represent indigent clients facing the death penalty has been conducted to date.

Addressing this gap in knowledge therefore has significance in contributing to knowledge about the psychological effects of capital trial defense practitioners as a “human cost” of death penalty jurisprudence and in developing interventions to prevent and/or reduce these adverse effects (Adcock, 2010; Beck, Blackwell, Leonard, & Mears, 2003; Gil, Johnson, & Johnson, 2006).

### **Purpose of This Study and Research Questions**

The purpose of this exploratory qualitative study is to examine lived experiences of secondary trauma among capital trial defense practitioners, including attorneys, mitigation specialists, paralegals, and investigators, who work as a team to represent indigent clients facing a charge of capital murder which may result in the death penalty.

The exploratory research questions of this study include:

- (1) What motivates capital trial defense practitioners to engage in capital trial defense practice for indigent clients?
- (2) What are the perceived stresses, difficulties, and traumatic experiences for capital trial defense practice for indigent clients?
- (3) What meanings do capital trial defense practitioners representing indigent clients give for their experiences of their client receiving a death verdict?
- (4) How does capital trial defense practice affect the practitioners, including their health, relationships, world view, and spirituality?

- (5) How do the practitioners cope with the perceived stresses, difficulties, and trauma associated with capital trial defense practice for indigent clients?
- (6) What are the perceived support systems for capital trial defense practitioners representing indigent clients?

Through in-depth interviews with capital trial defense practitioners who represent indigent clients, which were completed as an assignment for doctoral coursework taken in 2010, this study elucidates lived experiences of secondary trauma associated with capital trial defense practice based on their perceptions and meanings that capital trial defense practitioners have given for their experiences, using a constructivist phenomenological approach.

#### **Relevance of this Study to the Field of Social Work**

The death penalty is one of the critical issues that the field of social work has been concerned about with regard to its implementation in light of social work values and ethics. For example, the International Federation of Social Workers (IFSW, 2010) has taken a position against the death penalty because it violates the right to life as defined in the Universal Declaration of Human Rights. The IFSW (2010) also argues that the death penalty violates the International Social Work Code of Ethics, as it is an inhumane treatment of people.

In the United States, the National Association of Social Workers (NASW, 2009) has also taken a position against the death penalty, with regard to the fundamental respect for inherent human dignity and to the commitment to social justice:

The death penalty has always been and continues to be differentially applied to people who are poor, disadvantaged, of limited mental or intellectual capacity, or

from ethnic or racial minority groups. . . . The death penalty is a violation of human rights that belong to every human being, even those convicted of serious crimes. In the United States its application is arbitrary, unfair, and prone to racial bias and targets people who are most vulnerable. Thus, it is the position of NASW that the U.S. government and all state authorities, which have laws that provide for capital punishment, should abolish the death penalty for all crimes (pp. 40-41).

Additionally, NASW (2009) urges “an immediate moratorium on executions” (p. 41) and calls for “a life sentence as an alternative sentence to the death penalty” in its policy statement.

Indigent capital defendants often come from the population that the field of social work has long cared for: Members of a disenfranchised community with abject life circumstances and profound traumatic life experiences. Also, indigent capital defendants are more likely than wealthier defendants to receive a sentence of death as a result of the ongoing arbitrariness of death penalty sentencing procedures, as evidenced in numerous studies (Death Penalty Information Center, 2012). The arbitrariness of the death penalty cannot be reconciled with fundamental social work values, such as the respect of inherent human dignity and social justice for vulnerable populations. Furthermore, the recent recognition of the importance of mitigation evidence in capital sentencing procedures has increased more social workers’ involvement in capital defense practice, for social workers can uniquely contribute to defending indigent clients who face the death penalty with extensive knowledge of human behavior in the social environment, the ability to work with diverse populations with various vulnerabilities, and core social work values

that foster solid ethical foundations required in defending indigent capital defendants (Schroeder, Guin, Pogue, & Bordelon, 2006).

Considering the aspects above, this study has significant relevance to the field of social work. The findings will contribute to the advancement of social work education and professional development courses for those who work or are willing to work in the field, by adding to the knowledge on the possible psychological effects inherent in the nature of this work on the practitioners. The findings may also contribute to the further development of the position and policy statements of social work professional organizations by bringing unique insight into the critical examination of the issues associated with the implementation of the death penalty. Finally, the study findings can contribute to the development of descriptive type of research questions and studies and inform development of intervention for those who are affected by the involvement in death penalty jurisprudence.

## REVIEW OF LITERATURE

### **Secondary Trauma as “Cost of Caring”**

Helping professionals working with vulnerable populations are expected to commit to empathetic engagement with their clients at a deeper level (Newell & MacNell, 2010; Sabo, 2011). Human relationship is the core part of the helping practice, and one’s own self is an invaluable vehicle in engaging helping professionals to foster working alliances with their clients based on mutual trust and authenticity (Newell & MacNell, 2010).

This is especially true when one’s client not only comes from a vulnerable population, but also has suffered from traumatic experiences. Judith Harman, feminist psychiatrist who has extensive experience in working with trauma survivors, explains in her seminal work, *Trauma and Recovery: The Aftermath of Violence – from Domestic Abuse to Political Terror* (1992), as follows: “The core experiences of psychological trauma are disempowerment and disconnection from others. Recovery, therefore, is based upon the empowerment of the survivor and within the context of relationships; it cannot occur in isolation” (p.133).

Working with traumatized populations requires helping professionals to open one’s self to the suffering of the survivors through genuine, empathetic engagement (Pearlman & Saakvitne, 1999). Witnessing the profound struggle of traumatized clients is not only draining, but also overwhelming. Previous studies have noted that “working with traumatized clients is distinguished from working with other “difficult populations” (Cunningham, 1999, p. 279; Pearlman & Saakvitne, 1999). While empathetic engagement tends to exhaust helping professionals emotionally and psychologically,

listening to clients' trauma experiences and witnessing their profound wounds can be traumatic to helping professionals and challenge their psychological balance (Canfield, 2005; Elwood, Mott, Lohr, & Galovski, 2011; Figley, 1995; Harman, 1992; McCann & Pearlman, 1990; Newell & MacNell, 2010; Pearlman & Saakvitne, 1999). Helping professionals engaging in trauma work are therefore identified as "secondary victims," while "those who have directly experienced trauma are called "primary victims" (Figley, 1995; Illiffe & Steed, 2000, p. 393). In turn, the term "secondary trauma" was developed to describe this phenomenon in general (Illiffe & Steed, 2000, p. 393).

The psychological effects experienced by helping professionals who work with traumatized populations have been documented over the last few decades. The psychological demand from trauma-related work can cause the development of various stress-induced symptoms if internal and external resources are limited or impaired (Figley, 1995; Harman, 1992). Identification with clients' terror, helplessness, rage, grief, and despair can disrupt helping professionals' faith in the self, relationships with others, and the world (Harman, 1992). Some may experience similar symptoms of post-traumatic stress disorder, such as hyperarousal, intrusion and/or constriction as a result of professional involvement in clients' trauma (Figley, 1995; Harman, 1992).

This phenomenon, often called the "cost of caring" (Figley, 1995, p. 1), has been referred to as *professional burnout*, *traumatic counter-transference* or *vicarious traumatization*, *secondary traumatic stress*, and *compassion fatigue*. These terms have been used interchangeably in the past; however, recent literature argues that each of these terms represents a distinct concept, while some features overlap (Elwood, et al., 2011; Newell & MacNeil, 2010). Furthermore, there is an agreement in the literature that this

phenomenon should be understood as an occupational hazard that is associated with the nature of the work based on empathetic engagement with vulnerable or traumatized populations (Newell & MacNeil, 2010).

Newell and MacNeil (2010) suggest (1) “professional burnout,” (2) “vicarious trauma,” (3) “secondary traumatic stress,” and (4) “compassion fatigue” (p. 57) as the major key perspectives in illuminating this phenomenon. According to Newell and MacNeil (2010), all four perspectives represent an occupational hazard associated with the nature of human service work; however, these key perspectives can be classified into two different forms, depending on the involvement of traumatic aspects of the work. One form is professional burnout, which can occur regardless of the involvement in trauma materials, and the other form is trauma-related stress, which includes vicarious trauma, secondary traumatic stress, and compassion fatigue (Newell and MacNeil, 2010). Trauma-related stress is triggered by exposure to and witnessing of trauma suffered by clients; whereas, vicarious trauma, secondary traumatic stress, and compassion fatigue represent the ramifications of trauma-related stress, with an emphasis on a different aspect of this complex phenomenon.

### **Professional Burnout**

The first form, professional burnout, is a condition that can occur across any profession, regardless of the specialty and the relatedness to trauma (Elwood et al., 2011; Newell & MacNeil, 2010; Trippany, White Kress, & Wilcoxon, 2004). According to Christina Maslach, the founding theorist of the construct, burnout is defined as “a syndrome of emotional exhaustion, depersonalization, and reduced accomplishments that



can occur among those who do ‘people work’ of some kind” (Maslach & Jackson, 1986, p. 1, cited in Sabo, 2011).

Kahill (1988, cited in Figley, 1995, p. 12), who conducted an extensive review of findings from empirical studies on burnout, categorizes the symptoms into five distinct domains: (1) “physical,” (2) “emotional,” (3) “behavioral,” (4) “work-related,” and (5) “interpersonal symptoms.” For example, those who are under “burnout” may experience “fatigue and physical depletion/exhaustion, sleep difficulties, specific somatic problems such as headaches, gastrointestinal disturbances, colds, and flu” (physical symptoms), “irritability, anxiety, depression, guilt, sense of helplessness” (emotional symptoms), “aggression, callousness, pessimism, defensiveness, cynicism, substance abuse” (behavioral symptoms), “quitting the job, poor work performance, absenteeism, tardiness, misuse of work breaks, thefts” (work-related symptoms), and “perfunctory communication with, inability to concentrate/focus, withdrawal from clients/coworkers, and then dehumanizing, intellectualizing clients” (interpersonal symptoms) (Kahill, 1988, cited in Figley, 1995, p.12).

Theoretically, burnout is understood as a multi-dimensional concept that illustrates the cumulative effects of occupational stress, which emphasizes external factors, such as “workplace conditions,” for the development of burnout (Cunningham, 1999; Conrad & Kellar-Guenther, 2006; Jenkins & Baird, 2002; Newell & MacNeil, 2010). This theoretical framework is useful in illuminating the complex dynamics of the development of burnout that pertains to individual, interpersonal, organizational, and societal factors and/or the combinations (Sabo, 2011). Recent literature on burnout supports organizational factors, such as “work overload, lack of control, lack of reward,

lack of community, lack of fairness, and value conflict” (Sabo, 2011), as the critical predictive factors for the development of professional burnout (Canfield, 2005; Newell & MacNeil, 2010, Sabo, 2011).

Notably, burnout is a distinct concept that is different from secondary traumatic stress, although emotional manifestations share some common features, such as a sense of helplessness, anxiety, and depressed mood (Conrad & Kellar-Guenther, 2006; Figley, 1995). However, burnout is understood as the result of cumulative exposure to occupational stress, while the onset of secondary traumatic stress can occur suddenly, and can be triggered by “a single exposure to a traumatic incident” (Conrad & Kellar-Guenther, 2006; Figley, 1995). Burnout also differs from trauma-related stress because burnout results more from “workplace structural strains” rather than “exposure to trauma” (Jenkins & Baird, 2002, p. 425), and it can occur in any professions (Elwood et al., 2011).

### **Trauma-related Stress**

The other form, trauma-related stress among helping professionals, also has been identified and documented for decades (Dutton & Rubinstein, 1995; Harman, 1992). Trauma-related work evokes various emotional and psychological reactions among helping professionals. In capturing this unique aspect of trauma, Harman (1992) states that “trauma is contagious” (p. 140), and has a “dialectic nature” (p. 151).

While the powerful influence of trauma-related work has been known among helping professionals for a long time, its conceptual development evolved dramatically since the American Psychiatric Association (APA) decided to include “posttraumatic stress disorder” as an established psychiatric condition in the third edition of the

*Diagnostic and Statistical Manual of Mental Disorders* (DSM-III) published in 1980 (Figley, 1995). The sociopolitical context during the late seventies and the early eighties, such as the massive return of traumatized Vietnam veterans from the battlefield, the battered women's movement, and the anti-rape movement also facilitated greater awareness of trauma as an important social issue, and increased the demand for the provision of care for those who suffer from traumatic experiences (Harman, 1992). Simultaneously, more empirical studies have been undertaken and various conceptual frameworks have been developed to capture the phenomenon from different perspectives, such as vicarious trauma, secondary traumatic stress, and compassion fatigue (Figley, 1995; Harman, 1992; Newell & MacNell, 2010).

### **Vicarious Trauma**

Vicarious trauma is a perspective that was originally proposed by Lisa McCann and Laurie Anne Pearlman who founded the Traumatic Stress Institute in Connecticut (McCann & Pearlman, 1990). Vicarious trauma is defined as “a transformation in the therapist's (or other trauma worker's) inner experience resulting from empathetic engagement with clients' trauma material” (Pearlman & Saakvitne, 1999, p. 151).

In conceptualizing vicarious traumatization, McCann and Pearlman (1990) developed *constructivist self-developmental theory*. This theory is “built upon a constructivist foundation [where] the underlying premise is that human beings construct their own personal realities through the development of complex cognitive structures which are used to interpret events” (p. 137). McCann and Pearlman (1990) explain that “constructivist self-development theory is interactive in that it views the therapist's unique responses to client materials as shaped by both characteristics of the situation and

the therapist's unique psychological needs and cognitive schemas" (p. 136). This theory describes "the individual's adaptation to trauma as an interaction between his or her personality and personal history and the traumatic event and its context, within the social and cultural contexts for the event and its aftermath" (Saakvitne, Tenne, & Affleck, 1998, p. 283).

According to the constructivist self-development theory (Saakvitne, Tenne, & Affleck, 1998, p. 283), exposure to trauma is likely to affect the following five areas of the self as:

- (1) *Frame of reference*: one's usual way of understanding self and world, including spirituality.
- (2) *Self-capacities*: defined as the capacity to recognize, tolerate, and integrate affect and maintain a benevolent inner connection with self and others.
- (3) *Ego resources*: necessary to meet psychological needs in mature ways; specifically, abilities to be self-observing, and use cognitive and social skills to maintain relationships and protect oneself.
- (4) *Central psychological needs*: reflected in disrupted *cognitive schemas* in five areas: safety, trust, control, esteem, and intimacy.
- (5) *Perceptual and memory system*: including biological (neurochemical) adaptations and sensory experiences.

The constructivist self-development theory explains the cumulative process and the long-term effects that transform one's assumptions of self, the world, and sense of meaning in the course of empathetic engagement with traumatized clients (Brady, Guy,

Poelstra, & Brokaw, 1999; Chunningham, 1999; Pearlman & Mac Ian, 1995; Schauben & Frazier, 1995; Sinclair & Hamill, 2007; Trippany, White Kress, & Wilcoxon, 2004).

In the course of the conceptual development, McCann and Pearlman (1990) suggest that “burnout among therapists who work with [trauma] victims has special meaning” (p. 134). According to McCann and Pearlman (1990), exposure to clients’ trauma yields distinct psychological processes that are unique to trauma-related work, while burnout can occur among helping professionals who work with “any difficult population” (p. 133). McCann and Pearlman (1990) also acknowledge the usefulness of the theoretical framework of burnout in explaining the external stressors that can lead to burnout, and emphasize the importance of taking into consideration these external factors in understanding the psychological process of the development of vicarious trauma (Pearlman & Saakvitne, 1999).

Additionally, MacCann and Pearlman (1990) state that vicarious trauma is a distinct concept from countertransference. While countertransference refers to “a short-term reaction to working with particular clients,” vicarious trauma represents “a long-term alteration in the therapist’s own cognitive schemas, or beliefs, expectations, and assumptions about self and others” (MacCann & Pearlman, 1990, p. 132).

Some researchers point out the limitations of the vicarious trauma perspective. For example, Elwood et al. (2011) argue that empirical evidence on the vicarious trauma incidence is inconsistent, and that the prevalence seems much lower than it was originally assumed. Additionally, the vicarious trauma perspective is criticized because it tends to dismiss “the positive effects of trauma work,” and as a result, it does not adequately “distinguish between awareness and disturbances in cognitive schemas” (Dunkley &

Whelan, 2006, Vicarious Traumatization section, para 6, cited in Sabo, 2011). Sabo (2011) also suggests the reconceptualization of the vicarious trauma perspective in relation to the concept of posttraumatic growth.

### **Secondary Traumatic Stress**

According to Charles R. Figley, one of the prominent contributors to the conceptual development of trauma-related stress among helping professionals, secondary traumatic stress is defined as “the natural consequent behaviors and emotions resulting from knowing about a traumatizing event experienced by a significant other – the stress resulting from helping or wanting to help a traumatized or suffering person” (1995, p. 7). As the definition indicates, secondary traumatic stress may be applied not only to helping professionals but also to volunteers and family members who are willing to provide empathetic support for those who suffer from traumatic or other devastating experiences (Elwood et al., 2011; Figley, 1995).

Secondary traumatic stress is conceptualized in reference to the diagnostic criteria of posttraumatic stress disorder listed on the DSM-III, by paralleling “primary traumatic stress disorder” for direct victims and “secondary traumatic stress disorder” for secondary victims, in regard to “stressor,” “re-experiencing trauma event,” “avoidance/numbing of reminders,” and “persistent arousal,” respectively (Bride, Radely, & Figley, 2007; Bride, Robinson, Yegidis, & Figley, 2004; Figley, 1995, 1999). Figley (1995) suggests that secondary traumatic stress may “occur suddenly and unexpectedly in reaction to exposure to the details of one or more traumatic events” (Elwood et al., 2011, p. 26).

The literature also points out that secondary traumatic stress differs from countertransference conceptually (Berzoff & Kita, 2010; Figley, 1995). For example,

Figley (1995) argues that secondary traumatic stress is a normal reaction that may occur in anyone who is willing to help those who suffer from trauma, while countertransference is a concept specific to the psychotherapeutic context. Additionally, the literature emphasizes that secondary traumatic stress and vicarious trauma are conceptually different (Newell & MacNell, 2010; Pearlman & Saakvitne, 1999). Pearlman and Saakvitne (1999) summarize the distinction as follows: “the STS [secondary traumatic stress] approach focuses primarily on the symptoms, while the vicarious-traumatization approach focuses on the individual as a whole, placing observable symptoms in the larger context of human adaptation and the quest for meaning” (p. 153).

### **Compassion Fatigue**

Compassion fatigue is a term that was originally used by Carla Joinson to describe an “overpowering, invasive stress” that results from “the unique demands on caregivers” (1992, p. 116). Caregivers are expected to attend “infinite human needs deliver[ing] themselves, [while] filling multiple roles that can be psychologically conflicting” (Joinson, 1992, p. 118). Joinson (1992) also mentions that compassion fatigue is unique to caregiving professions, while burnout is observed in any work setting.

During the 1990s, Figley and colleagues, who had undertaken extensive research on the phenomenon of “secondary victimization,” started to use the term “compassion fatigue” as synonymous to “secondary traumatic stress,” because compassion fatigue is a more common term with a lesser stigmatizing impression (Adams, Boscarino, & Figley, 2006; Bride, Radey, & Figley, 2007; Figley, 1995, 1999; Jenkins & Baird, 2002). Over time, Figley (1999) has refined the conceptual framework of secondary traumatic stress

under the term “compassion fatigue” with greater emphasis on “the empathetic ability” of helping professionals as a factor that may contribute to the development of compassion fatigue/secondary traumatic stress.

Some scholars criticize Figley’s synonymous use of these terms because such usage compromises the original meaning proposed by Joinson and has created some conceptual confusion (Coetzee & Klopper, 2010; Sabo, 2011). Coetzee and Kloppe (2010), for example, alternately define compassion fatigue as “the final result of a progressive and cumulative process that is caused by prolonged, continuous, and intense contact with patients, the use of self, and exposure to stress (p. 237), and operationalized as “the final result of a progressive and cumulative process that evolves from compassion stress after a period of unrelieved compassion discomfort, which is caused by prolonged, continuous, and intense contact with patients, the use of self, and exposure to stress” (p. 239). This newly defined compassion fatigue suggests the onset of compassion fatigue as progressive and cumulative, with no prerequisite for the exposure to trauma materials. This is conceptually distinct from Figley’s (1995) original assertion that the onset of secondary traumatic stress/compassion fatigue can be sudden and by a single exposure to trauma.

To date, there is no terminological agreement, and the synonymous use of compassion fatigue and secondary traumatic stress continues to be found in the literature. However, it is becoming more common to understand compassion fatigue as a broader concept, such as the “byproduct of emotional empathetic connections with clients” (Benoit, Veach, & LeRoy, 2007, p. 300) with lesser or no emphasis on the involvement



of exposure to trauma materials for the onset of the compassion fatigue (Coetzee & Klopper, 2010; Sabo, 2011).

### **Secondary Trauma and the Death Penalty**

For the last few decades, research on secondary trauma has progressed dramatically. Previous studies have uncovered the negative psychological impact of empathetic engagement among those who were willing to help traumatized individuals. Over time, various conceptual frameworks and measures were developed (Adams, Boscarino, & Figley, 2006; Bride et al., 2004; Bride, Radey, & Figley, 2007; Cunningham, 1999; Figley, 1995, 1999; Jenkins & Baird, 2002; McCann & Pearlman, 1990; Pearlman & Saakvitne, 1999; Saakvitne, Tennen, & Affleck, 1998; Sinclair & Hamill, 2007). The incidence and prevalence were also examined using samples from various professions and with different types of trauma that their clients experienced (Benoit, Veach, & LeRoy, 2007; Brady et al., 1999; Conrad & Kellar-Guenther, 2006; Fahy, 2007; Levin & Gerisberg, 2003; Iliffe & Steed, 2000; Pearlman & Mac Ian, 1995; Schauben & Frazier, 1995; Voss Horrell, Holohan, Didion, & Vance, 2011).

The psychological effects of the death penalty on those who are involved in its legal proceedings have been documented since the death penalty was reinstated in 1976 in the U.S. criminal justice system. As Wayland (2008) states, “psychological trauma lies at the heart of death penalty cases. . . because of [not only] the unspeakable grief and irrevocably altered lives that follows the loss of a loved one to homicide, [but also] an almost universal feature of the lives of capitally charged and convicted defendants” (p. 923).

Anecdotal accounts and emerging research have identified the devastating emotional and psychological effects of the death penalty on various involved parties: family members of murder victims (Lanier & Acker, 2004; King, 2006; New Jersey Death Penalty Study Commission, 2007), capital jurors (Antonio, 2006; Bienen, 1993; Robertson, Davies, & Nettleingham, 2009; Schuman, Hamilton, & Daley, 1996), family members of the capital defendants and death row inmates (Beck, Blackwell, Leonard, & Mears, 2003; Jones & Beck, 2007; King, 2006; King & Norgard, 1999; Radelet, Vandiver, & Berardo, 2003; Smykla, 1987), journalists who have witnessed executions (Barnett, 1995; Freinkel, Koopman, & Speigel, 1994), officers of the Department of Correction who have engaged in the actual executions (De Lilly, 2014; Gil, Johnson, & Johnson, 2006; Osofsky & Osofsky, 2002; Vasquez, 1993), and capital defense practitioners (Adcock, 2010; Mello, 1997).

### **Family Members of Murder Victims**

Various anecdotal and testimonial accounts have illustrated that family members of murder victims are significantly traumatized by the current U.S. criminal justice system involving the death penalty. For example, King (2006), the author of *Don't Kill in Our Name: Families of Murder Victims Speak Out against the Death Penalty*, provides narratives that describe how the death penalty causes adverse impact on family members of murder victims, based on numerous interviews with those individuals. Through their stories, King (2006) shed light on how arbitrary procedures in death penalty cases create a sense of hierarchy among murder victims and their families, breaking up family relationships, and labeling family members of murder victims as “bad” if they disagree to seek the death penalty.

Testimony of family members of murder victims in front of the New Jersey Death Penalty Study Commission also illuminates the complicated experiences as a result of their involvement in the legal proceedings of the death penalty (New Jersey Death Penalty Study Commission, 2007). For example, Molly Weigel Piper testified at the hearings of the Commission:

I spent three years in the emotionally untenable position of not only being opposed to (the death penalty) and traumatized by the murder while being asked to participate in a state execution, but also of being morally obligated to speak out against the execution as a benefactor of the person who raped and murdered my 74-year-old mother. Not only did I feel violated by having been given both the responsibilities of executioner and rescuer, I can also say that giving victims the indirect power of revenge undermines the principle of government by law (New Jersey Death Penalty Study Commission, 2007, p. 65).

Some family members became opposed to the death penalty because of the unbearable length of time for the convicted murderers to be executed. Anne Barlieb articulated how prolonged stress led her to change her position on the death penalty:

I'd support the death penalty if the State of New Jersey could limit the appeals process and actually utilize it. Unfortunately, I sit here following a more realistic approach in favor of abolition. I can testify from experience that our current system is most unjust for victims and their loved ones. I can only hope to save other families from the grief of the never-ending appellate process (New Jersey Death Penalty Study Commission, 2007, p. 64).

King and Norgard (1999) point out that there is no scientific evidence of the long-lasting healing effects of the execution of convicted murderers on family members of murder victims. King and Norgard (1999) also report that much of the enthusiasm of family members of murder victims to execute the convicted murderers diminishes over time because of the prolonged, complicated legal proceedings, which often further traumatizes family members of murder victims and compromises their grief process.

### **Family Members of Capital Defendants/Death Row Inmates**

It has also been documented that family members of capital defendants and death row inmates are traumatized by the legal proceedings of the death penalty. For example, Smykla (1987) anecdotally reports “the human impact” of the death penalty among family members of the death row inmates in Alabama. Based on field interviews with 40 family members of eight death row inmates, Simkla (1987) illustrates the prolonged grieving process that is characterized by self-accusation, social isolation, and powerlessness, and urges that the critical examination of death penalty policy because of not only the economic and legal issues, but also “the human impact” of its implementation.

Radelet, Vandiver, and Berardo (2003) conducted a first of its kind sociological investigation on “the human impact” of the death penalty, in light of the inter-relationships between death row inmates and their family members. Based on 500 hours of interviews with death row inmates in addition to interviews with their family members and numerous observations over a decade, Radelet et al. illustrate how incarceration on death row is fundamentally different from any other type of institutionalization. According to these authors, the distinguishing features include structured uncertainty,

social death resulting from the total rejection from society, and stigmatization as death-worthy, which aggravates the agony experienced by the family members of the death row inmates.

Beck, Blackwell, Leonard, and Mears (2003) report the social and psychological effects of the death penalty on family members of death row inmates in the course of death penalty legal proceedings. In-depth interviews with 24 family members of 19 death row inmates revealed that the family members experience significant emotional pain and chronic grief, in addition to secondary traumatization, in the course of their involvement in the criminal justice system, which is parallel to experiences among family members of murder victims. Beck et al. (2003) report that offenders' family members also suffer from the public views toward them as culpable, and suggest the extension of some assistance to these family members based on the principle of restorative justice.

Jones and Beck (2007) illustrate that facing the execution of a loved one is significantly traumatic to family members of the death row inmates, based on findings drawn from in-depth interviews with 26 family members of death row inmates. Jones and Beck (2007) refer to the family members' experiences as disenfranchised grief and infinite loss, due to the highly stigmatized and ambiguous nature, and lack of empathy and support for them from the public and community.

King and Norgard (1999) conducted in-depth interviews with 28 family members of death row inmates and those who were executed and suggest the importance of the introduction of "defendant family impact evidence" in its legal proceedings, for it illuminates the devastating psychological influences of the death penalty on family members of the condemned. King and Norgard (1999) also embrace the standpoint of

rehabilitative justice, and advocate the departure from retributive justice in order to decrease secondary trauma associated with the death penalty legal proceedings on family members of murder victims and the condemned.

### **Correctional Officers Involved in Executions**

Some correctional officers who serve on execution teams have similarly experienced psychological issues that result from their roles in the execution procedures. It is reported that these officers often experience chronic health issues as a result of their participation in the execution procedures, which is called “executioner’s stress” (Lifton & Mitchell, 2000).

In order to address these issues, for example, Daniel B. Vasquez, warden of San Quentin, a California state prison, developed a trauma intervention program in preparation for the execution of Robert Harris in 1992 (Vasquez, 1993). This was the first execution held by the state of California since 1976. Multiple psycho-educational sessions in relation to post-traumatic stress were conducted prior to the execution for those who were to be involved in the execution process, including chaplains for death row inmates, medical staff involved in the execution procedures, staff working with death row inmates, and the murder victim’s family members who would witness the execution. Immediately after the execution, critical incident psychological debriefing was provided for the staff involved in the execution, the official witnesses and the murder victim’s family members by the post-trauma team. The follow-up psychological debriefing sessions were also provided at three weeks and six weeks after the execution for the execution team members to deal with delayed onset of post-traumatic symptoms and for stress management. The rationale of such a program confirms the possibility of

experiencing secondary trauma as a result of being involved in executions; however, it is unknown if any psychological support was provided for family members whose loved ones were executed by the state of California.

Osofsky and Osofsky (2002) examined the psychological effects among security officers who are involved in state executions. In-depth interviews and mental health inventories with 50 of 52 correctional officers involved in executions in the state of Louisiana revealed that the study participants were not clinically depressed; however, they utilized various strategies including diffusion of responsibility and suppression of emotional pain to cope with their roles as execution team members. Osofsky and Osofsky (2002) also reported that the security officers experienced conflicting feelings on belief in whether the criminal justice system was fair and just and internal struggles and difficulties in carrying out executions, regardless of the level of their professionalism.

De Lilly (2014), referring to anecdotal accounts of those who were involved in and witnessed executions, suggested that they manifest symptoms resembling post-traumatic stress disorder (PTSD) or “perpetuation-induced traumatic stress (PITS)” (p. 120). De Lilly (2014) called their experiences “chronic side effects” (p. 111) of the death penalty, and urged: “Research on secondary trauma should be considered in Eighth Amendment jurisprudence because the consequences of capital punishment have a social impact on the lives of those employed to carry out executions” (p. 133).

### **Journalists Who Report and Witness Executions**

Freinkel, Koopman, and Spiegel (1994) conducted a survey study with journalists who witnessed the execution of Robert Harris in 1992. The purpose of this study was to investigate the psychological effects of this experience. The questionnaires were sent to

all 18 journalists who witnessed the execution, and 15 of them returned their responses to the questionnaires. The findings revealed that the respondents had dissociative symptoms as high as those who experienced the 1991 Oakland-Berkeley firestorm. As a result, Freinkel, Koopman, and Spiegel (1994) warn of the negative psychological effects of witnessing to executions among journalists.

### **Capital Jurors**

The role of capital jurors is very challenging, and the psychological effects that result from the duty have drawn attention. For example, the Capital Jury Project, which started in 1991 with funding from the National Science Foundation, has revealed significant psychological stress among capital jurors as a result of involvement in capital trials, based on over 1200 in-depth interviews from 14 different states (Antonio, 2007). Michael E. Antonio (2007), who was involved in this project as the Phase II Lead Project Manager, reports that symptoms experienced by capital jurors included disrupted sleeping patterns, a sense of anxiety for their own safety, feelings of paranoia about being watched outside of the courtroom, and getting ill after the trial.

Additionally, the National Center for State Courts has conducted survey research with 401 jurors who were involved in different types of trials across the country (National Center for State Courts, 1998, cited in Robertson, Davies, & Nettleingham, 2009). The findings revealed that the capital jurors, whose duty involved making a decision on the death penalty, demonstrated the highest levels of stress among all respondents who served as jurors in various types of trials (National Center for State Courts, 1998, cited in Robertson et al., 2009).



## **Capital Defense Practitioners**

There have been no systematic studies on the psychological effects of death penalty legal proceedings on capital defense practitioners; however, Saakvitne and Pearlman (1996) suggest that criminal defense attorneys, prosecutors, family law lawyers, and judges are at risk for vicarious trauma because they frequently are exposed to traumatic materials as part of their duty of their work, without adequate training on trauma. Susan Bandes, Distinguished Research Professor of Law at DePaul University College of Law, emphasizes the importance of addressing the emotional aspect of “criminal lawyering,” and states that “there may be no other profession whose practitioners are required to deal with so much pain with so little support and guidance” (2006, p. 342).

Levin and Greisberg (2003) found that attorneys exhibited higher levels of symptoms of secondary traumatic stress and burnout, in comparison to social workers, in the context of dealing with domestic violence cases, due to the attorneys’ higher caseload and lack of trauma-related supervision. Levin and his colleagues (2011, 2012) also found that public defenders who were exposed to traumatic experiences of their clients demonstrated significantly higher depressive symptoms and higher post-traumatic stress as well as secondary traumatic symptoms in comparison with general populations.

A few attorneys have anecdotally documented the psychological effects on themselves as a result of involvement in capital defense practice with indigent clients. For example, Michael Mello (1997), in an article on his own life as a capital defense attorney, described the psychological effects of having his clients executed as follows: “The pain

goes away but the wound stays forever. The scar never quite heals over, and whenever it seems like it is going to, you pick at it” (p. 165).

Moreover, Cynthia Adcock (2010), who has worked as a post-conviction attorney representing death row inmates, illuminated her experiences:

For 13 years, I represented men and women on North Carolina’s death row in their post-conviction proceedings. During this time, 38 prisoners were executed by the State of North Carolina. I was involved at some stage of almost all of these prisoners’ cases. I directly represented five men who were then executed: Zane, Willie, Ernest, Timmy and Steve. I was present at four of their executions. All of these men I knew for at least four years; I knew one for ten. . . . Death row lawyers read about and listen to, usually repeatedly, the stories of trauma experienced by their client and experienced by others in the family. These stories involve incidents of violence done to their client and done by their client. Interviews of the client’s family members can be traumatic for them and vicariously for the lawyer. An added layer is that the death row lawyer uniquely experiences the vicarious trauma within a system that is bent on killing her client – unless she and her team can stop the death train coming down the tracks. The experience is a recurring cycle of hope and despair, hope and despair, hope and despair. Sometimes, a loss may seem to be the lawyer’s fault, compounding the despair with guilt - or that of her co-counsel, adding strain to that relationship. If lucky, the relationship between a death row lawyer and her client lasts years, even decades. During those years, however, a death row lawyer has the responsibility - a task hopefully shared - of keeping her client as sane and as connected as

possible, sometimes requiring hours and hours of visitation time. When the execution date is set, life becomes surreal for the death row lawyer. The focus is both on saving her client's life and on keeping her client's (and his family and friend's) hopes up. But she doesn't want her client's hopes too high because he must prepare for death. There is no manual for a lawyer on how to fight for your client's life while helping him die (pp. 5-7).

Adcock (2010) articulates the traumatic aspects of capital defense practice and emphasizes the importance of further examination of the adverse psychological effects associated with the death penalty legal proceedings on all involved individuals, including capital defense practitioners.

## THEORETICAL FRAMEWORK

### **Critical Theory and Systemic Dehumanization**

Critical theories that conceptualize systemic dehumanization caused by the death penalty guide this study. Dehumanization of capital defendants is one of the critical issues associated with capital sentence proceedings (Banner, 2001; Haney, 1995, 1997, 2004, 2005, 2008; Radelet, 2001). Dehumanization of the capital defendant means a denial of the personhood and right to life. Dehumanization defines the defendant as unworthy for redemption, and it legitimizes the termination of his or her life (Haney, 1996, 2008). Dehumanization also deprives the capital defendant of “the capacity of interlocution” in the human community (Lyotard, 1993, p. 146). It functions to silence the capital defendant to speak on behalf of him or herself (Banner, 2001, p. 570).

This is particularly true when the defendant is from an oppressed or disenfranchised population (Banner, 2001; Bright, 1992; Johnson & Johnson, 2001). His or her voice is often suppressed and unheard throughout the capital proceeding from trials to clemency hearings. Former U.S. Supreme Justice Brennan, in his dissenting opinion in *McClesky v. Kemp* (1987), describes this as follows:

Those whom we would banish. . . from the human community. . . often speak in too faint a voice to be heard above society’s demand for punishment. It is the particular role of the courts to hear these voices, for the Constitution declares that the majoritarian chorus may not alone dictate the conditions of social life (cited in Banner, 2001, p. 569).

Dehumanization imposes total powerlessness on the condemned and rejects human dignity (Rotman, 2010). Historically and to the present date, oppressed

communities have sometimes perceived the criminal justice system “as sources of humiliation and oppression” (Du Bois, 2005, p. 76). In his seminal work *The Soul of Black Folk* published in 1903, W. E. B. Du Bois, one of the most influential Black intellectuals, illustrates how the criminal justice system has functioned as a tool of social engineering that constructs and maintains racial injustice. Du Bois explains the police system in the South evolved as “a system of surveillance” to control not only criminals but also all Blacks under the institution of slavery. Upon emancipation, according to Du Bois (2005), the court then became primarily “a means of re-enslaving the blacks” (p. 77) by “convict [ing] [them] on almost any charge” (p. 77). Such experiences led Black people to believe that “the laws are made by men who have little interest in him; they are executed by men who have absolutely no motive for treating black people with courtesy or consideration” (Du Bois, 2005, p. 70). The court, in their eyes, is an “instrument of injustice and oppression” (Du Bois, 2005, p. 77); that is, those who were once dehumanized as property under the system of slavery are now subject to “objectification” and “dehumanization” as “criminals” to keep them subordinated and exploited under the criminal justice system in a racially stratified society (Davis, 2005, p. 69).

Dehumanization against the oppressed in the criminal justice system, which consists mostly of indigent defendants, is deeply intertwined with the system of domination and oppression (Eastman, 2000; Johnson & Johnson, 2001). Dehumanization is intensified and becomes more salient when the indigent defendant is accused of capital murder. As a result, capital defense practitioners representing indigent clients are exposed to various forms of injustice against their clients in defending their very right for life (Haney, 2008). The ultimate goal of capital defense work is to fight for the client

whose life is to be spared; however, standing at the forefront of the “oppressive dehumanization” (Rotman, 2010, p. 535) against the client, in a place where one barely finds any compassion for the client (Bright, 1997), but with the massive call for his or her death, is emotionally difficult, and can be traumatic.

One way to obtain a deeper understanding of the experiences of capital trial defense practitioners representing indigent clients is to apply the critical theory of justice in examining the systematic nature of dehumanization of capital defendants. Iris Marion Young (1990a), a political scientist and critical thinker, provides a useful conceptual framework in considering social justice in relation to domination and oppression. Young’s fundamental position in developing her theory of justice lies in the following statement: “Justice should refer not only to distribution, but also to the institutional conditions necessary for the development and exercise of individual capacities and collective communication and cooperation” (Young, 1990b, p. 39). Based on this notion of justice, Young (1990a) infers injustice as oppression and domination, and asserts that social justice should seek “the elimination of institutionalized domination and oppression” (p. 15).

Young (1990b) defines oppression as “structural phenomena that immobilize or diminish a group” (p. 42). Young refers to the term “group” as a social group, which is “a collective of persons [who share] a sense of identity” (1990b, p. 44). Identities are defined as “ways in which people give meaning to their lives” (Castells, 1997, cited in Harding, 2006, p. 255), and the formation of an identity-based social group is related to the way one group identifies the other (Young, 1990b). The process is socially situated

and embedded in the shared meaning that people attribute to their life experiences (Harding, 2006; Mohanty, 2003; Pfohl, 2008).

In terms of how to know if a group is oppressed, Young proposes that oppression consists of the following five faces: (1) exploitation; (2) marginalization; (3) powerlessness; (4) cultural imperialism; and (5) violence (1990b, p. 64). First, Young (1990a) defines *exploitation* as a force to “enact a structural relation between social groups” (p. 49) in a way to put one group in subordination to the other. Young (1990b) argues that the distributive paradigm of justice cannot change the injustice of exploitation, because it does not alter “the institutionalized practices and structural relations” that “recreate an unequal distribution of benefit” (p. 53).

Second, Young (1990b) observes *marginalization* as “the most dangerous form of oppression” (p. 53). According to Young (1990b), marginalization is an institutionalized practice that excludes “a whole category of people” from “useful participation in social life,” which often results in “material deprivation and even extermination” (p. 53). Young (1990b) warns marginalization is more pervasive than exploitation as a form of oppression in the United States.

Third, Young (1990b) explains powerlessness in relation to the unequal division of labor. In this context, power is not exercised in a reciprocal way. Young (1990b) defines the powerless as “those over whom power is exercised without their exercising it; the powerless are situated so that they must take orders and rarely have the right to give them” (p. 56).

Fourth, cultural imperialism, according to Young (1990b), “involves the universalization of a dominant group’s experience and culture and its establishment as the

norm (p. 59). While exploitation, marginalization, and powerlessness represent forms of oppression that relate to structured and institutionalized unequal division of labor, cultural imperialism normalizes “the [dominant group’s] experience as representative of humanity” (Young, 1990b, p. 59), and therefore “the standpoint of the privileged, their particular experience and standards, is constructed as normal and neutral” (Young, 1990c, p. 116) because the privileged own “exclusive or primary access” to “the means of interpretation and communication in a society (Fraser, 1987, cited in Young, 1990b, p. 59). The universality claim of the dominant group’s experience as normal and representative inevitably “constructs the difference which some groups exhibit as lack and negation” (Young, 1990b, p. 59). As a result, some groups experience themselves as not only “invisible” but also “marked out as different” (Young, 1990b, p. 60).

Finally, Young (1990b) claims “group-directed violence” as systematic social practice, and differentiates it from repressive violence by the state or tyrants. According to Young (1990b), repressive violence is a form of violence that is calculatedly used as “a coercive tool to maintain their power” (p. 62). In contrast, group-directed violence occurs at random in an irrational way to “maintain group privilege or domination” (Young, 1990b, p. 62). However, group-directed violence is also systematic in nature, as institutional forces often “encourage, tolerate, and enable” such violence (Young, 1990b, p. 62). Lack of institutional protection creates fear of violence among members of oppressed groups and reinforces their subordination to the dominant group (Young, 1990b).

Young (1990b) argues that the “presence of any of these five conditions is sufficient for calling a group oppressed” (p. 62), and any practice related to these



conditions should be under critical scrutiny in order to “dismantle the hierarchy” as “the remedy for domination and oppression” (Young, 1990c, p. 116). In the quest for social justice, Young (1990c) urges oppressed groups to challenge the “impartiality claim” in moral reasoning, as the impartiality claim often functions to reinforce hierarchy.

According to Young, the impartiality claim rejects “the particularity of situation,” represses “the form of feelings,” and “reduce[s] the plurality of moral subjects to one subjectivity” (1990c, p. 100). As a result, “plurality of subjects [is] expelled from the moral realm” and the voice of the oppressed loses its legitimacy in the discourse (Young, 1990c, p. 103).

As Young (1990c) claims, the issue of social justice needs to be considered in relation to oppression and domination. Equally, the significance of subjectivity in considering the issue of social justice needs to be recognized (Banner, 2001; Harding, 2006; Klein, 1995; Pfohl, 2008; Young, 1990a), as it “produce[s] the information and insight oppressed groups need and seek” (Harding, 2006, p. 253).

Francine Banner, an attorney who published an article to argue the usefulness of the “feminist narrative to deconstruct the myth of the capital defendant” (2001, p. 569), writes: “As a result of race, poverty, mental disability, youth, illiteracy, and dysfunctional family backgrounds, most capital defendants have spent their lives in subcultures of people who are seldom given the opportunity to assert their own voice” (p. 609).

Dehumanization of the indigent capital defendant is a way to “essentialize the difference” (Banner, 2001, p. 592), and functions to reinforce what Pateman (2007) calls “mutual indifference” (p. 154) in the death penalty legal proceedings. Pateman (2007) explains this phenomenon:

It is easier to be indifferent to the misery of others if those involved are seen as having brought their distress upon themselves, or are perceived as very different, as alien, as worthless, as inferior, as barely human or as another “race.” Their suffering can then be seen as of little or of no account (p. 152).

Patemen (2007) finds the structural cause of mutual indifference in power relations: “Part of being in power or being privileged is that a choice is available about what is seen or listened to” (p. 160).

The death penalty, in the eyes of the oppressed, is “state institutionalized violence” (Eastman, 2000, p. 527). It is called “death by design” (Haney, 2005) where the capital defendant is systemically dehumanized and demonized. In this context, capital defense practitioners are the lone advocates for the defendant to restore his or her humanity and find a voice. Critical theories, as presented above, provide a useful lens to examine the oppressive mechanism of the death penalty and to understand the larger context where capital defense practice for indigent clients is socially situated.

### **Therapeutic Jurisprudence**

Another theoretical framework that guides this study is therapeutic jurisprudence in illuminating psychological effects of the law and its practice. Therapeutic jurisprudence is broadly defined as “the study of the therapeutic and anti-therapeutic consequences of the law” (Wexler, 2008a, p. 4). Therapeutic jurisprudence perceives the law as “part of a rich tapestry of human interaction” (Winick, 1996, p. 647) and “a social force that produces behaviors and consequences” (Wexler, 2008a, p. 3). Therapeutic jurisprudence takes a post-realist view of the law, which embraces the idea of “the law in action” whose function is influenced by a given context (Winick, 1996, p. 647). The

legal rules, legal procedures, and legal actors are all part of the law as a social force, and inevitably bring about both therapeutic and anti-therapeutic consequences on those who are affected by the legal system (Fondacaro, 2010; Henning, 2008; Wexler, 2008a, 2008b; Winick, 1996).

Therapeutic jurisprudence emphasizes “the human, emotional, psychological side of law and the legal process” (Wexler, 2008a, p. 3), which is a crucial inquiry influenced by a perspective of “ethics of care” (Wexler, 2008a, p. 11; Winick & Wexler, 2008, p. 305). With grave concerns about the adversarial consequences of the legal system and the criminal justice system in particular, therapeutic jurisprudence aims to not only scrutinize the anti-therapeutic effects of the law, but also explore “the potential role of the law as therapeutic agent” (Winick, 1996, p. 646; Elwork & Benjamin, 1996; Parker, 2007).

Therapeutic jurisprudence initiatives originated in the late 1980s. Law Professor David B. Wexler, one of the prominent founding scholars of therapeutic jurisprudence, describes the origin of the inquiry:

Therapeutic jurisprudence grew out of mental health law. . . . Therapeutic jurisprudence cut its teeth on civil commitment, the insanity defense, and incompetency to stand trial. It looked at the way in which a system that is designed to help people recover and achieve mental health often backfires and causes just the opposite [result] (2008a, p. 6).

This crucial awareness led concerned scholars and practitioners to question the dominant view of legal formalism, which separates legal reasoning from sociopolitical contexts,

and to seek more normative orientation based on the post-realist, consequentialist point of view (Winick, 1996).

Therapeutic jurisprudence is a critical inquiry in nature. It provides “a framework for asking questions and for raising certain questions that might otherwise go unaddressed” (Wexler, 2008a, p. 8). While therapeutic jurisprudence emphasizes the usefulness of empirical evidence accumulated in behavioral science, the normative orientation illuminates the distinct nature of therapeutic jurisprudence from the positivist view that the mainstream of behavioral science has built on (Winick, 1996). In this sense, therapeutic jurisprudence has much more in common with other critical inquiries, such as critical race theory and feminist jurisprudence in its orientation (Wexler, 1996).

The initiatives for the development of therapeutic jurisprudence have significantly grown across disciplines since its inception. The interdisciplinary and international alliance for the development of therapeutic jurisprudence is called a “social movement” (Madden, 2010), “international movement” (Rotman, 2010), or “comprehensive law movement” (Daicoff, 2004, cited in Winick & Wexler, 2008, p. 304). “Protecting well-being while pursuing justice” (Sturgis, 2009, p. 103) is a critical calling among those who share concerns about anti-therapeutic effects of the law. It seeks the advancement of psychological well-being among those whose welfare is affected by the law by exploring the transformative role of the law as “therapeutic agent” (Winick, 1996). In this sense, the ultimate goal of therapeutic jurisprudence is “humanizing the law” (Wexler, 2008, p. 3).

## **Therapeutic Jurisprudence and Social Work Values**

One of the major characteristics of therapeutic jurisprudence is its normative orientation. The goal of therapeutic jurisprudence goes beyond the accumulation of scientific knowledge. With deep commitment to normative considerations, therapeutic jurisprudence aims to not only uncover the collateral anti-therapeutic effects of the law, but also to transform the role of the law in order to minimize its adversarial effects and promote psychological well-being for those who are affected by the law.

Therapeutic jurisprudence is interdisciplinary and has benefited from various disciplinary efforts. Among those, social work is one of the most influential disciplines for the advancement and fulfillment of the purpose of therapeutic jurisprudence (Darr, 2008; Madden, 2010). Social work and therapeutic jurisprudence also share various similarities, such as its evolving path as a profession and the normative foundation (Madden, 2010). In particular, compatibility between social work values as expressed in the *NASW Code of Ethics* and various normative expressions constructed in the course of the development of therapeutic jurisprudence are noteworthy.

The *NASW Code of Ethics*, for example, embraces six core values as guiding the social work profession: (1) Service; (2) Social justice; (3) Dignity and worth of the person; (4) Importance of human relationship; (5) Integrity; and (6) Competence (Madden, 2010). As for the first value “service,” therapeutic jurisprudence clearly aims at not only the accumulation of knowledge on therapeutic and anti-therapeutic effects of the law, but also the transformation of the law as “therapeutic agent.” The practice-oriented nature of therapeutic jurisprudence has contributed to the emergence and development of alternative services that “humanize the law” for the last few decades.

*Problem Solving Courts* or *Specialty Courts* are examples of such intentional efforts to meet unique needs of individuals who suffer homelessness, domestic violence, or mental health issues (Meekins, 2008; Strugis, 2009).

Commitment to “social justice” is also an important normative orientation that therapeutic jurisprudence embraces. This is a natural consequence of its serious awareness of the anti-therapeutic effects of the justice system on those who are often from oppressed or disenfranchised populations. Therapeutic jurisprudence has actively examined the anti-therapeutic effects of the justice system on various minority groups, such as “mass post-traumatic stress” (Mugliston, 2008, p. 363) and “law as microaggression” (Davis, 2010, p. 252). Therapeutic jurisprudence recognizes the sociopolitical context where the law resides and that the law often functions as a social engineering of systemic oppression and domination, interacting with larger social forces. “Hierarchical judgment predicated upon race” (Davis, 2010, p. 252), “social message of subordination” (Davis, 2010, p. 252), and most importantly, historical exclusion of minority group members from an opportunity for their “voice” to be heard in a meaningful way in the justice system (Henning, 2008; Lind, Tyler, & Huo, 2010), are all evident in legal decision-making at various levels; therapeutic jurisprudence seeks to challenge those injustices and transform the law as a “positive change agent” (Wexler, 2008, p. xvii) to promote social justice in the legal system.

The “dignity and worth of the person” is probably the central value embraced by therapeutic jurisprudence, and it is also the most consistent value shared between social work and therapeutic jurisprudence. Therapeutic jurisprudence has been built on the “ethics of care” with deep “affirmation of the value of human life” (Rotman, 2010, p.

678). “Meaningful participation” through having a voice heard and validated, as well as “individual autonomy, self-determination, and choice” are all emphasized as “important components of therapeutic jurisprudence that promote the psychological well-being of those who are involved in legal proceedings” (Henning, 2008, p. 330). This calling is particularly urgent in the area of criminal justice, because it has been evident that the criminal justice system, as a social force consisting of not only legal actors but also legislators and voters, has “dehumanized, demonized, and ultimately excluded certain criminal offenders from the human society” (Rotman, 2010, p. 692). Therapeutic jurisprudence stands firmly with respect to human dignity and challenges “the illusion of security above and beyond humanity and justice” (Rotman, 2010, p. 692).

Finally, the “importance of human relationship,” “integrity,” and “competence” are also hallmarks of values that both social work and therapeutic jurisprudence uphold, as practice-oriented disciplines. Therapeutic jurisprudence, like social work, perceives the human relationship as a critical instrument for its practice (Mugliston, 2008). It advocates the transformation of the role of the law as therapeutic agent or change agent (Wexler, 2008) and the construction of “culturally competent therapeutic jurisprudence” (Hartley & Petrucci, 2010, p. 272) based on the “client-centered, collaborative model of advocacy” (Henning, 2008, p. 333). Therapeutic jurisprudence challenges traditional legal education, and “seek[s] to promote policies, systems, and relationships, consistent with principles of justice and constitutional law that secure positive therapeutic outcomes and minimize negative or anti-therapeutic consequences” (Henning, 2008, p. 329). An emphasis on education in the area of the relationship, ethical principles, and cultural

competence is another example demonstrating the consistency between therapeutic jurisprudence and social work in terms of their value orientations.

### **Therapeutic Jurisprudence and Capital Trial Defense Practice**

The therapeutic jurisprudence perspective can bring about various transforming effects on capital defense practice with indigent clients. For example, therapeutic jurisprudence helps practitioners to transcend “legal assumptions about human behavior” (Fondacaro, 2010, p. 224). The traditional legal view has defined human nature as “autonomous, independent, and rational” (Fondacaro, 2010, p. 227) and presumed that human beings act based on rational reasoning, which is free from contextual influences. This view of human nature and behavior is the backbone of retributive justice, which has been the dominant legal philosophy embraced by the U.S. jurisprudence system.

Therapeutic jurisprudence, alternatively, acknowledges the complexity of human nature and behaviors. Therapeutic jurisprudence asserts that both human behaviors and the legal system are subject to larger social forces, including systematic oppression and domination, and explores ways to liberate the role of the law to serve the well-being of those who are affected by the law.

This alternative understanding of human nature and human behavior in the legal context is significantly important for capital defense practice with indigent clients, for its critical portion of work resides in the development of, and effective presentation of, comprehensive mitigation evidence based on the social history of the capital defendant. A solid understanding and compelling explanation of the acts of capital defendants, who are often from oppressed and disenfranchised communities full of traumatic experiences



including harsh abuse and deprivation, are at the heart of capital defense practice with indigent clients in determining the defendant's moral culpability or leniency.

Another significant implication of therapeutic jurisprudence on capital defense practice with indigent clients is its emphasis on the therapeutic role of the law, based on the ethics of care and strong faith in human dignity (Rotman, 2010). Humanizing the capital defendant and ensuring his or her voice is heard in a meaningful way is one of the fundamental tasks for capital defense practitioners, and therapeutic jurisprudence provides the philosophical foundation for capital defense practitioners in working with their clients, as human beings, regardless of the crime he or she has been accused of committing.

Finally, the therapeutic jurisprudence perspective provides a useful lens in addressing the anti-therapeutic consequences of the law on the involved parties, including legal actors, as a critical inquiry, which has been otherwise unaddressed (Bandes, 2006; Elwork & Benjamin, 1996; Parker, 2007; Silver, Portnoy, & Koh Peters, 2004; Silver, 2010). By proposing an alternative viewpoint of the law as a social force, the therapeutic jurisprudence perspective provides the rationale for the importance of the critical examination of the possible anti-therapeutic effects of the death penalty on capital trial defense practitioners who represent indigent clients.

## METHODOLOGY

### **Research Design**

#### **The Epistemological Standpoint**

The purpose of this study is to understand secondary trauma associated with capital trial defense practice for indigent clients by elucidating the lived experiences of the practitioners, using a phenomenological approach based on a constructivist epistemological standpoint. This study aims at obtaining a deeper understanding of the practitioners' experiences, rather than measuring the phenomenon. The constructivist phenomenological approach serves best for answering the research questions and fulfilling the purpose of this study.

Constructivism holds to the “belief that human phenomena are socially constructed” (Padgett, 2008, p. 7). Ontologically, constructivism takes the relativist view (Guba & Lincoln, 1994). That is, knowledge is perceived as multiple and dialectical social constructs that are locally situated and experientially embedded (Guba & Lincoln, 1994; Harding, 2006; Pfohl, 2008). It asserts that “the reality of social construction involves the subject position of those engaged in the labor of construction” (Pfohl, 2008, p. 651).

The constructivist epistemological perspective is “transactional” and “subjectivist” (Guba & Lincoln, 1994, p. 111). In this view, “knowledge [is] created in the interaction among investigator and respondent” (Guba & Lincoln, 1994, p. 112) in the knowledge-seeking project” (Harding, 2006, p. 249). Epistemology is defined as “a subdiscipline of philosophy concerned with the nature and validation of knowledge” (Schweizer, 1998, p. 39). Epistemology addresses questions such as, “how do they

[researchers] know what is known?” (Creswell, Hanson, Clark, & Morale, 2007, p. 238). Constructivist inquiry holds to the assumption that knowledge development is basically “hermeneutical and dialectical” (Guba & Lincoln, 1994; Schweizer, 1998). For a constructivist, social construction is subject to “new interpretation as information and sophistication improve” (Guba & Lincoln, 1994, p. 113).

The constructivist perspective suggests that understanding of subjective experiences “enable a more attentive conversation with the real world itself” (Pfohl, 2008, p. 667). The emphasis on the significance of subjectivity in knowledge development contributes to illuminating experiences and voices of marginalized populations (Harding, 2006; Pfohl, 2008). As a result, constructivist researchers often embrace the values of “advocacy and activism” (Guba & Lincoln, 1994, p. 113) and contribute to addressing the issue of social justice from the viewpoint of oppressed populations (Harding, 2006; Pfohl, 2008).

### **Constructivist Phenomenological Approach**

Phenomenology is a study of “the lived experience of a phenomenon” (Padgett, 2008, p. 35), or “people’s experiences as they live every day” (Creswell et al., 2007, p. 253). Phenomenology is also called “the study of meaning created by human beings in particular historical settings” (Schweizer, 1998, p. 47). The goal of phenomenological studies is to invite the audience to experience “the feeling that ‘I understand better what it is like for someone to experience that’” (Polkinghorne, 1989, p. 46, cited in Creswell et al., 2007, p. 255). A phenomenological approach fits well with a constructivist epistemological perspective (Guba & Lincoln, 1994) and best serves in addressing research questions such as “what do all participants have in common as they experience a

phenomenon (e.g., grief, anger)?” and “what have they experienced and how have they experienced it?” (Creswell et al., 2007, pp. 252-253).

According to Moustakas (1994, cited in Creswell et al., 2007), constructivist phenomenological inquiry takes the following systematic steps:

- (1) “Identifying a phenomenon of study”
- (2) “Bracketing out one’s experiences”
- (3) “Collecting data from several persons who have experienced the phenomenon”
- (4) “Analyz[ing] the data by reducing the information to significant statements or quotes, combin[ing] the statements into themes, and writ[ing] a textual description of the experiences of the person, a structural description of their experiences (the conditions, situations, or context in which they experienced the phenomenon) and a combined statement of textural and structural description to convey the essence of the experience” (p. 254).

Constructivist phenomenological researchers also acknowledge “the inclusion of participant values in the inquiry” as inevitable, and take the role of “passionate participant” who is “actively engaged in facilitating the ‘multivoice’ reconstruction of his or her own construction as well as those of all other participants” (Guba & Lincoln, 1994, p. 115). In so doing, constructivist phenomenological researchers utilize reflexivity and bracketing in order to maintain “a fresh perspective of the phenomenon under examination” (Creswell et al., 2007, p. 254).

## **Guiding Theoretical and Conceptual Lenses**

This study is exploratory in nature. The phenomenological approach requires a suspension of “judgment about the existence of the world, and ‘bracket[ing]’ or set[ting] aside existential assumptions made in everyday life and in the science” (Schwandt, 2001, p. 19). While the inductive exploration remains the primary focus of this study, this study used several theoretical and conceptual frameworks as “lenses” that provide “leads and directions in formulating study questions,” and “through which the study’s data and ideas are refracted” (Padgett, 2008, pp. 13-15).

The constructivist phenomenological approach fits well with the conceptual framework of vicarious trauma because vicarious trauma is built upon a constructivist self-development theory, and it shares the epistemological standpoint (McCann & Pearlman, 1990). Furthermore, critical theory on systemic dehumanization provides a lens to see death penalty jurisprudence from the perspective of those who are marginalized or disenfranchised. And finally, the therapeutic jurisprudence perspective legitimizes “anti-therapeutic” effects of the law on legal actors as an important inquiry.

## **Sampling and Recruitment**

### **Sampling Strategies**

The sampling strategy employed for this exploratory qualitative research is purposeful sampling. According to Patton (1990), *purposeful sampling* fits well with qualitative inquiry because it enables researchers to “select information-rich cases whose study will illuminate the question under study” (p. 169). Padgett (2008) defines *purposive sampling* as “a deliberate process of selecting respondents based on their

ability to provide the needed information” (p.53), and emphasizes that it is typically used in qualitative inquiry.

Purposeful sampling has several variations in terms of sampling strategies. For example, Patton (2002, cited in Padgett, 2008) suggested eight different variations of purposeful sampling that are employed at the beginning of qualitative inquiry, such as *extreme or deviant case sampling, intensity sampling, maximum variation sampling, homogeneous sampling, typical case sampling, criterion sampling, and snowball sampling* (p. 54). In this study, criterion sampling was used.

Criterion sampling is a technique to select samples “that meet some predetermined criterion of importance” (Patton, 1990, p. 176). Criterion sampling is one of the purposeful sampling strategies that are helpful in “narrow[ing] the range of variation and focus[ing] on similarities” (Palinkas et al, 2013, p. 535) of study samples.

The criterion predetermined for the recruitment of the study participants included as follows: (1) Capital trial defense practitioners who currently represent indigent clients; and (2) Capital trial defense practitioners who take on one of the roles, including attorneys, mitigation specialists, paralegals, and investigators, in accordance with the Guidelines of the American Bar Association (Mahr, 2008).

Based on the criteria above, an organization that employed a large number of capital trial defense teams representing indigent clients who were charged with capital murder in a metropolitan area of the Southwest was identified as a suitable study site, and all the staff who worked for this organization as capital trial defense practitioners were identified as good candidates for this study.

## **Recruitment Procedures**

In the first step of the recruitment process, the office manager and the capital unit supervisor of this organization were contacted through the assistance of an informant, and their permission to recruit study participants was obtained. Approval from the University Institutional Board Review (IRB) was obtained in advance of contacting the office manager and the capital unit supervisor.

As the next step, information letters to recruit the study participants were distributed to all the staff engaging in capital trial defense practice within the organization. This information letter was developed based on a format suggested by the IRB, which pertained to the purpose of this study, interview procedures, potential risks and benefits associated with participation, participants' rights, how to participate in the study, and contact information of the IRB.

With assistance from the capital unit supervisor, the information letter was placed in each individual's mail box, and an electronic message was sent to the staff to inform them of the opportunity to participate in this study. The message also assured the staff that (1) participation in this study would be completely voluntary, and (2) participation in this study would be kept confidential and the office would not know who participated in this study.

Those who were interested in participating in this study were asked to contact this researcher via E-mail or telephone. Within a few days after the announcement of this study, 19 capital trial defense practitioners contacted the researcher to express their interest in participating in this study. During this initial contact, the practitioners were asked if they were currently holding ongoing cases of indigent clients who were charged

with capital murder, as the eligibility criteria for the participation in this study. All 19 practitioners who expressed their willingness to participate in this study met eligibility criteria. All but one practitioner provided their informed consent to participate in an audio-taped, face-to-face individual interview, and were included in this study ( $N = 18$ ).

### **Sample Size**

The ideal sample size in phenomenological studies may vary and depend upon the depth of data; however, it is suggested that samples ranging from five to 25 are adequate for saturation in identifying and describing the essential themes in phenomenological studies (Creswell et al, 2007; Polkinghorne, 1989). Also, Guest, Bunce, and Johnson (2006) suggest that twelve interviews should be sufficient for qualitative inquires whose aim is to understand and describe shared perceptions and experiences of the participants who represent relatively homogeneous samples (p. 79). In accordance with these suggestions, the sample size of this study met the criterion in conducting the thematic identification sufficiently.

### **Descriptions of the Study Participants**

The participants ( $N = 18$ ) in this study included seven attorneys, five paralegals, four mitigation specialists, and two investigators who engaged in capital trial defense practice for indigent clients. Twelve of them were female and six were male. The participants' ages ranged from 35 to 64 ( $M = 51$ ). Seven participants held Juris Doctorate degrees, six participants had earned Bachelor's Degrees, four participants had earned Master's Degrees, and one participant held a High School Diploma. The number of years engaged in capital trial defense practice ranged from one to six years ( $M = 3.9$ ), and eleven out of 18 participants experienced their own clients receiving death verdicts.



Table 1 illustrates the participants' role and experiences of clients receiving a death verdict. The participants were assigned dual-gender pseudonyms to protect their privacy, while providing a humanizing attribute to each of them.

Table 1

*Participants' Roles and Experience of Clients Receiving a Death Verdict*

N = 18

Role and Pseudonym*	Experience of Clients Receiving a Death Verdict?
<i>Attorney</i>	
Alexis	Yes
Avery	Yes
Cameron	No
Dakota	No**
Hayden	No
Jesse	No**
Sean	Yes
<i>Paralegal</i>	
Angel	Yes
Casey	No
Charlie	Yes
Drew	No
Sidney	Yes
<i>Mitigation Specialist</i>	
Cayden	Yes
Jordan	Yes
Marley	No
Riley	Yes
<i>Investigator</i>	
Morgan	Yes
Sam	Yes

*Note. \* Dual-gender pseudonyms were assigned to the participants to maintain their confidentiality. \*\* Experienced standing for a client of other attorneys when a death verdict was delivered.*

The demographics of each participant are not included in Table 1 and reported only in an aggregated manner above as an additional safeguard to protect the participants' privacy. The sample of 18 participants represented all nine capital trial defense teams at the study site. At least one practitioner from each team chose to participate in this study. There were several teams from which two or more practitioners working on the same team participated in this study. Confidentiality of each participant was carefully maintained in order to protect their privacy.

## **Data Collection and Instrumentation**

### **Semi-Structured Individual Interviewing**

The data collection method employed in this study is semi-structured, face-to-face, individual interviewing. Constructivist phenomenological inquiry often uses in-depth interviews with “individuals who share particular life experiences” (Padgett, 2008, p. 35). One of the types of in-depth qualitative interviewing is *semi-structured*, or *semi-standardized* individual interviewing. Berg (2009) describes it as follows:

This type of interview involves the implementation of a number of predetermined questions and special topics. These questions are typically asked of each interviewee in a systematic and consistent order, but the interviewers are allowed freedom to digress; that is, the interviewers are permitted (in fact, expected) to probe far beyond the answer to their prepared standardized questions (p. 107).

During semi-structured individual interviewing, an *interview guide* or an *interview schedule* is used in order to facilitate the interview process (Berg, 2009; Bernard, 2006; Padgett, 2008). An interview guide includes *essential questions* that target the focal point of the study, as well as *probing questions* that help the participants

elaborate their responses (Berg, 2009; Bernard, 2006; Padgett, 2008). The use of an interview guide allows researchers to elicit “the most valuable information” in the interview, while staying on the topic of interest (Padgett, 2008, p. 108).

Semi-structured individual interviewing is time consuming and requires skilled interviewer(s) as well as a carefully crafted interview guide (Bernard, 2006; Berg, 2009); however, it is a useful method to collect in-depth data that helps researchers in “understanding the perceptions of participants or learning how participants come to attach certain meanings to phenomena or events” (Taylor & Bogdan, 1998, p. 98, cited in Berg, 2009, p. 110).

### **Instrumentation**

In this study, an interview guide was used in order to facilitate semi-structured individual interviewing. Additionally, the participants’ demographics, including age, education, the professional role on the capital trial defense team, years of experience, and having clients who received a death verdict were collected using a one-page information sheet. No standardized measures to capture the perceived mental health status of the participants were incorporated in this qualitative study.

The interview guide was developed and revised referring to literature on related topics and consulting with a qualitative research advisor as well as a few informants who had extensive knowledge of capital trial defense practice for indigent clients. No pilot study was conducted with individuals who represented the characteristics of the population of this study in advance of the data collection.

The interview guide included the following essential questions and probing questions whose intention was to gather thick descriptions:

- (1) What motivates you to engage in capital trial defense practice for indigent clients?
  - How did you first come to join the capital trial defense team?
  - What keeps you practicing in this work?
- (2) What makes you feel stressful because of the nature of your work?
  - Please give me some examples.
- (3) What are your traumatic experiences because of the nature of your work?
  - Please give me some examples.
- (4) What is your experience with your clients receiving a death verdict?
  - How did that make you feel?
- (5) How does this work affect you, including your health, relationships, and world view?
  - Please give me some examples.
- (6) What are your coping strategies?
  - Please give me some examples.
- (7) What is your support system from personal and organizational contexts?
  - Please describe all sources of support that you feel were helpful.
  - What kind of organizational support would be helpful for you to deal with the stress relating to the nature of your work?

### **Data Collection Procedures**

The original data of this study were collected as an assignment for a *Qualitative Research Methods* class taken in 2010 as part of doctoral coursework. All interviews were conducted by myself as the single interviewer who had sufficient training on qualitative interviewing through doctoral coursework and related research experience.

Tape-recorded interviews with 18 participants were completed in their private office spaces based on their preference in March and April 2010. I also met one additional practitioner who was interested in this study; however, a conversation with this practitioner was excluded from the data collected for this study because this practitioner was more interested in discussing secondary trauma and criminal defense lawyering in general rather than answering research questions, and requested to have this conversation kept private and not tape-recorded.

An information flyer was utilized in lieu of informed consent based on IRB instructions. Before the interviews started, the researcher allocated a sufficient time (approximately 15 minutes) to greet the participants, review the information letter together, assure their confidentiality, and address any questions or concerns that the participants may have had in order to create a safe, comfortable environment for the participants as much as possible.

The interviews were facilitated using the interview guide in order to elicit the essences of the participants' experiences associated with the research questions. A variety of "probing" techniques suggested by Bernard (2006), such as "the uh-huh probe," "the tell-me-more probe," "the echo probe," and "the silent probe" (pp. 218-219) were used in order to obtain "thick descriptions" with plenty of context and examples to better understand the meaning of their lived experiences.

At the end of the interviews, the participants were asked to fill out the information sheet that described participants' demographics and work-related background. Additionally, a de-briefing time (approximately 10 minutes) was also allotted after each interview, depending on the participants' needs and preferences.

The average length of each tape-recorded interview was approximately one hour, ranging from 40 minutes to 120 minutes. The total length of each interview visit including the greeting and de-briefing time ranged one hour to 2 hours 30 minutes. No incentive or compensation was provided for their participation in the interviews.

## **Data Analysis**

### **Data Management**

Data collected for this study were managed using Microsoft Windows Software (Pelle, 2004). Tape-recorded interviews with 18 participants were downloaded and stored in Microsoft Media Player. Each interview was transcribed verbatim using an outside transcribing service (14 transcripts) and by myself (4 transcripts), and formatted with line numbers. The audio data, transcript, and information sheet of each participant were assigned a unique identifier, and all identifiable information including the participants' contacts were securely deleted at this time. The data filing system was created using Microsoft Word Processing Software and processed manually using tracking, comments, editing, and table functions (Pelle, 2004).

### **Phenomenological Analysis**

In this study, data were analyzed using the phenomenological analytical approach. Phenomenological analysis is a qualitative data analytical approach employed by researchers who are interested in understanding “the lived experience of a phenomenon” of interest, through thematic identification that elucidates “the essence” embedded in shared experiences (Padgett, 2008, p. 35).

Morse (2008) defines a *theme* as “a meaningful ‘essence’ that runs through the data” (p. 727). Morse (2008) also notes that a theme is identified as “the researcher reads

the interview or document paragraph by paragraph, asking, ‘What is this about?’, and thinking interpretively” (p. 727).

The focus of the thematic identification in qualitative data analysis includes *manifest content* and *latent content* (Berg, 2009). According to Berg (2009), manifest content is made up of the “elements that are physically present and countable,” including “*the surface structure* present in the message” (pp. 343-344). Alternatively, Berg (2009) conceptualized latent content as “the symbolism underlying the physical, objective data,” including “*the deep structural* meaning conveyed by the message” (p.344). Analysis of this study focuses on both manifest and latent content with a greater emphasis on the latter because latent content helps the researcher “learn and understand the meanings people give to their world and experiences” (Becker, 1996, p. 61).

The data analysis of this study was guided by Moustakas’ phenomenological analytical procedures (1994, cited in Creswell et al., 2007). According to Moustakas (1994, cited in Creswell et al., 2007, p. 255), thematic identification of phenomenological analysis takes the following steps:

- (1) “Textual descriptions”: Reading through transcripts gathered by “highlighting significant statements, sentences, or quotes that provide an understanding of. . . overall experience [of individual studied]”;
- (2) “Structural descriptions”: “Arraying. . . statements on paper and collapse them into meaning units or broader themes. . . then go back through the transcripts and look at themes more closely and identify situations or contexts in which the themes appeared”;

- (3) Description of “the essence of the experiences”: “Describ[ing]. . . the experiences of individuals studied and their common experiences with the phenomenon,” including contextual descriptions and variations of the experiences.

Moustakas (1994, cited in Creswell et al., 2007) also suggests that “[researchers] begin a project describing their own experiences with the phenomenon and bracketing out their views before proceeding with the experiences of others” (p. 254) when conducting phenomenological inquiry. In this study, my personal experiences associated with the phenomenon examined are presented in the prologue as part of self-reflexivity.

The process of the thematic identification of this study was facilitated by the *immersion/crystallization approach* (Crabtree & Miller, 1999). Depending on the type of inference, qualitative inquiry involves three different analytical approaches: (1) *template approach*, (2) *editing approach*, and (3) *immersion/crystallization approach* (Crabtree & Miller, 1999).

In the template approach, deductive inference is taken, and a prior codebook is created based on literature, while the editing approach is more inductive, and creates a codebook that is “grounded” on the data (Crabtree & Miller, 1999).

The immersion/crystallization approach is another inductive approach that emphasizes the interpretative aspect for the thematic identification by “immersing” in the data in order to “crystallize” the essence or the meaning of the perceived experiences of the study participants (Crabtree & Miller, 1999). The immersion/crystallization approach does not require creation of a codebook; rather it focuses on understanding and



elucidating the lived experiences (Crabtree & Miller, 1999), which fits well with the purpose of this study.

Moreover, the data analysis of this study took the *iterative* process (Srivastava & Hopwood, 2009). According to Srivastava and Hopwood (2009), the process of phenomenological data analysis is “iterative” in nature (p. 77). The iterative process of qualitative analysis is described as “a loop-like pattern of multiple rounds of revisiting the data as additional questions emerge, new connections are unearthed, and more complex formulations develop along with a deepening understanding of the material” (Berkowitz, 1997, cited in Srivastava & Hopwood, 2009, p. 77).

Srivastava and Hopwood (2009) note that thematic identification and meaning-making emerge from co-constructive, reflective iterative processes:

. . . Patterns, themes, and categories do not emerge on their own. They are driven by what the inquirer wants to know and how the inquirer interprets what the data are telling her or him according to subscribed theoretical frameworks, subjective perspectives, ontological and epistemological positions, and intuitive field understandings. . . . The role of iteration, not as a repetitive mechanical task but as a deeply reflexive process, is key to sparking insight and developing meaning. Reflexive iteration is at the heart of visiting and revisiting the data and connecting them with emerging insights, progressively leading to refined focus and understandings (p. 77).

Srivastava and Hopwood (2009) suggest “the iterative framework” that consists of three reflective questions that facilitate researchers’ reflexivity in reviewing and analyzing data throughout the analytical processes in a circular manner (Table 2).

Table 2

*Reflective Questions for the Iterative Framework of Data Analysis*

---

Q1: What are the data telling me? (Explicitly engaging in theoretical, subjective, ontological, epistemological, and field understanding)

Q2: What is it I want to know? (According to research objectives, questions, and theoretical points of interest)

Q3: What is the dialectical relationship between what the data are telling me and what I want to know? (Refining the focus and linking back to research questions)

---

*Source: Questions that served as the framework for the data analysis (Srivastava & Hopwood, 2009, p. 78)*

In this study, data analysis was assisted by this iterative framework, constantly revisiting the transcripts and re-listening to digital data of tape-recorded interviews, having conversations with informants in the related field, reading literature that deepened theoretical and conceptual lenses of this study, and reflecting upon my own standpoint while analyzing the data to identify “the essence” of the participants’ experiences.

Also, all transcripts were analyzed together across the participants, rather than separately analyzing the transcripts by the group of professions, such as attorneys, paralegals, mitigation specialists, and paralegals, and/or by experiences of having clients who received a death verdict or not. These are important analytical distinctions; however, this study is an exploratory inquiry whose purpose is to understand the lived experiences of capital trial defense teams who represent indigent clients, and therefore such distinctions were not included as the focus of this study. Themes identified from the analytical process were organized and presented in the chapter of findings based on overarching categories that were closely related to research questions. Finally, the

epistemological foundation, approach, and methodology of this study is synthesized as follows (Table 3).

Table 3

*Epistemological Foundation, Approach, and Methodology of this Study*

---

Epistemology	<i>Constructivist</i>
Theoretical Lens	<i>Critical Theory</i>
Conceptual Frameworks	<i>Vicarious Trauma &amp; Therapeutic Jurisprudence</i>
Perspective/Approach	<i>Phenomenology</i>
Methodology	<i>Phenomenological Analysis</i>
Data Collection Method	<i>In-depth Interviews with Individuals</i>
Data Analysis Method	<i>Immersion</i>
Format for Writing	<i>Quotes</i>

---

*Source: The Foundations and Processes of a Qualitative Study (Padgett, 2008, p. 14)*

**Strategies for Trustworthiness**

Constructivist qualitative researchers often use the term *trustworthiness* when addressing the validity of the study (Creswell & Miller, 2000; Lincoln & Guba, 1985; Padgett, 2008). Evaluative criteria of the trustworthiness of qualitative research include (1) credibility, (2) transferability, (3) auditability or dependability, and (4) confirmability (Padgett, 2008). Credibility is defined as “the degree of fit between respondents’ views and the researcher’s description and interpretations” (Padgett, 2008, p. 181).

Transferability means the ability to “transfer knowledge from one setting to another setting” as if it provides “vicarious experience” (Guba & Lincoln, 1994, p. 114).

Auditability or dependability illustrate that “the study’s procedures are documented and

traceable” (Padgett, 2008, p. 181). Auditability addresses the logical cohesiveness of the analysis, not the replication, and confirmability indicates that “the study’s findings were not imagined or concocted, but, rather, firmly linked to the data” (Padgett, 2008, p. 181).

Major threats to trustworthiness include (1) reactivity, (2) researcher biases, and (3) respondent biases (Padgett, 2008, p. 184). Reactivity indicates “the potentially distorting effects of the researcher’s presence on participants’ belief and behaviors” (Padgett, 2008, p. 184). Examples of researcher biases include leading questions, ignoring emerging data, and “going native” (Padgett, 2008). Researcher biases “emerge when observations and interpretations are clouded by preconceptions and personal opinions of the researcher” (Padgett, 2008, p. 184). Respondent bias may occur when the subjectivity of the respondent is called into question, information is withheld, the memory of the respondent is faulty, or the respondent is too eager to please the researcher (Padgett, 2008).

There are multiple strategies for enhancing trustworthiness of qualitative research (Creswell & Miller, 2000; Lietz & Zayas, 2010; Lietz, Langer, & Farman, 2007; Lincoln & Guba, 1984; Padgett, 2008). In this study, I chose (1) self-reflexivity, (2) negative case analysis, and (3) thick description as strategies for enhancing the trustworthiness that are recommended for phenomenological analytical studies (Guba & Lincoln, 1994).

For example, self-reflexivity is used to address researchers’ biases. Self-reflexivity involves researchers “bracketing themselves out by describing personal experiences” and “disclos[ing] their assumptions, belief, and biases” (Creswell & Miller, 2007, p. 127). “Situating ourselves social and emotionally in relation to respondents is an important element of reflexivity” (Mauther & Doucet, 2003, p. 419, cited in Lietz,

Langer, & Farman, 2007, p. 448) because it helps researchers “acknowledge how one’s identity could both help and hinder interpretation of the narrative data” (Reich, 2003, cited in Lietz, Langer, & Farman, 2007, p. 448). My own identity and standpoint were described and presented in the prologue, and I constantly asked myself the questions that facilitated the iterative analytical process (see Table 2) in order to engage in self-reflexivity.

Moreover, negative case analysis indicates “the search by researchers for disconfirming evidence” (Miles & Huberman, 1994, cited by Creswell & Miller, 2000, p. 127). Similar to a procedure of triangulation, this strategy helps researchers engage in the analytical process “in a critically self-reflective way” (Padgett, 2008, p. 181). In this study, not only confirming excerpts but also contrasting excerpts were searched and incorporated during the thematic identifications, regardless of frequency, because such incorporation helps elucidate the complexities of the lived experiences of the participants, and may provide alternative insight in understanding the phenomenon.

Finally, thick description means “deep, dense, detailed accounts” (Denzin, 1989, p. 83, cited in Creswell & Miller, 2000, p. 128). This description includes “statements, meaning units of themes, textual descriptions, structural description, and essence of the phenomenon” (Creswell et al., 2007, p. 241). Thick description gives the ability to “produce for the readers the feeling that they have experienced, or could have experienced, the event being described in a study” (Creswell & Miller, p. 129). Thick description is instrumental in developing “insightful interpretation” especially when exploring a phenomenon which is little known (Padgett, 2008).

## **Ethical Considerations**

Several ethical safeguards were taken in order to protect the study participants. First, approval from the IRB was obtained as an exempt study prior to conducting interviews in 2010 as well as data analysis in 2011. Interviews took place upon obtaining informed consent from the participants, using an information letter in lieu of a consent form. The information letter included the description of the study, the full identity of the researchers, the rights of the participants, and the procedures. This letter explained that there were no foreseeable risks involving participation in this study, and participation in this study was voluntary, i.e., the participants could withdraw from the study at any time with no negative consequences. This letter also described the safeguards to protect confidentiality of the participants and their clients, indicating that no identifying information including names and case descriptions would be used when disseminating the findings. Moreover, each participant was assigned a dual-gender pseudonym obtained from several online resources as an additional safeguard for protecting their privacy and confidentiality.

## FINDINGS

In this chapter, I present the findings in describing lived experiences of capital trial defense practitioners that emerged from the participants' narratives. In accordance with the interview guide, I elucidate their lived experiences in the following overarching categories: (1) Motivation to engage in capital trial defense practice for indigent clients; (2) Challenges in defending clients who face the death penalty; (3) Emotional reactions to clients receiving death verdicts; (4) Effects of the stress on the practitioners; (5) Coping strategies; and (6) Support systems.

### **Motivation**

All 18 participants described their motivation for engaging in capital trial defense practice. Based on their narratives, nine themes emerged: (1) "Clients"; (2) "I am against the death penalty"; (3) "They deserve to have a fair trial"; (4) "Fight for the defenseless," "speak for the voiceless"; (5) "It's my calling;" (6) Capital litigations as "intellectually stimulating"; (7) The "pinnacle" of being a criminal defense attorney; (8) "Give them some comfort" as a Black attorney; and (9) Salary increase. Most participants expressed their motivation for engaging in capital trial defense practice in relation to the first eight themes; however, two participants pointed out monetary compensation as one of the critical motivating factors for engaging in capital trial defense practice, because this work involves "added stress" or there were financial needs to support a family. Each of these themes is described below.

### **Clients**

The participants described "clients" as one of the significant motivating factors for engaging in capital trial defense practice for indigent populations. Four sub-themes

emerged: (1) “It’s about that client”; (2) “Meaningful relationships” built with clients; and (3) “Empathy” and “compassion” for clients; and (4) “He wasn’t born a killer.”

### ***“It’s about That Client”***

Investigator Morgan and mitigation specialist Marley spoke of this theme that revealed their strong focus on clients’ well-being. For example, Morgan stated: “I think everybody in Capital . . . it’s not about egos anymore. . . . It really is about that client. I think it is always about saving that person’s life.” Marley provided a similar reflection: “Quite honestly, it’s the people I work with. . . . It’s the client.” Marley further elaborated:

I see myself working for the client. That’s what keeps me going. With all the madness that takes place in a bureaucracy . . . , I just think to myself, okay, I’m doing this to save and help the defendant. That helps me.

### ***“Meaningful Relationships” Built with Clients***

Some participants spoke of clients as an important motivating factor with regards to “meaningful relationships” built with clients. For example, attorney Alexis pointed out that the meaningful relationship with clients can emerge when getting to know them and caring for them. Alexis stated, “Once you start working in this field, you get some real, meaningful relationships that are built from this.” Alexis also stated, “The close relationship you build with some of your clients. . . . You really get to know them, and you really get to care for them. They are more than just a client.” Cameron, an attorney, described an evolving process of meaningful relationships with clients:

You get to know the client so well. . . . You have so long to meet them, their families, talk to them. They’re just not that person in the police report any more. . . . They’re somebody that you can identify with and see the problems they’ve had.



Mitigation specialist Jordan resonated with the descriptions provided by Alexis and Cameron. Jordan stated that the relationship with clients could positively change over time from getting to know them as a “person”:

You get to know them as a person, other than what they did. . . . You’re building a rapport with that client and when you start off and then you look three months later or six months later and nine months later how different your relationship is with that person, the more you get to know them.

Paralegal Angel pointed out that capital trial defense practice allowed practitioners to get to know clients better and make a long term commitment. When describing motivating factors, Angel excitedly stated: “I really enjoy doing this I get to know the clients better. It’s a long term commitment.”

Riley, a mitigation specialist, suggested that meaningful relationships can be built with not only clients but also their family members. For Riley, such relationships with their family members were also an important motivating factor:

Just being able to subjectively look at the families, but not get involved. . . . I just sit down there, listening to them. . . . We are just being, right where we are. That’s what I really like about the job.

### ***“Empathy” and “Compassion” for Clients***

A few participants spoke of clients as a motivating factor with regard to empathy and/or compassion for clients. For example, investigator Morgan described the importance of empathy:

I think you have to have empathy. You have to have that; you can step out of your box and step in their shoes and realize in the right circumstances and at the right moment, that if everything lined up, you could react the same way. Any person could be put in that position and I never think that I’m above them, or I could do the same thing if the circumstances were not correct. It’s the empathy. For one moment in time, I could be the one sitting in that cell and not the one sitting across them where I get to get up and walk home every day. I would never judge. I think, people in [the] Capital [unit] don’t judge.

Alexis, an attorney, also expressed a sense of empathy for clients as a motivating factor: “I can see myself, my face in their eyes, in some cases. That kind of keeps me going.” Sam, an investigator, pointed out that compassion for clients was a critical factor in keeping the motivation for this work:

I think you feel compassion for another because you kind of I don’t know if this makes any sense you kind of put aside what they are accused of. Remember, when we’re dealing with them, they haven’t been convicted, they’re accused. They are presumed they should be presumed innocent until found guilty. They are accused of committing a murder, but they also are human being. If you don’t have compassion for another human being, then what have we become? We’ve lost our humanity. How can I look at a client, look at them in the eyes and talk to them and not feel compassion? You just have to. It’s sad that they got to that point and you can say, “Well, a lot of them had a very hard upbringing.” . . . Maybe if we were brought up under that very impoverished conditions or we had abuse in our life, who’s to say we wouldn’t be the same? We’ve been lucky that we didn’t have that or we were able to overcome that. I’ve heard a lot of people say in society, “I had a rough life. I grew up in the ghettos.” Yes, you did, but something took you in the right direction. This person now that’s charged with this murder maybe didn’t have that same break that you had or maybe they have a mental problem that didn’t allow them to get themselves out of the situation where they would get this far to a murder. . . . How can’t you feel sorry for another human being that’s charged with a murder and facing death?

You feel compassion because you are dealing with a human being. That human being you’re dealing with also has feelings, emotions and maybe a lot of baggage or scars that brought them to that point. If you can’t feel sorry for another human being, where are you? You see a homeless person walking along and a lot of people say, “Oh, that’s just a bum.” It’s a human being. How can you just say it’s just a bum? . . . You have to have compassion for another human being that’s in a worse situation than you are, you just do.

Paralegal Angel referred to compassion for clients as a motivating factor: “I find that. . . once I learn their story, I have a lot of compassion for them.” Angel also spoke on behalf of colleagues who engaged in capital trial defense practice:

They have absolutely a lot of compassion for the people, and they work really, really hard. They pour their heart into what they’re doing, and I admire that, that they can do that.

***“He Wasn’t Born a Killer”***

Several participants spoke of clients as a motivating factor with regards to the realization that “He wasn’t born a killer.” Participants’ narratives illustrated that the realization was intertwined with their deeper understanding of clients’ lives within broader contexts, such as their biological, developmental, psychological, and socio-economic as well as cultural backgrounds, which leads them to see clients with a “humanizing” lens. For example, attorney Avery stated: “He wasn’t born a killer. He was shaped into one. That’s ultimately what he became.” Paralegal Angel provided a statement that resonated with Avery’s point of view:

I like to look at the sociological aspect of the way that these people were brought up. I kind of have a philosophy myself that no one is born bad, that because of their circumstances they became the person that they did that ended up doing what they did. That’s a large part of it is that I think that the people in this unit feel that way also, that they’re not bad people. They got on drugs or they have a bad environment or they are mentally ill, so they have more of an understanding of that rather than just like “okay, we’ll just kill them. They did something bad.”

Paralegal Sidney, referring to difficulties in clients’ lives, emphasized the complexities in understanding human behaviors:

A lot of our clients, we find out that they grew up in a horrible home environment, so that’s why I have always been more defense-oriented, because I have seen it’s not as simple as, okay, you have committed the crime, so you are guilty, but there is a reason behind it a lot of times. A lot of the kids are the product of the environment.

Jesse, an attorney, pointed out that re-constructing clients’ life histories for the development of mitigation evidence leads capital trial defense practitioners to see them as people, and to obtain a deeper understanding of the complexities of their behaviors:

We get to know our clients so well that in spite of what they're accused of, we see this other side of them. As you know, we go back from before they were born and we get to know them a lot of times literally better than they know themselves. We in almost every case are able to see a real human side of them and see the cause and effect that goes into the dysfunction which results in the crime.

Investigator Morgan called clients “traumatized people.” Morgan reflected on the abject adversities of clients’ lives, and spoke of them empathetically:

There’s so many of them that never had . . . they never had a prayer. I mean they have such horrendous lives and such horrendous backgrounds. They were sexually abused. They were physically abused. There are so many that are traumatized people. In some cases, you go like, “You only killed one?” I mean that sounds kind of like, “Oh, my gosh,” but these people are so wounded. They’re damaged people.

Resonating with Morgan’s perception, attorney Alexis empathetically described clients and reflected on their lives:

They are very damaged individuals. They did not have the same choices that I had growing up. . . . A lot of them had parents who were not available for them, that just contributes to their bad choices they learned to make in their own lives that result in death, usually the death of another individual.

Hayden, an attorney, referred to an example of a client who suffered from significant traumatic experiences:

Some of these people just never had a chance in life. . . . We had a client, a female client who began getting raped when she was a young child by her own family. They stopped raping her when she turned a [teen-age] girl. . . . A few years later she of course was messed up in the head. She winds up killing somebody. She never had a life from childhood on. . . . Like you and I, we can sit here and talk and enjoy life. These people don’t have that opportunity. It’s a wasted human life.

### **“I Am against the Death Penalty”**

Half of the participants spoke of the motivation for engaging in capital trial defense practice in relation to their opposition to the death penalty. Two sub-themes emerged: (1) “The death penalty is unjust,” and (2) “Human life has value.”

### ***“The Death Penalty Is Unjust”***

Several participants expressed their opposition to the death penalty with regard to concerns about its unjust administration. For example, Alexis, an attorney, stated, “I

have a strong belief that the death penalty is administered unjustly.” Attorney Dakota articulated, “There is no fair way to administer the death penalty.” Paralegal Angel expressed concerns about arbitrariness in details:

I think that the death penalty is unjust in that there are so many variables, and you can have somebody go to trial who has killed somebody whose circumstances may be better or worse than a death penalty person, and they’re not going to get the death penalty.

Attorney Dakota and investigator Morgan spoke of their concern about the cost for taxpayers associated with maintaining the death penalty:

I wish the jurors understood what it costs us as taxpayers. Most of that stuff is never told to them. They don’t know that it costs more to appeal something, because everybody has an automatic appeal instantly when they receive death (Morgan).

We've seen state after state decide they can't afford it. Do you want a fire truck? Do you want to lay off ten teachers? Or do you want to have the death penalty? I think the question answers itself, and it makes me sad that the people who run the state government can't let themselves see that (Dakota).

Investigator Sam and paralegal Sidney stated that the reason that compelled them to work against the death penalty through their practice was the fear that an innocent person may be tried, convicted, and ultimately executed:

I’ve always been against the death penalty. The reason I’ve been against it is I have this fear or worry. What if this person is innocent? In a court of law, somebody has to be proven guilty beyond a reasonable doubt, but reasonable doubt is just that. There could be a little bit of a doubt. Now, what if that person is innocent? When I would present my argument to other people and was talking in spirited discussion, they would say to me, “Well, maybe so that one person is innocent, the most of them are not.” That’s probably true, but how would they feel if they were that one person, or if it was their brother, or mother or son? (Sam).

It is possible to make a mistake, it is possible to convict an innocent person. . . . If they could get convicted and they get sentenced to death, then that is ultimate punishment and there is no going back. . . . (Sidney).

Mitigation specialist Marley mentioned the inhumane conditions on death row in relation to their opposition to the death penalty. Marley stated, “I am so strongly against the death penalty. . . . The conditions that they live in . . . the inhumanity of it.”

### ***“Human Life Has Value”***

Attorney Jesse and paralegal Charlie expressed their objection to the death penalty because the value of life should be preserved and respected with regard to all human life, and the death penalty contradicts this belief. The following excerpts illuminated how the value of life motivated Jesse and Charlie to engage in capital trial defense practice:

I'm very proud to do what I do. Not just because it's supposedly like one of the higher levels of criminal defense. I think we do a very worthwhile task. I think to try to save lives is a noble thing, even if they are these broken lives. In fact, maybe because they are broken lives if we're really going to prove the thesis that human life has value, every human life, then what better way to prove it than to try to preserve and save the life of the most, quote unquote, wretched people in our society. I'm very proud of what I do. It's an honor to do what I do (Jesse).

I'm more spiritual. . . . I think you do value life a lot more. . . . It just makes you realize what life is like. It's probably one reason I can probably do some of this work. . . . Probably I just feel stronger the more work I do against the death penalty (Charlie).

### **“They Deserve to Have a Fair Trial”**

Several participants indicated that the motivation for engaging in capital trial defense practice was driven by their desire to protect the right to a fair trial of indigent individuals. For example, Alexis stated, “Many of them are guilty of what they have done, but even so, they deserve to have their constitutional rights protected, they deserve to have a fair trial.” Also, Paralegal Sidney described, “I think that everybody is entitled to a fair trial, that it's one of the most important rights that we have.” Moreover, Marley, a mitigation specialist, expressed, “While they may have done something horrific, they're

still people. They deserve to be treated with basic human rights.” Furthermore, Drew, a paralegal, described capital trial defense practice as a “fight for people’s rights.”

Paralegal Casey referred to the U.S. Constitution, stating that “We’re truly guardians of the Constitution,” and “It’s up to us to make sure that our clients, or anybody else for that matter, receives their full Constitutional rights when they’ve been accused of a crime.” Investigator Sam’s sentiment echoed with Casey: “I’m working here so that you can protect the rights of the individual. We’re all entitled to have the best defense that we can have and that’s what our system is based on. That’s what makes America a great country.” Similarly, Riley, a mitigation specialist, expressed, “We are sort of protecting your civil rights, because if they [clients] are not fit to live. . . . What’s the next population that’s not gonna be fit to live? . . . It’s a slippery slope that you are on.”

### **“Fight for the Defenseless,” “Speak for the Voiceless”**

Some participants expressed the fact that they engaged in capital trial defense practice because they were willing to stand up for marginalized individuals who were not only indigent but were also often disenfranchised. For example, Avery, an attorney, used the phrases, “fight for the defenseless” and “speak for the voiceless” as reasons for making a commitment to this work. Attorney Hayden provided an excerpt that resonated with Avery:

I enjoy being a defense attorney because I enjoy fighting for people who really can’t fight for themselves. . . . A lot of times, these people, nobody in their life cares about them. We are their last resort. Especially when you get to the capital level . . . the government wants to kill them. The only thing keeping them from being killed is us. . . . When we get this person, nobody else in their life can or will help them. Most of society hates them, wants them dead.

Moreover, Riley, a mitigation specialist, emphasized the importance of “giv[ing] a voice:”

What motivates me . . . is to stand up for people nobody else really wants to stand up for. Defend the un-defendable. . . . Everybody should have a voice no matter how awful they may have turned out. . . . It’s more than just a right. . . . They still need somebody to stand up for them. . . . Somebody has to. . . give them a voice.

Riley also stated, “I really wanted to stay with. . . underserved people. . . . I like working with these people . . . that have gotten very marginalized, especially this population.”

Echoing Riley’s narratives, Alexis, an attorney, stated, “I wanted to help those people . . . kind of the worst of society, kind of marginalized completely.” Alexis also emphasized that “the enjoyment of the work itself, in the population that you are serving” was an important factor fueling the motivation to engage in capital trial defense practice for indigent clients.

### **“It’s My Calling”**

Some participants spoke about their work as capital trial defense practitioners in terms of their “calling,” “mission,” or “passion.” For example, mitigation specialist Marley stated, “It’s not just a job to me. It’s something I believe in. That kept me here.” Similarly, Morgan, an investigator, said: “It’s a passion for me. I love doing this. I absolutely—I feel like it’s where I’m supposed to be.” Moreover, attorney Alexis expressed, “I really want to see the death penalty abolished in my life time, and that’s what I am working toward, that’s my mission, I look at this as my mission.” Riley, a mitigation specialist, shared the following narratives with tears: “I really look to God a lot. . . . Tell me where to go and what to do. . . . That’s why I came here . . . regardless



of how difficult it is.” Furthermore, Avery, an attorney, stated, “This work is—it’s a calling for me.” Avery continued:

I’m doing what God has commanded me to do. That is to fight for the defenseless, and to speak for the voiceless. It is what I personally am commanded, and should be doing with my life. . . . I feel that this is what God has chosen me to do.

### **Capital Litigations as “Intellectually Stimulating”**

Several participants described the motivation for engaging in capital trial defense practice because they perceived capital litigation as “intellectually stimulating.” For example, Jesse, an attorney, expressed the complexities of capital cases as very “interesting” and “stimulating”:

It's extremely interesting. You really get to focus on issues. You're not just moving cases, you're really doing an in-depth study of any important issue in your case. It's really one of the most interesting areas of criminal defense that you can practice because you learn so much about DNA issues, mental health issues, forensic issues like fingerprints, blood spatter, that sort of thing. It's intellectually stimulating. It's very interesting.

Mitigation specialist Jordan was fascinated by in-depth investigation on human behaviors as an integral part of capital trial defense practice:

A fascination with why do people do what they do and the darker side of human nature. . . . Which is kind of what litigation is. It’s a life story of the person from conception to the time they commit the crime. Trying to understand why they did what they did. Was it mental illness? Was it brain damage? What are the factors? I just find the whole psychology of why people do what they do extremely interesting. I think that’s. . . what brought me to capital litigation.

Furthermore, Cameron, an attorney, stated, “I’m really enjoying the aspect of learning capital defense strategy, jury selection and all the things that are different than a regular trial.” Charlie, a paralegal, simply stated, “I like the more complicated cases,” and Casey, a paralegal, expressed the enjoyment in working on “more in-depth” cases.

Moreover, Cameron and Cayden, a mitigation specialist, spoke of their willingness to think “outside of the box.” For example, Cameron stated, “I love criminal defense work,” because “it gives you the opportunity to really kind of think outside the box.” Similarly, Cayden said, “I love the idea of thinking outside of the box.” Cayden further expressed, “I think that provides you the opportunity to really grow professionally. That’s what I really enjoy about the job.”

### **The “Pinnacle” of Being a Criminal Defense Attorney**

Some participants expressed that their motivation for engaging in capital trial defense practice was also driven by a desire to attain “the pinnacle” of criminal defense practice. For example, Jesse, an attorney, who called capital trial defense practice “the ultimate challenge,” said, “Because I had done all of the other types of trials and I just think it was the next logical step. It was really about a challenge.” Additionally, Sean, an attorney, described that capital trial defense practice is “the pinnacle of the work that we do here, the best lawyers, the most resources.” Sean further mentioned: “I knew that supposedly the best lawyers in the office were working in the unit. I wanted to be part of that.” Resonating with Jesse and Sean, Cameron, an attorney, stated, “Being a capital attorney is kind of the pinnacle of being a defense attorney. . . . It’s the ultimate level you can get to . . . to actually be saving someone’s life versus trying to keep them out of prison type of thing.” Cameron said:

I think the only reason somebody comes up to capital is because these are the absolute most difficult cases that you can do and to be a capital attorney I felt was really the pinnacle of what I could do as a defense attorney. There’s a lot of thought, a lot of strategy and everything that goes into any type of a trial, but for capital cases you have the ultimate end that can come to your client, so there’s more on the line. I think there’s a little more pressure and I’m always looking for a new challenge and this is definitely it.

Moreover, Hayden, an attorney, who described capital defense trial practice as being “so rewarding,” stated: “If you want to be the best of the best, you have to have the worst of the worst.” Hayden also stated, “I get so much personal satisfaction out of doing this work,” because “I can save somebody’s life.”

### **“Give Them Some Comfort” as a Black Attorney**

One attorney, Avery, is African-American, and is particularly sensitive to issues involving justice and race. Avery spoke of the motivation for engaging in capital trial defense practice in relation to objection to racial injustice in death penalty jurisprudence.

Avery stated:

When I look at the defendants they are usually Black or Mexican. I firmly believe they should have someone in that courtroom that looks like them that maybe doesn’t understand them fully, but at least has an idea of their culture and their background and where they came from. Give them some comfort level or comfort zone. I could not stand the idea of a Black defendant on trial for his life, and he is the only Black person in the room. That bothered me. I couldn’t stand for an Indian or a Mexican to be on trial for their lives. They look around, and everybody in that courtroom including the jury of—who’s going to decide whether they live or die, everybody’s white, but them. I couldn’t stand it. That’s why I do what I do. It shouldn’t be that way. It should not be that way.

### **Salary Increase**

Dakota and Jesse, both attorneys, spoke of a salary increase as a motivating factor. For example, Dakota stated, “They gave me a very lovely raise in pay, which is very important to me I have to say quite frankly because I’m my sons’ sole support.”

Similarly, Jesse stated:

I hate to admit it, but now with these salary increases, money is a factor. I have to admit that because the downside of what we do is very stressful. There have been times that I've thought about just going back and doing regular cases. The money's a big factor at this point. It's not the only factor, but it is a factor.

In contrast, Avery stated, “We got a healthy raise to come here. We got a lot of money. If they took it away tomorrow, I would still do this work.”

## **Challenges in Defending Clients Who Face the Death Penalty**

### *~If We Lose, Our Clients Get Killed~*

All the participants spoke of defending clients who face the death penalty as a significant challenge associated with capital trial defense practice. Eight themes emerged: (1) “If we lose, our clients get killed”; (2) The death penalty trial; (3) The criminal justice system; (4) Negative community responses; (5) Clients; (6) Clients’ family members; (7) Compassion for victims and surviving family members; and (8) Violence and trauma in capital cases.

The participants’ narratives elucidated various challenges and stress associated with engaging in defending clients who face the death penalty. The participants expressed the responsibility for saving clients’ lives as the most challenging aspect of engaging in capital trial defense practice. The participants also expressed that the death penalty trial, dealing with death penalty jurisprudence, negative community responses, and working relationships with clients as well as their family members are significant sources of stress associated with engaging in this work. Moreover, the participants described emotional difficulties witnessing suffering of victims and surviving family members as well as dealing with cases with violent natures and traumatic materials. Each of the themes is described below.

#### **“If We Lose, Our Clients Get Killed”**

Most of the participants spoke of perceived stress in defending clients who face the death penalty in relation to the responsibility for saving their lives. Two themes emerged: (1) “Their life is at stake”; and (2) “They depend on you.”

#### ***“Their Life Is at Stake”***

Most of the participants stated that the gravity of the consequence heightens their sense of responsibility for saving clients' lives, which is also a significant psychological burden for them. For example, attorney Dakota stated, "Their lives are literally on the line. Anything you do or fail to do could be the reason your client is put to death." Attorney Jesse described, "If we lose, our client gets killed. That weighs on your mind a lot." Also, attorney Sean mentioned, "If I make a mistake . . . they die. It's the consequence of the conviction that's stressful." Attorney Alexis stated, "The stress of trying to defend somebody, trying to protect somebody's life with their life on the line is too much for a lot of the attorneys." Moreover, attorney Cameron articulated, "Your main concern in capital is saving your client's life, keeping them off of death row. . . . My client is very likely going to be found guilty, but I have to save his life."

Examples of other participants' excerpts included but were not limited to: "We're fighting so they don't get death. . . . It's a high stress job. You're dealing with life and death" (*Marley*, mitigation specialist); "Just simply the stakes are so high. We are talking about life and death here" (*Riley*, mitigation specialist); "It's literally life and death" (*Sam*, Investigator); "What I do is somebody's life" (*Sidney*, paralegal); "You know that their life is at stake" (*Angel*, paralegal); "It's always so serious what the consequences are" (*Charlie*, paralegal); "The biggest stress I feel is the responsibility of having a human life in our hands" (*Casey*, paralegal); and "The total stress is that we have somebody's life in our hands. That shouldn't be given to us. . . . The stress is the fact that they [the state] will really kill our client" (*Morgan*, investigator).

***"They Depend on You"***

A few participants spoke of the close relationship developed with clients as aggravating the stress associated with a sense of the responsibility for saving their lives. For example, Dakota, an attorney, stated, “It’s incredibly stressful because you get to know the clients so much better.” Additionally, attorney Jesse expressed, “If we lose, this person that we’ve gotten to know so well and understand gets killed. That’s a heavy burden to have to carry.” Furthermore, Riley, a mitigation specialist, described this difficulty:

You see that person every week. And you know sometimes you look at this person, and think “Oh my gosh, they can die.” And you get to know they depend on you. . . . I’ve never seen them not show a really good side that nobody ever saw. . . . That’s traumatic. . . . It’s almost like a family member . . . may die later on. . . . It’s the same sort of trauma.

### **The Death Penalty Trial**

Most of the participants spoke of the death penalty trial as a significant source of stress associated with capital trial defense practice. Six sub-themes emerged: (1) “You are the lone voice for your client”; (2) Prosecutors “painting your client as the worst monster”; (3) “People on the jury that have no compassion”; (4) Capital jury selection; (5) Waiting to hear a verdict; and (6) The death penalty trial as “extremely draining.”

#### ***“You Are the Lone Voice for Your Client”***

Some participants expressed that standing up alone for clients in the death penalty trial would take “courage.” For example, attorney Jesse called it “a tough environment.” Attorney Alexis stated, “The system. . . [is] so tough for the defendants. . . . It [is] just [an] uphill battle to fight for defendants in the system, and often times you are the lone voice.” Alexis continued: “All your client has is you in that courtroom. Everybody else is against your client. . . . There is no sympathy in that courtroom. A lot of times, you

are the only voice for that client.” Morgan and Sam, who were both investigators, provided their observations from the perspective of supporting staff. For example, Morgan expressed, “I can’t imagine being in their place realizing that [attorneys are] the ones who have to—no matter what we bring them, they have to present it.” Similarly, Sam said:

The attorneys have to stand in front of a jury and a judge and make a defense. They can’t just go up in front of a judge or a jury, no matter how bad the case looks, and just go, throw their hands in the air and say, “Well, nothing I can do.” They have to present a case to a jury that the jury can understand.

### ***Prosecutors “Painting Your Client as the Worst Monster”***

A few participants spoke of prosecutorial strategies that dehumanize clients as part of the difficulty in defending clients in the death penalty trial. Mitigation specialist Riley described how difficult it was to sit there in the courtroom during the death penalty trial and listen to the prosecutor labeling clients in dehumanizing ways:

I hate trial. I hate it. It is so tense, and so. . . . I do not know, there are times that I want to slide down underneath the pew, the first phase, I hate, because they are just painting your client as the worst monster in the world, and you cannot say anything to refute it. You have to just sit there, and take it, take it, and take it. And it is so hard on the client. . . . That’s the guilt phase. That’s where the prosecution gives pretty much free reign. And that’s where you get crime pictures. That’s where you get, they just lay it on. They just possibly make your client look like a cold-blooded monster. And you basically have to sit there, take it. You cannot do anything to really refute it. And, and, it’s very difficult for the client, no matter how much I warn them, they still never realize how intense it is in that court room, especially when basically they are being made out to be the worst person in the world.

Hayden, an attorney, described how prosecutors evoke the jury’s anger toward clients:

How they [prosecutors] kill people is they try to get the jury emotionally involved in the case. They show them horrific photos. They make them angry enough at that person that the jury wants to kill them. They kill them not out of reason, not as a rational decision, because it's not a rational decision. . . . They try to convince the jury to kill them through emotion.



Paralegal Angel spoke of prosecutors calling upon the jury for total dismissal of any mitigation presented by the capital trial defense team, as equivalent to discounting the work of the defense team to try to humanize a client and call for leniency:

The state can rebut our mitigation. To me the mitigation is us kind of begging for them to not kill our client, and then the state can rebut what we say. . . . The state can say, “Okay, well, you can listen to that, but then he did this, this and this so you shouldn’t consider it.” To me that shouldn’t happen. I mean, we say he had a bad childhood, and then the state tries to downplay that after we’re done. That bothers me because when you go through this for five years and you know the ins and outs of this person’s life, and then to have it discounted in court.

***“People on the Jury That Have No Compassion”***

Some participants spoke of lack of compassion and tolerance among the jury in finding mitigation evidence, when describing difficulties associated with defending clients in hostile the courtroom. For example, mitigation specialist Riley stated:

People seem to be a lot, I don’t want to say meaner, but, less tolerant, less compassionate, than when I first started. . . . We have been losing a lot of cases. . . . They are doing what I call foreclosing, which means, they say they support keeping an open mind to the end, but most of them have made up their minds by the end of the guilt phase. . . . Even though they promised they would keep an open mind.

Attorney Avery echoed Riley’s observation:

I think we have made it so easy to be uncompassionate. That when you get in a jury room, your heart [is] gone, your soul [is] gone. . . . Compassion is looked down upon. I mean it is literally sneered at. If you show one thread of sympathy then you’re labeled a bleeding heart, commie, socialist, liberal. . . . What I am saying is we as a society are less compassionate to everyone. It really is not a surprise . . . even though it is hurtful. It’s not surprise when we sit people on the jury that have no compassion. They have no compassion for anyone else. They’re sure not going to have any compassion for my defendant. Lacking compassion seems to be . . . okay. They don’t get called on it. In fact they get supported in their lack of compassion. . . . Everybody’s convinced they’re right.

Paralegal Angel illustrated the jury’s unwillingness to find mitigation evidence with regard to history of childhood abuse:

I think when children are abused and people hear about that they say, “That’s a horrible thing. That’s a terrible thing to have happen to that child,” but when that same child grows up, and they become abusers or they become what society thinks are bad people, then they think they’re monsters, and they just want to kill them. I just don’t understand how that happens. It’s the same person, and it’s because they had this horrible childhood that people say, “Oh, my gosh. That’s horrible.” Then that’s sometimes what they become. They become what they know, and I just think that’s totally wrong. In [client’s name]’s case, it was very difficult for me.

Also, Dakota, an attorney, pointed out that the jury tended to see mental illness as a defect of moral character, rather than mitigation evidence:

Actually the culture I live in here regards mental illness either as a dodge, a hustle, an invasion or a mark of poor character. Unless a person is literally catatonic or like a—but most people don’t have “raving lunatic” written on their forehead. They [the jury] think they’re malingering because a person who is. . . . I could sit here and look at you and be completely schizophrenic and completely unconnected to reality, and I can have the most dreadful paranoia. . . . I could think you were with the CIA, and you were trying to get information so you could kill me and you wouldn’t know by looking at me. . . . I would still look exactly like I look now even though I’d be totally crackers. Enough, you take a person like that, and bring them in front of a jury, and they say well he doesn’t look crazy. He’s sitting there. He’s wearing a tie. He’s not drooling. Then if I jump up and start preaching the gospel to you. . . or the jury. . . and say you know I’m Jesus Nirvana. . . and I’ve been given this special mission to. . . . Well, he’s just faking. He’s just faking. He’s just playing it. So it’s just real, real stress. . . . It’s supposed to be mitigating but out here it’s regarded as a sign of weakness, a weak character, a weak moral character to be mentally ill. It’s largely regarded as a fraud.

Investigator Morgan spoke of the jury’s lack of empathy in the courtroom for clients’ family members: “They look at [clients’ family members] as if they [are the] cause of these alleged monsters. . . . Their total focus and empathy is for the victim, and nobody looks at these family members. Nobody. Nobody gives them their empathy.”

### ***Capital Jury Selection***

Some of the participants spoke of capital jury selection as one of the challenges that the defense team has to deal with during the death penalty trial. For example,

Attorney Jesse mentioned a significant challenge in selecting desired jurors for the defense because the court disqualifies those who are against the death penalty as part of the jury for death penalty trials:

It's a big task that . . . maybe an impossible one for us to overcome the inherent bias that a lot of these people have towards our clients. They're even more judgmental the worse the crime, I think. Then by definition, it's a death qualified jury. You're going to get even more conservative people because they can't have any philosophical beliefs against the death penalty. You're taking an already conservative group and you're choosing the more conservative people out of that group.

Paralegal Charlie described difficulty selecting desired jurors for the death penalty trial, comparing the time when the judge did the aggravation and mitigation phases of the trial:

Under the old system when the judges did it, sometimes you had kind of an idea depending upon what judge you had, whether or not you would get the death penalty. With juries, it's been the process of picking them. It's been a lot harder to learn to pick juries. Because now you're picking them for different reasons. . . . Because now you're trying to ask about, would they give the death penalty under what conditions? You didn't go into that type of questioning when you did trials. . . , when the judge did it. You didn't ask those same questions. . . . It's harder, because you're now questioning about the penalty where before you really didn't. They might not have even known it was a death penalty case. Now they will know.

Angel, a paralegal, pointed out difficulty selecting desired jurors because potential jurors often do not understand the instructions for screening questionnaires, and/or change their answer in order to get dismissed from jury duty:

Some of the jurors, when you read the questionnaires before the trial and you see some of their opinions, you just don't have a lot of faith in . . . they don't really understand. They'll say, "Oh, yes, I'm for the death penalty," and then when they give their answers you don't think that they really understand what it really means. They all think that they're going to get out if they don't give them the death penalty.

Attorney Cameron stated, "You want people on the jury who may find your client guilty but won't give them the death penalty." Also, Avery, an attorney, stated:

The trick is to finding those that may at least listen. . . . If you actually move somebody then wow, you're batting a thousand. To get somebody to actually listen is. . . , that's the goal. Just please listen. Just don't shut it out. . . . We try to just focus on that one person in that jury that maybe, just maybe still cares. . . to convince them to stand strong.

### ***Waiting to Hear a Verdict***

A few participants spoke of waiting to hear a verdict as part of the difficulties that occur during capital trials. Attorney Sean recalled;

You get to the very end in the capital case, actually pleading for someone's life. You presented everything. Now, this is why you shouldn't kill the person. That doesn't exist in a non-capital. . . . Very different. . . . It's nothing comparable. You're looking at these people who have his life in their hands. . . . It's not a conversation. It's not giving back and forth. They just sit there. . . . You feel it. I mean, you just feel, I am the person between him, the client, and death row. I feel that's stressful.

Paralegal Sidney described as follows:

I think for the attorneys, too, you know, because it is like. . . you are working so hard, and then this is it, you know, this is everything you do, and a lot of it is relying on somebody else's opinion. . . . We just present it, and then, ultimately, you have to wait for them.

Attorney Cameron, though not experiencing capital trials, imagined how stressful it would be:

Obviously, the most stressful point in time is when the jury comes back with a verdict and you're standing—sitting in the courtroom waiting to hear if it's guilty or not guilty, death or life in prison. I mean, those are the points in time that are probably the most stressful.

### ***The Death Penalty Trial as “Extremely Draining”***

Several participants spoke of increased demand and length of the work as part of difficulties associated with the death penalty trial. For example, mitigation specialist Jordan stated, “When you're in trial, it [the workload] is very heavy.” Angel, a paralegal, described demanding work in supporting attorneys during death penalty trials:

When I'm in court for trial I take notes of everything that everybody says, as much as I can, or what I believe is important. One attorney out of the two especially uses my notes when he does his closings, when he is going to – not so much when he's going to cross examine a witness, but if there's an expert and if the expert goes for a couple of days, he'll use my notes to remind himself of what the expert said the day before to work on questions to ask the expert the next day. I have to make sure I have accurate notes that are understandable, so it's hard work. . . . It's challenging.

Similarly, paralegal Sidney expressed:

It is stressful when we are in a trial, a large part when we are in a trial is for my attorneys I take notes about testimony that goes on back and forth, because you know in a short amount of time, we do not have a system that they can go to a court reporter, saying I need this testimony this morning. . . . So they rely on my notes a lot to help them formulate their closings, to help them what are cross examinations. That is to me the most stressful time when we are in a trial.

Charlie, a paralegal, spoke of the prolonged length of the death penalty trial as stressful, stating, "It's harder because trials take so much longer." Also, attorney Sean described the death penalty trial as stressful because "the process is so long, having the three phases." Cameron, an attorney, had not experienced capital trials at the time of his interview, yet speculated: "It probably can be extremely physically draining for anyone who does trials and especially capital trials because they are so long and drug out, and they are all-consuming."

### **The Criminal Justice System**

Half of the participants spoke of dealing with the criminal justice system as one of the difficulties associated with capital trial defense practice. Three sub-themes emerged: (1) "The law is designed to kill people who kill"; (2) Scrutiny for ineffective assistance of counsel; and (3) The Victim's Bill of Rights.

#### ***"The Law Is Designed to Kill People Who Kill"***

Several participants spoke of dealing with death penalty jurisprudence as stressful because it shakes faith in its fairness. For example, paralegal Sidney articulated, “The state has an overwhelming budget, and then, the defense doesn’t. . . . It kind of seems like it’s unfair, in a way.” Sam, an investigator, stated that defense practitioners have unequal access to resources and information in dealing with capital cases, compared to prosecutors:

We don’t have the same access that the police or the county attorney has. They have much more access to information whereas we don’t and we’re defending people that are fighting for their very lives. It’s stressful to me that we don’t have that. . . . I just think we should be going on an even keel and we’re not.

Similarly, mitigation specialist Riley said:

We are behind people from the beginning, the prosecution, the state, they all have more money, they have police backing, so they can get all the information that they want. We have to fight to get the same information, all they have to do is basically go in there and change the name, change the situation, and pitch the same case. They are monsters, because they did blah, blah, blah.

Attorney Alexis and mitigation specialist Cayden spoke of law enforcement that manipulates evidence and testimonies favoring prosecutors who seek the death penalty against their clients. For example, Cayden stated, “I know there’s a possibility of law enforcement sweeping things up underneath the rug when they don’t want someone to know certain things.” Alexis spoke of law enforcement officers changing their testimonies on the witness stand: “I have had traumatic experiences where I’ve seen situations where a police officer can lie and get away with it on the witness stand, because the county attorney will not prosecute them, since they are helping the county attorney.” Alexis further stated, “Police officers are part of the government, they are government agents, they come in and they lie, you know, it’s, it’s traumatic. That’s a traumatic experience.”

Alexis and Dakota, both attorneys, spoke of death penalty jurisprudence as “a design for killing.” Alexis said, “You think the justice system works well. Even though the system may not be perfect, everybody assumes that the system is working well. But, in a lot of cases, it doesn’t.” Dakota spoke up in details:

The law is stacked against us. The law is designed to kill people who kill. . . . You would think that there would be every presumption against killing someone. You would think it would be the first thing you would learn but it's actually the other way and on top of that, it is totally chaotic. You have no idea what it's like. You have no idea what your client's chances are. . . . You are given this incredible task to perform and, you're not given a fair shot in terms of the law. So it's like playing a game with the deck stacked against you.

I think the judicial system is corrupt. I used to think the judicial system was essentially honest. I think they're corrupt in terms of the death cases because they have—they've bought into the view it's their job to get the people put to death, and I just think that's terrible. So I don't have any. . . I've lost an enormous amount of respect for the courts as an institution. . . . I've been doing this a long time, and I think it's a dirty game. I think it's a rigged game. I don't think they do sustainable justice, and I think it's disreputable.

I feel dirty when I go to court. I feel like I've been degraded. I feel like my ideals, not that I lose. I don't mind losing fair and square. I don't mind losing fair and square, but it's almost like Kabuki where everyone dresses up and you know what's going to happen. If you wear a certain outfit in Kabuki you are either the hero or the villain. Or you could be the victim but everyone knows—it's like an old Greek drama where everyone knows what's going to happen but you have to go through the steps anyway. So I feel like I'm being used. I really feel like I'm being manipulated to make it appear like it's the justice system; or that it gives the appearance of correctness. I feel degraded by that.

Mitigation specialist Riley spoke of the excessive sentence that the death penalty jurisprudence imposes:

We had a client that just took a plea a little while ago. Their plea was way too stiff. It was for life [without parole]. Even if he had done that, it was a second degree. . . . He should have never gotten that stiff of a sentence. And I remember just as he was leaving, catching his face, and just. . . feeling for a moment, Oh my gosh. . . . You [team members] are all getting teary there. . . . From that point on that determined the rest of your life was gonna look like. Would that not be devastating to you?

### ***Scrutiny for Ineffective Assistance of Counsel***

A few participants spoke of scrutiny of capital trial defense attorneys for ineffective assistance of counsel under death penalty jurisprudence as part of the difficulties in engaging in capital trial defense practice. Mitigation specialist Marley stated: “If we lose, they're going to be looking at the attorney more than the rest of us. I think their stress has got to be even higher.” Alexis, an attorney, described:

Another stress that I would like to add is the fact that defense attorneys are always under constant scrutiny. Whatever we do prior to the trial, whatever we do during trial, even post trial, after trial, we would be looked at in the appellate process, and . . . for post-conviction relief. They are looking at ineffective assistance of counsel issues. If you are found to be ineffective, that might help your client, but that’s basically saying, well you did not do a good job for your client. That adds to your stress. So, we always want to be doing the best for our clients, but you know, and the clients come first obviously, but I certainly do not want, you know, I mean, as a human being, I do not want to be called ineffective, by anybody, especially when I am trying so hard for my client. So, that adds to the stress, I think.

Similarly, attorney Sean stated:

I know people will be looking at the work that we're going to. . . , it's going to be scrutinized. I'd feel, I'd get overwhelmed by that at times, the gravity, the seriousness of this and how it's all going to. . . . If it kind of turns out bad, other lawyers are going to be looking at the work and questioning it. That's the process, but it's stressful, and anticipating all that.

### ***The Victims’ Bill of Rights***

Morgan, an investigator, spoke of complications arising from the Victims’ Bill of Rights, which allows interactions between capital trial defense practitioners and victims only through the prosecutors’ office:

We cannot contact victims. We have a victim’s rights law that’s so encompassing. . . . It’s too stringent. Sometimes these victims don’t want people killed either. You can have a victim stand up in a courtroom, and say they want life. They [prosecutors]’ll still argue for the death penalty. What does that make sense? You’re not listening to the victim either.



We never know what they're thinking or feeling. . . . The prosecutor says, "This is what they want." We don't know that first hand. We don't know. We don't know if the prosecution is lying. We don't know. You just know what prosecutors are saying. . . . We'll want to interview the victim. . . and they [prosecutors] say that the victim doesn't want to talk to you. We don't even know if they asked them. They say they do. We have to believe they did.

Not all victims believe in the death penalty. . . . We can't get their say unless the prosecutor asks them to speak. . . . We as defense never get to know what they're really thinking. We're limited. We can't contact them. It's not to be confrontational with them. What are they really thinking? It would be nice to know, but we can't. . . . We could be sued. We could be prosecuted.

### **Negative Community Responses**

Half of the participants expressed negative community responses to their work as capital trial defense practitioners. For example, attorney Hayden stated, "They don't like that we fight for these people." Hayden wondered "Why is this person so angry they want to kill my client? . . . They have no relation, yet they're angry enough to kill this person, want to see them killed." Mitigation specialist Marley expressed:

In the community. . . the second you tell them what you do, they associate you with the crime, the criminal. . . . How could you defend those people? They look at you completely differently. That's another added bonus of the job. . . that you can't talk about your job much. I'm being facetious.

Investigator Sam recalled:

I look at society and I talk to people, you know, friends of mine that aren't in this field and they don't understand what it's like to deal with a capital client day in and day out. . . . When I tell them what I'm doing, they go, "Are you kidding me? . . . These are murderers. These are scum." That's what they think. They don't understand and I say, "No, they're not." We can get into arguments. They think that and that's what society. . . , I think society in general looks at it that way.

Mitigation specialist Riley stated:

I have a bunch of [people] at church that are very supportive, but they do not understand. . . . How many people could actually understand? . . . It's difficult, because a lot of people have very strong feelings for the death penalty. . . . When I tell them what I do, right away, I am almost on the defensive, because I know

it's coming. . . . "Wow, they should die, why you defend those guys?" And then, I have to somehow explain why I do what I do. People have very strong feelings about the death penalty, so you are not getting all like I was taking care of some hospice patients. . . . You are not getting that all. . . . A lot of people don't really understand why I do what I do. They are sympathetic to my feelings, but not what I do. What they think is very misguided. . . . Not many people out there really understand why you do it.

Attorney Alexis said:

They are not gonna understand. . . the level of work, the level of the intensity of emotion. . . , how close you get to your client. . . . People are just not gonna understand. . . . Almost unspoken inability to touch that topic. It almost separates us from the rest of the society. . . because they cannot possibly understand it, and a lot of people are pro-death penalty anyway, so they are not gonna understand. They can't possibly empathize with my point of view. . . , they are just like, "Well, he murdered somebody, he deserves to die." You know, that's the attitude, I am not saying their attitude is necessarily all wrong, but they really have not put time and effort into this whole issue anyway, it's easy to just say "Kill him. . . , kill him, let the state kill him."

Paralegal Angel expressed:

There's not a lot of support in the public. A lot of people when they hear what I do the first thing is, "How can you defend those scumbags?". . . I'm very proud of what I do. When I hear people say things to me like, "I don't know how you could do that," I feel like I have to defend my position for what I do. That's not easy for me sometimes, but I think that's why I like hanging out with the people here is because we all understand and we all are in the same mindset, so it's not hard. I don't have to explain to them why I do what I do. I think it's important that the more understanding that the public has of what we do and why we do it, I think the better (*Angel*, paralegal).

A few participants, who were all paralegals, described their decision not to tell others about their work as capital trial defense practitioners due to negative responses from people in the community:

I do not tell a lot of people what I do. A lot of people ask me what I do for a living, whether it's in a church setting or just in general everyday life. You will get a lot of negative comments. . . . Anytime anybody asks specific things about my job, I answer in very general terms. . . . It does create a lot of controversy. . . . "How could you do that? How you can defend them?" They get very emotional, because they only see one side of it. You know, they only see one side (*Sidney*, paralegal).

I took my child to a birthday party two weekends ago. You're with other parents who your child goes to school with and the parents say, "Oh, what do you do for a living?" Not thinking about it, and I shouldn't have, you say, "Oh, you know I work for the county. . . and I work on capital cases." Nobody really knows what that means, just like I didn't either. "Oh, so you prosecute." "No, I defend, and capital means that they're up for the death penalty." They stop for a minute and they look at you like you've got four heads and they go, "Oh, I don't know how you can possibly help or work on cases for rapists, child killers." . . . It's to the point now where I don't really tell people what I do (*Drew*, paralegal).

I always worry if. . . somebody else's child. . . comes over for dinner and have a play date, are they [parents] going to look at my family differently because of what I do? It almost makes you feel morally compromised in people's eyes because of what you do, even though you're not. It's hard for people out there to understand. They don't have all the facts, they don't. . . , people tend to forget that people can be innocent. I think there is a lot of judging. It's hard (*Drew*, paralegal).

Lots of times I don't tell people I do death penalty work because then you have to sit and explain it and justify doing it. . . . I don't tell people and it just eases constantly having to explain, "How could you do that?" (*Charlie*, paralegal).

## **Clients**

Nearly half of the participants spoke of difficulties in the working relationship with clients. The heart of capital trial defense practice derives from the working relationship with clients; however, it also raises various difficulties. Seven themes emerged: (1) "You have to earn their trust"; (2) "They are desperate people"; (3) "Why couldn't I get him to take the deal?"; (4) Feeling "torn" about clients; (5) "The client wanting death"; (6) "Other inmates killed him"; and (7) Clients "who are around the age of my children."

### ***"You Have to Earn Their Trust"***

Some participants spoke of difficulties gaining trust from clients. Mitigation specialist Riley described as follows:

It can get very stressful. . . working with your client. Sometimes your clients are not the most agreeable people and nicest people. . . . They do not trust the system or anybody in the system, so you have to earn their trust, and many times, they are working almost against you.

Some of the stress is dealing with the fact that they do not perceive life the way we do. . . . It's having to step into their shoes, and see life their way, and then, trying to find the connections, so that they really at times. . . can start to be able to work with us in a positive way. . . . They bring this to the table, all sorts of beliefs that we will never know. We never grew up in abject poverty, surrounded by crimes, all the things that they grew up with. . . . It's very hard. I don't ever tell them I understand how you feel, because I really don't.

Mitigation specialist Marley expressed the difficulty in building a working alliance with clients because they often tried to manipulate those who tried to help them:

You don't know what to believe. They all lie. . . . There's always that, what if. I'm sure you've heard all the cases lately with the so and so exonerated after 20 years behind bars because of new DNA evidence. It's kind of crazy. Then sometimes too, the clients will try to manipulate you. . . . That's what they do.

Sidney, a paralegal, stated that some clients were not truthful, which kept the defense team from providing the best representation for them:

I always have to say [to the client]. . . , what's important to me is you are truthful with me, so we can get our job done. You are not guilty, okay, we are going to do everything we can to prove you are not guilty. . . . But. . . if you told us that you were guilty, that is not gonna change as hard as I work on it. . . . Most of our attorneys more want their clients to tell them the truth. . . . They do not want to be surprised two years from now, you are telling me the sky is blue, but it is really green. . . . I think that is the hardest part. . . . We just need to know the truth, so we can work with that. We do not want to be surprised, coming down the road, because that's gonna be worse for you.

Sidney also spoke of unique challenges to earn trust from clients and get their cooperation for mitigation investigation when they believed in their innocence. A capital trial is divided into three separate phases, and one phase follows immediately after the next. A defense team must prepare for the possibility that the case will enter the sentencing or mitigation phase before the guilt or innocence of clients have been

determined. However, clients may have difficulty understanding the need to prepare for all possible outcomes at trial in advance, and refuse to cooperate with the defense team in preparing mitigation presentation. Sidney described this dilemma:

A lot of our clients will say, “I do not want to talk about that, because I am not gonna be found guilty, I am gonna be found innocent.” Well, that is the goal that you are found innocent, but we have to be prepared for it, if you are not, you know, and we have to be able to defend you just as vigorously as we did in the phase one and the phase three, in order to do that, we have to probably go over some area that you don’t want to talk about.

We are pushing for not guilty, but if you get guilty, and then now we are pushing to save your life. . . . That is a very hard time to explain to the client too, because they say, will you think I am guilty, because you are preparing for [mitigation phase after a guilty verdict]?. . . We have to tell him, No, but we need to be prepared. . . ,whether guilty or not guilty. We need to be prepared for every stage of the case to defend you vigorously. . . . We are not conceiving that you are guilty, just because we are preparing the mitigation phase for you. What we are preparing for is that if things are not going our way, we have everything in mind, so we are actually giving you the best defense that you can get, because we are preparing for all possible aspects that we can.

Paralegal Angel pointed out that some clients do not follow the instructions given by the defense team, and the result is that their actions negatively impact the client’s case:

Our clients don’t sometimes really understand when they say they’re being recorded in their jail calls, and they’ll talk and talk and talk about the crime or whatever. Then the state is allowed to get those jail calls, and then they can use that against them in court. It’s very difficult to try and explain. These people a lot of times are not very intelligent, and even if you explain that it’s not wise for you to share that information, they still do. That’s one obstacle.

### ***“They Are Desperate People”***

A few participants who were all mitigation specialists spoke of stress from attending to psychological and emotional needs of clients, reflecting on their role on the defense team. Mitigation specialists often become those who listen and respond to clients’ emotional and psychological needs, which creates stress unique to their role.

For example, Riley described:

They are getting really depressed, and I am gonna call correctional health, to see if we can [get] anti-depressants. I am the one to take the emotional pulse of that person. . . all the hopes, all the dreams, all the giving up of the dreams. . . . It's tough, because they go through the super-optimistic, super-depressed, super-optimistic, super-depressed [cycle].

Marley described clients' sharing their suicidal ideation:

These are desperate people we work with. Suicide, the thought of suicide. That's always in the back of my mind, usually after they get sentenced. I know one of my clients said to his dad, "If I get life in jail, I'm going to hang myself." That kind of thing sticks with you.

Jordan spoke of difficulties in listening to clients who described their crime:

I had a client. . . that told me in pretty graphic detail what he did, what his crime was and because you're developing this relationship and this rapport, at the same time having someone tell you very graphically, exactly what they did to the victims and you can't show disgust you have to just listen because you're there. . . . A mitigation specialist isn't necessarily there to have the client tell you that, but when you develop a closer relationship, sometimes they feel freer to do that. Even though I really didn't ask him to tell me, he told me anyway, and it was very healing for him. So it's hard to say, "Stop," but at the same time I remember walking out of the jail feeling just stunned listening to that story. That also can be difficult. . . . I'm someone who's been in the criminal justice system for years, but this is different. This is the extreme.

### ***"Why Couldn't I Get Him Take the Deal?"***

A few participants expressed the challenge of speaking with clients about taking a plea agreement. A plea agreement is often used to save the state the time and resources for prosecuting the case, and in exchange for a guilty plea, clients will gain the benefit of a reduced sentence, which eliminates the state's pursuit of the death penalty against them. In this regard, mitigation specialist Marley stated, "Trying to talk somebody into a plea" can be frustrating when the benefit for doing so is in the client's best interest, but the client does not see the benefit. Marley continued to state that the client would say, "Well, that means I won't get out until I'm 60. . . . My mom will be dead, my dad will be dead."

Morgan, an investigator, expressed a sense of fear in such situations: "We have a client

who doesn't want to plea, and you know that moment [sentenced to death] will come. . . . It's awful. It's horrendous." Attorney Dakota spoke of the "very traumatic" experience of working with a client who has a mental illness, and how difficult it was to convince him that a plea agreement was in his best interests:

It's also a very traumatic experience when—Okay, I had a mentally ill client. This is a true story who I just pled guilty. . . . He was going to be put to death if he went to trial. There was no way. I worked as hard as I could for years to prepare his case, and I knew if he went to trial. . . , I knew if he went to trial, he would lose and the jury would kill him. . . . He was so paranoid and it took forever to get him to take the deal. I thought I was going to die. . . . Why couldn't I get him to take the deal?

### ***Feeling "Torn" about Clients***

Mitigation specialist Marley and paralegal Drew spoke of the stress associated with contradictory feelings toward clients. Both Marley and Drew expressed their willingness to work hard for the best interests of clients; however, the severity of the crimes that clients were accused of evoked various emotions in them. For example, Marley stated:

There would be some fear, like if we go to trial and our client is found not guilty and he's back out on the streets. That's going to be a problem. . . , for a lot of us think he most likely did it, this brutal. . . murder of a female. . . . It's this weird position that you're in. You don't want them out necessarily, but you want the best thing for them.

Drew expressed as follows:

It's also stressful because you have to have a relationship with this person. You go to the jails, and the humanness of you tries to forget what they've done. . . . You're reading about it [crime], you're seeing the photos, you're seeing the evidence, you're seeing the crime scene and all the blood, you're investigating. And then, you go [to a jail to meet the client], and you have to somehow be professional. . . . That's really stressful. . . . You almost get torn in two different worlds in that sense. . . . It's really hard to sit and look at them as a human being after you know what they've done (Drew).

We're supposed to be loyal to the client but also a human being. . . . [But] we have those natural human feelings of how could anybody harm another human being. . . . I understand that we're not supposed to get involved in that aspect but how do you not? How do you not see a photo of somebody who's been tortured and killed and you don't go "oh." Then, you're also supposed to be loyal and be of service to your client who potentially did that. It's hard. You hear them upset in jail because they're sad, they're lonely, and then your heart goes out to them too (Drew).

### ***"The Client Wanting Death"***

Marley, a mitigation specialist, expressed the difficulties when clients want to receive the death penalty, and do not want to cooperate with the defense team for mitigation investigation. This is an inherent contradiction for the defense team, who all work to save their lives, and therefore such a condition brings an ethical dilemma.

A huge issue right now is with the client wanting death. That is stressful, because our goal is to get them life over death. If the client wants death, and there's no universal protocol in this office, like what do you do? If the client wants death, do you still present the mitigation that might save his life, or are you bound by respecting what the client wants? There is no answer to that.

### ***"Other Inmates Killed Him"***

Mitigation specialist Marley described an unexpected encounter of a death of a client as a traumatic experience. In a case that Marley was involved with, the client was sent to a prison upon his acceptance of a plea agreement. Within a week, however, Marley found that he was killed by another inmate as a result of classification errors:

I should tell you about the one [client] who died. Talk about traumatic. That was a traumatic experience. I call him a kid. . . . He was young. . . just young, good kid, for the most part. . . . Took a plea, signed the plea. We hugged him. . . , said "Stay in touch, we want to know how you're doing." . . . Within a week of him being [in prison] he was killed. . . . The other inmates killed him. You develop relationships. Next thing you know he's dead. It's mind blowing. That was a big loss.

### ***Clients Who "Are Around the Age of My Children"***



Mitigation specialist Cayden stated that “a lot of times I find that some of these clients are around the age of my children. I almost see them like a child. That part is sometimes difficult.”

### **Clients’ Family Members**

Several participants spoke of working with clients’ family members as a source of stress associated with capital trial defense practice. Four themes emerged: (1) The emotional “turmoil” of clients’ family members; (2) Interviewing clients’ family members; (3) “They’re being victimized too”; and (4) “No formal services” for clients’ family members.

#### ***The Emotional “Turmoil” of Client’s Family Members***

A few participants spoke of witnessing the emotional “turmoil” of clients’ family members involved in death penalty jurisprudence. For example, Casey, a paralegal, provided a narrative that illustrates the emotional impact on family members:

[Dealing with the families of the defendants is stressful] because you feel the . . . what’s the word I’m looking for. . . the turmoil that they’re in. They have a person that they love. . . , they understand that they’re accused of a very serious crime. Sometimes they’re really torn and they have like this rollercoaster of emotions. Most of them are anxious to have us help their loved one and to do the best defense that we can for them and hopefully, to get them not the death penalty.

Casey also spoke of family members who were disconnected or torn apart:

In capital we had a case where our client, of course, was accused of a homicide, and his family was just kind of flaky. His mother had opportunities to come out here and visit him in jail, and she didn’t want to. She said that she loved him but she’d kind of been like that for his whole life where she was there, but not there emotionally for him. That was difficult to watch.

We have some family members that still can’t believe that our client did what he did. Then there’s other family members who say, “He should burn in hell,” and have that kind of an attitude. Sometimes it’s difficult to try to deal with both ends

of that without causing issues within the family itself, for us to respect both types of feelings of the family towards our client.

Mitigation specialist Marley described a similar situation:

They're usually so low functioning. . . . The families are all divided. . . . That's sad. . . . You've got family members too who are convinced that their loved ones are innocent. . . . What do you do? You don't want to burst their bubble. . . . We're honest with them and say there's a lot of evidence against them. They'll ask you. . . . "Do you think he's innocent? Do you think he's guilty?" That's a hard question to answer.

Sidney, a paralegal, described a difficult situation that family members face when they choose to testify as a mitigation witness to help clients; because they are not allowed to be in the courtroom prior to their testimony, they cannot see how their loved one is holding up emotionally:

A lot of our clients' families are going to be mitigation witnesses, so they are not even allowed to be in the courtroom during phase one of the trial, or until after they testify, and then that can be difficult, because they want to know what happened today, you know, "What is going on?". . . , "How does he look?" A lot of the questions. . . . "He is faring?" Things that they want to ask, "Is he taking it okay?" Those are the kind of questions.

### ***Interviewing Clients' Family Members***

Mitigation specialist Riley and paralegal Sidney spoke of interviewing family members about their painful family memories as a source of stress associated with capital trial defense practice. One of the critical duties for the defense team is the mitigation investigation, where the team investigates the social background of clients and uncovers any evidence that may mitigate clients' moral culpability or call for leniency. This work involves interviewing family members about clients' life histories including trauma experienced within the family, which often evokes painful memories in the family members. For example, Sidney said:

We have to go around life history. We have to talk with families. That's another stressful thing. We are talking to people about really intimate secrets that they held all their lives and now you are saying you have to give them up, your secret, in order to save your son, nephew, or whoever's life.

A lot of our clients do not have the happiest home life, growing up. We are asking them to tell. . . re-live painful memories. . . . A lot of families feel they are gonna be judged on how they raised him. . . . Your son, or your nephew was raised at a drug addicted home, or was a victim of sexual abuse. I mean, to sit through that [interviews], you [family members] have to re-live that [painful memories] with our defense team.

Sidney also pointed out that family members who stood up in the courtroom as mitigation witnesses were often re-traumatized:

If you got to be called to testify, especially siblings, a lot of times, it's hard for them, you know, maybe, they all have the same type of abuse at their home, and now, they are having to re-live something that they probably put out of their mind that they did not want to share with anybody. They did not want to share with us, and now they have to get up and share it in front of the room of full of people, and that can be very stressful for them.

Riley spoke of gaining family members' trust in order to get them to divulge a "family secret" as an uneasy task that attorneys never see:

Doing interviews, and having those little quiet moments with the family. . . . I go in there. It can't be a formal anything. I have to sit down on the couch. . . hang out, and it's those. . . little interactions, that finally build trust. . . . They [attorneys] never see that. . . . An attorney has to still stay objective. . . . He can't get down there. But we have to. Somebody does.

Riley also pointed out that the family secrets are so difficult for some of the family members to give up:

They are choosing to keep it a secret, rather than save him [the client]. That's stressful, because we cannot force people to do what they do not want to do. But, at the same time, you know, it's like he is gonna die. You are not doing anything to stop it, which baffles me.

***"They're Being Victimized Too"***

Paralegal Sidney and investigator Morgan spoke of the realization that death penalty jurisprudence victimizes family members and of the stress associated with witnessing their victimization. Morgan stated:

They [client's family members] are being victimized. . . . I don't think anybody looks at that they're being victimized too. That they're victims. They're definitely victims. They are facing horrendous challenges. . . . Nobody raises their child obviously to be a murderer. If my child was a murderer, I'd still love her. She's my child. I'll still stand behind her. . . . If my daughter was facing the death [penalty], that's horrendous, but nobody would look at me as her parent as being victimized. Yeah, I am. You're going to kill my child someday.

Sidney's narratives echoed with Morgan:

I felt more bad for the family, because we have got very close to his parents, and I felt bad for them, because they were very involved in their son's defense, they firmly believe that he was not going to get a death sentence, their son had a problem that they recognized, that they tried to get help and it did not work. . . . They are to me the victims, as much a victim, as the victim's family. . . . He is somebody's son, somebody's brother, somebody's father. And you know, he is the person, you know, he deserves some dignity. You need to respect that he has, just like you have, you lost your loved one, they are losing their loved one too.

It [death verdict] is a very traumatic experience. Many times they know this means that they will never get to touch their son again, they never get to touch your significant others if that is your father, your son, your mother. I mean, many times, by this time, they have been in custody for 3 or 4 years, and the only time they get to see them is when they are in trial at court, and they are shackled. You know, okay now, I will never be able to touch my son again.

I have one mother that told me one time, she said you know if he passed away, I can go visit his grave, I can get some closure, she said but this is just, as it he is slowly dying over this 10-year period, you know, it is a little piece of me that dies every day, knowing that he is sitting here in the cell, and then he is not gonna spend the rest of his life there, eventually they are gonna put him to death.

### ***“No Formal Services” for Clients’ Family Members***

Paralegal Sidney spoke of difficulties in searching for resources to support the clients' family members as a source of stress associated with capital trial defense practice:

Most of the services that I have seen were informal. . . . A lot of it has been through the church. . . . I do not know any formal services. . . . There has not been one that has been developed that we can refer them to. . . . There is no formal [organization] that I have known. It is very difficult for them.

When you are the victim of the crime, you go to the program, somebody comes over and sits with you during the whole trial. All kinds of services are literally available. It is not the way for the defendant's family. It is usually up to the defense team, somebody on the team, mitigation specialist, she usually has to go out and try to find some type of help for them. Church, counseling services. . . . But it can be difficult, because there is no program, no budget. . . . They [the state] do not see the defendant's family a lot of times. . . . They do not believe that they are also a victim, too. . . , but it is a very traumatic experience for them.

### **Compassion for Victims and Surviving Family Members**

Some of the participants spoke of the situation in which victims and surviving family members are present in court or at the sentencing hearing, and how emotionally evocative it is for the defense team to witness their emotional pain and suffering inflicted by the crime. For example, attorney Hayden said, "It's so sad to see the [survivor's] family there [in court] and if I see kids I always start crying. I want to cry right now just thinking about it." Similarly, mitigation specialist Riley stated:

I can see why they are feeling the way they are. Nothing is worse. . . . Sitting across from the victim's family, it breaks your heart. There is another thing that is very traumatic, very stressful, because you are watching the people that are affected by it, who lost their loved one, and how it rips their heart out, and you are over here defending this person who you also are believing in, and you are right there in the middle. . . . It looks like nobody wins, nobody wins in this. . . . Everybody loses. . . . It's sort of the ultimate path of life. . . . It can be very powerful, because I can see exactly how the victims would feel. . . ,and you look at your client. . . . They took their loved one who they will never see again.

Jesse, an attorney, described various reactions of surviving family members of the victim in expressing their emotional pain and suffering:

When you have a set of victims who come to court at sentencing, they can be very angry. That's the first opportunity that they've had to really vent in front of our clients. I had two sentencings last year, one in particular where the victim's family were just furious, yelling and pointing in open court at my client, calling

him names that I can't repeat, just really bad things. That wasn't that traumatic to me, but I'm sure it was to my client. . . . You have other victim's families that behave the way that I would hope that I would behave if I were ever in that situation, that are just forgiving and just sad. They still have compassion in spite of everything that happened. . . . They were the greatest people. It just made you feel even worse that they were such classy, humble, enlightened people that they could deal with that situation with so much grace. I'm not sure I could.

Paralegal Drew described how traumatic it was witnessing the suffering of surviving family members of the victim, especially when they provided victim impact testimony during the sentencing hearing:

That's hard for me when we do settlement. When we do the sentencing for the plea. . . , the victim's family is there and speaking and crying and I think that's traumatic. . . very traumatic on both ends. You feel bad for the client because the client is literally. . . walking into people who totally hate them. . . . They killed somebody who those people loved. It's a very judging situation atmosphere. It's very tight. It almost feels like the air is gone. Then you've got people that are just crying and crying and so upset. That's traumatic. You're sitting on this side and they're looking at you like you're the defendant, because you're actually working for the defendant. Yeah, that's traumatizing. That's not fun; that completely like depresses the rest of your day. It's definitely traumatic. That's hard.

What am I doing? What am I doing, what am I doing? There's a mother over there crying because her baby was killed. You're just like, what are we doing? It's traumatic; it's very traumatic, for both, and for the client.

Attorney Jesse and investigator Sam spoke of compassion for not only the clients, but also victims and their surviving family members as an important quality for capital trial defense practitioners. For example, Jesse stated:

If you don't care about people, especially people that have suffered this horrible loss, what kind of person are you? If you're not caring, compassionate to that person, what kind of lawyer are you going to be? I think about the victims and their family all the time.

My partner [another attorney on the team] feels the pain of the victims. He's very compassionate, extremely compassionate. . . . I think we have a good crew [team] here, because we really care. If we really care about our clients, we really care about people in general, which would include the victims. How can you not feel for them?

Similarly, Sam expressed:

I've said it several times throughout the interview and I have to keep saying this that I never want to lose sight of the victim. I feel most sorry for the victim. They are now dead. They did nothing that would warrant them being killed. I want to always feel the most compassion for the victim, absolutely.

Never lose sight of the victim. There was a victim here that's dead or maybe more than one. Cry for them too. . . . Feel compassion for that dead person and feel compassion for that dead person's family that are hurting and suffering as a result.

### **Violence and Trauma in Capital Cases**

Some participants described capital trial defense practice as stressful because capital cases that the team had to deal with were violent in nature; their work therefore involves exposure to traumatic materials. For example, Marley, a mitigation specialist, stated, "It's not like a regular job. . . where you sit at the computer and type stuff and go home. It's death, death, death." Marley also described graphic images as "disturbing":

There's a lot of disturbing stuff that we do and that we're exposed to. . . crime scene photos. . . . While I'll look at them, if there's stuff that's just too disturbing, I just won't look. . . . To me for some reason. . . more disturbing. . . is the autopsy. . . . It just makes me sick.

Paralegal Drew described the nature of the cases that the defense team had dealt with:

You always know that if you get a [capital] case, whether it's a child or not, there is rape, object rape, possible mutilation, killing, I mean it's everything under the sun. You always know that whatever comes in. . . . It's going to be bad, really bad.

Drew also expressed the emotional difficulty inflicted by crime scene photographs of a child victim who was around the same age as Drew's own child:

It was really hard looking at those photos because. . . they were born around the same time. There were also sexual injuries to the baby. I always thought of the pictures when I was changing my child. That was really hard for me. Just having those pictures in my mind all the time. . . . They stay in your mind, all the photos of everything.

This experience evoked Drew's fear of receiving another case involving a child victim:

I always think, "Oh God, please don't let it be a kid." There are certain things that bother you more than others. For me, it's kid deaths. That's tough. I always dread that, like please, I don't want to go. . . . Let's not take another one just yet, and you know you're gonna get that other one. You are so overwhelmed with what you already have. That's hard.

Attorney Jesse spoke of the exposure to traumatic materials as one of the difficulties:

"I've had photographs that were just horrible. That's always traumatic." Jesse also expressed the emotional difficulty inflicted by autopsy photographs of a child victim who was around the same age as Jesse's own child:

The current case I'm working on now, the victim is a little child. That's tough. I remember looking at the autopsy photos of this child. . . . Had I not been a parent, those photos probably wouldn't have affected me as much. I have a cute little child. In this particular case, it wasn't the crime scene photos that were so bad. It was the autopsy photos. During the autopsy, they really sort of open up the wound and it's a really very gruesome photo. I remember looking at those on a Friday. It just ruined my whole weekend. . . . I was depressed for a whole weekend, just thinking, how could someone do something like that to a cute little child? . . . I know a lot about this little child because we've done all the mitigation stuff. This child was cute, outgoing, friendly, properly adjusted. . . . This child was no different from my little child.

Traumatic materials also come from interviews with mitigation witnesses. Casey, a paralegal, spoke of such an experience:

I had one just recently that was very traumatic for me. I happen to come from a dysfunctional family where I was abused. We were interviewing mitigation witnesses for one of our cases, and the woman that was talking to us was telling about the horror that she had to endure when she was growing up, and it was basically my life if you just changed the names. I had to deal with some depression and flashbacks after that, so that was very difficult.



## **Emotional Reactions to Clients Receiving Death Verdicts**

Most of the participants spoke of emotional reactions to clients receiving death verdicts. Among those, eleven participants reported that they had experienced their own clients receiving death verdicts. Two attorneys (Dakota and Jesse) provided related narratives based on their experiences of standing on behalf of other attorneys' clients in court when death verdicts were delivered. Additionally, one paralegal (Casey) provided observational information on other defense teams whose clients received death verdicts. Two themes emerged: (1) Clients receiving death verdicts as being "traumatic"; and (2) Anger evoked by death verdicts of clients.

The participants described the scope and the magnitude of their emotional pain associated with experiences of clients receiving death verdicts. The participants indicated that emotional reactions to death verdicts of clients were intense, and a few participants not only perceived the experiences as traumatic, but also spoke of anger evoked by the experiences. Each of the themes is described below.

### **Clients Receiving Death Verdict as Being "Traumatic"**

Many participants described their experiences as "traumatic." Among those, over half of the participants experienced their own clients receiving death verdicts. For example, Sidney, a paralegal, stated, "The most traumatic part is when the case was not resolved in a way that we wanted when our client gets death. . . . It's very hard. . . . It is very hard. . . . It is very horrible." Similarly, paralegal Charlie said, "The worst one was the first one when he was sentenced to death. I just came back and cried." Jordan, a mitigation specialist, provided detailed memories of that moment:

I think the most stressful situation was . . . when we did lose a case, and watching my client be led off to death row basically, after court. Knowing that he was

going to be going to [death row] and we get to know our clients, as I was saying, really well. . . . It's almost like watching your brother being led off. . . . Even though I had dealt with a lot of emotional or stressful situations, it's really nothing like this because the consequences are the most extreme, and that is the person that is going to death row. You get to know them as a person, other than what they did, so it makes it very difficult. . . . Very sad . . . because . . . we know them so well. . . . Yes, I got to know him well. I would say kind of traumatic, actually. . . . That was the most traumatic.

I was with his family. His family was in court so after he was led off back to the cell his entire family fell apart. So I was falling apart, but I had to be there. I mean, I didn't have to, but I wanted to be there to support them because they just lost their brother, father, etc. We were in the courtroom together for quite a while afterwards and they were completely. . . . I mean one woman, his sister, fell to the ground. So, being in a position of trying to support them, try to say something positive and at the same time with your own feelings was very difficult. . . . What I found was that I couldn't hide the way I felt. It was too difficult, so we just kind of all went through it together. I might not have been as much of a support to them as I would have liked to have been, but I think maybe that it helped them to know that this had affected me and other members of our team, as well. Even though we were doing the job we got to know him well also, and it was very difficult for us also.

Mitigation specialist Riley provided narratives that echoed Jordan's experiences:

I just had one [traumatic experience]. . . . That's why probably I called you so fast [to participate in this study]. . . . It was a bad case. . . , but we also had tremendous mitigation. But, I will tell you that when we got the death verdict, it was tough. We were all just reeling. . . we were numb. . . . You are defending the un-defendable, but some cases it really knocks you up for a loop.

After they got it [death verdict], the van is waiting. They are not allowed to go back. Now, in this particular case, he had a gift. In that, the judge held him over one more day [in jail] for something. He got to get on the phone to say good bye to everybody, which normally they never get a chance to do. . . family, his girlfriend. . . . It hits you so hard.

Obviously it's very stressful, after you have gotten a death verdict. . . . You put in all that energy, all that time, you are almost like family, I mean, you know these people probably better than your own families, too. And then. . . you. . . lose the case. . . . Ah . . . awful. . . . You are talking about really intimate things, and then once you make that breakthrough, then you can get close to that family, as you do for your client. So, in the end, not only does it have a bad outcome, you've got the client, you have got the whole family, at the same time. We invest so much time in these. . . , that makes it very difficult.

Morgan, an investigator, reflected upon this experience, resonating with losing a loved one:

That whole experience of when those jurors, when they say, “Yes, my true verdict is, yes, death, death,” and they say that. You’re sitting with the mom or the sister, you just can’t let go. . . . This. . . to me, it is no different than getting a phone call that your child was killed in a car wreck or something. I mean that is a true verdict. That is, they’re going to kill that person. That is very traumatic, and I’ve been there. . . . I’ve sat there and cried with the sisters and the moms and the dads. They’re just like you just got a phone call that your loved one was killed. That’s how bad it is. You just got the phone call that your dad died. I mean it is horrendous, and it’s for real. It’s not at a play that we’re all going to get up and clap at the end. This is for real. These people do get death sentences. I haven’t experienced the call where they’re actually taking them into the death chamber yet, but I know it’s going to happen.

In that moment, I will never ever not. . . like you’re stunned. It is seriously the best way to describe it is the phone call that your family member is dead. That’s the best way to sum it up. I’ve done two of them. . . . That’s the moment. . . , you realize they’re gone. That’s the same thing in a verdict at court. That’s how it feels to me. . . . It’s unbelievable. It’s indescribable.

The most shocking thing for me is when they poll the jurors, and they’ll look you right in the face. They look you right in your eyes, and they say, “Yes, that’s my true verdict. Yes.” It’s like they’re killing our client each time they say that. I can’t comprehend it. I cannot. . . . Nobody has the right to kill anybody. No. I can’t comprehend it.

Similarly, attorney Alexis expressed: “These are loss experiences, these relationships are losses for me. It’s almost as if somebody died.” Alexis further continued:

Two of my clients received the death penalty. . . . Those experiences were very traumatic for me. It was a shock. I was in shock, when I heard those both times. It was no less the second time, no less difficult. . . . I mean, it was not any easier, even though it happened the second time. It was a chilling experience.

The verdict was read by the clerk of the court, they take the paper, and the judge looks at the paper, and then hands it to the clerk, and the clerk reads it out to the court, and they basically say, “We the jury empaneled do find the defendant shall be sentenced to death, for the crime of first degree murder,” or something like that. Your heart jumps. You know, because it’s such a shock. And then, the judge says “okay,” you know, and the jury files out, and right then, the client is sentenced to death. And in both cases that I have had that happen, the judge allowed the clients to sit at the counsel table, and just read the verdict, you know,

the sentence of death, but because, he stands, standing is so difficult. And my client, one of my clients, just like, felt like he shrunk. You know, when you have heard, yes, visibly, just kind of shrunk [with gesture]. That kind of like, you know, it was just awful. What an awful experience.

I really believed. I really believe that, especially the first time, that my client deserved a life sentence. I really believe that. I never thought this could happen until the last minute that it did. And then when they came back, I was, that was shocking.

That was just simply a horrible experience, because you put so much of yourself into cases, and they are telling you your client's life is not worth for saving, it is not worth it. They are telling you that, they are also telling you basically all your work you did does not really matter. . . . It's just really a shock. It's like getting kicked in the head, I mean, really horrifying, shocking. . . . Words can't describe adequately the feeling. . . . It's very, very difficult to go through that.

We worked, my team and I worked so hard for both of these clients for 4 years. For a full 4 years, and to be told by a jury, within just a few days, you know, of deliberating, deciding their lives were not worth sparing, after all that effort, all of the out of state trips, all of the jail visits, all of the investigations, all of the hours and hours and hours of meetings, and of writing motions, and all those things to be told that your client doesn't deserve to live is just, just a frightful experience, horrifying.

Attorney Sean recalled:

It was a real slap in the face. I would call that a trauma for me. We had spent so much time and effort in presenting this mitigation case. It was weeks and weeks; we had given them so much material and books. They just went in there and they had already decided. They just hung out for a few hours and came back and said "death." I would say that was the traumatic experience. . . . They didn't identify with the client, clearly. . . . They had made up their mind. It seemed like it was very. . . , everything we did was pointless.

Sean also stated: "Everybody [on the defense team] cried. . . . They were stunned, too.

We all were. Everybody worked really hard." Investigator Sam depicted the moment through detailed observation:

When the jury came back. . . , they just simply said, "Death." . . . When you hear that word, God, my blood just ran cold. . . . They sentenced this man to die. It's not going to be for many, many years if it ever happens. We're hoping at appeals it won't, but it's not going to be for many years. Still, when you hear "death". . . , that word in and of itself, it tears you up.

I looked over at my mitigation specialist who put her heart and soul into this case. . . mitigation, they understand the whole family. They reconstructed this person's, or our client's, life from the day they were born. . . . I looked over at her. . . and I saw. . . a little despair. I knew that he gave everything that he had and I felt so bad for her. I looked at the attorneys and I looked at the client. The client seemed just like a statue. He was affected, but the team was even more affected. I looked at every one and I know how I felt. . . . I looked over at the team. I looked at the attorney that was the primary attorney in the case, he was up there, and I looked at the mitigation specialist who was sitting right next to me and I felt their pain. I just felt what it did to them and it actually did it to me too.

Angel, a paralegal, expressed:

People have asked me in the past what's the most difficult part of my job. I tell them that the most difficult part is when I'm standing behind my client and the verdict is read because you have to stand there and not say anything and not show any emotion. When you hear that, all of that work. . . , and your client is standing there and he's trying to be strong and not say anything or have any outbreaks or whatever, that's really hard to stand behind him and listen to somebody getting the death penalty. I don't believe in the death penalty for many reasons, and so standing behind my client and knowing. . . what kind of life he's going to have until he dies. That's very traumatic. It makes me feel. . . when I hear the verdict read, and it's the death penalty, and I can't show any emotion or anything, it's like there's this huge knot in my stomach. I feel like I'm going to be physically sick. . . . Your heart starts to beat faster, and you just try and keep breathing and wait for the jury to leave the room so you can kind of take a breath and be okay.

I knew both of them for like five years, [client's name] actually six years. That's when it [receiving a death verdict] gets to be more of an emotional thing is when you know them, and you know their life story, and you know their family. Even in [client's name]'s case there were family members that stood beside him.

Cayden said:

We all know that you can either get a life or possibly a death sentence. I think a lot of times when you've really worked and the attorneys have really worked hard to try to explain to the jurors why this person should receive a life sentence. They've got all the evidence. They've got all the experts that can testify to the same thing as to what's going on with this client. The jurors just don't quite . . . they're not able to get it. They don't make the connections. They give your client death. That is very touching to me. It has brought me to tears. That's really the sad part. I believe it not only causes stress with the client, it causes stress with the entire team, the attorneys, the investigators, paralegals, and also the mitigation specialists. Because you're sitting there, you're saying, what is it

that they don't see that we're seeing? I think that was a little bit traumatizing for me the first time.

I walked out of the courtroom crying. . . . I think it's because I had really kind of grown attached to the client. I would meet with him every week. It was very clear that he had certain disabilities. I'm saying, well, the jurors have sat here, they've even heard him speak. Why is it that they can't see that he doesn't have the mental capacity that we do? That was really hard.

Dakota, an attorney, described the moment when an all-white jury delivered a death

verdict to another attorney's African-American client:

I think the most traumatic experience I had was standing next to [a lead counsel's name] when [client's name] was sentenced to death because I stood in for [a co-counsel's name] who couldn't be there. I had never stood next to a man being sentenced to death. I didn't really know [client's name] at all. . . . It was just so appalling to be there as he was sentenced to death, number one. Number two, it was appalling to be there later and listen to the jury give their cockamamie reasons for sentencing him to death. If there had been real reasons, of course, I had been doing this a lot of longer than the jury. If the reasons had been coherent, if the reasons had been understandable or debatable. . . , that's the point I'm thinking of. . . but they were looking for excuses to kill him. They were looking for reasons to kill [a client's name], and I think a lot of it was because he was Black and they were all white. There wasn't an un-white face on that jury panel. An old white guy. . . was the foreman of the jury. His reasons for imposing death were incomprehensible except in the context of race and culture, especially race. A dangerous Black guy with a gun shoots a white. . . . Case over, no matter what. So it was very traumatic.

Paralegal Casey provided observations of other defense teams:

I've observed some of the other paralegals. There are tears shed when your client gets the death penalty. . . . I've not had this experience yet, but I've observed some of the other paralegals, and I can certainly understand. In fact, sometimes they even have to take a couple of days off because it's so traumatic to see the jury come back with that kind of a verdict.

### **Anger Evoked by Death Verdicts of Clients**

Several participants spoke of anger evoked by clients receiving death verdicts.

Among those, two attorneys (Alexis and Avery) and one paralegal (Angel) experienced their own clients receiving death verdicts. For example, Alexis, an attorney, stated, "For

myself, you know, just a lot of anger. I had a lot of anger about what happened.”

Similarly, attorney Avery said: “It was. . . anger. It is what it is.” Avery further stated:

I’m mad at the system, mad at the jury. I wonder if they didn’t care because he was Black, and the person he killed was white. They can identify with the victim, but not my client. I was just angry I guess that they—that even if they couldn’t understand how he got to be sitting in that chair next to me. That maybe, just maybe there would be some form of compassion. I guess my anger was just the lack of care and compassion that we share. . . . The anger at the emotional disconnect between jurors and my client.

My client had a horrific childhood. I mean it was terrible. The jury didn’t care. They were like, “So what. What does this have to do with anything?” That pissed me off because they couldn’t see the connection between what he endured and the homicide. Even though the law doesn’t require a connection – and they don’t have to find one. I just felt that their humanness, their very humanity should have let them see that this guy was shaped into a killer.

Additionally, Angel, a paralegal, expressed a sense of being insulted when the jury took only a few hours to decide to deliver a death verdict:

It took the jury four hours to decide. Four hours is not a long time to decide the life or death of somebody that you’ve been looking at in the courtroom for three months. To me that was insulting that it took them such a short time to make such a – to me this is one of the most important decisions you would ever have to make.

Attorney Dakota, attorney Jesse, and paralegal Casey described their emotional reactions when they witnessed clients of other defense teams receiving death verdicts:

The punch is that everyone got to thinking that [this client] was going to be another success story; that [this client] was going to be another life verdict. They worked so hard and [the attorneys] are the best and the brightest. They are really way there in terms of the quality of the work they do. Basically they were undone by the jury’s inchoate racism I think, because I got to sit for there. . . . [The attorney] couldn’t talk to me, he was so mad. I got to sit there for 90 minutes and listen to [the jury] telling me all these bogus reasons for killing this guy. I thought it was terrible (Dakota).

They [the jury] were racist. There’s no doubt in my mind that they were. . . . The client was African American. I think every single one of them was white, except for maybe one or two Hispanics. They were angry. I just sat there and listened. . . . They said some things that were just shocking, they were sort of

irrational. I thought very judgmental, there was obviously a cultural gap between the mindset that those jurors had and our client's lifestyle (Jesse).

It's frustrating too because – I know recently one of our paralegals, their client got a death penalty. She told me in tears, she said, "I don't think they even considered the mitigation aspect of this case." You put all this work into trying to convince them that this is not an evil person, and then if you feel like they're not even considering that it's very, very frustrating (Casey).



## **Effects of the Stress**

All 18 participants described effects of the stress from capital trial defense practice. Five themes emerged: (1) Negative changes in physical and/or mental health conditions; (2) Diminished trust, faith, and sense of security; (3) Negative effects on personal relationships; (4) Diminished motivation and sense of burning out; and (5) Deepening self-reflection on one's own values and perspectives.

Most of the participants reported that engaging in capital trial defense practice affected their lives in various ways. While the negative effects were profound, some participants expressed their deepened capacity for self-reflection on their own values and perspective as they engaged in this challenging work. Each of themes is described below.

### **Negative Changes in Physical and/or Mental Health**

Many participants spoke of negative changes in physical and/or mental health as a result of the stress associated with their practice. Four sub-themes emerged: (1) Sleep disturbances; (2) Negative effects on moods and mental state; (3) Physical and mental exhaustion; and (4) Physical health complications.

#### ***Sleep Disturbances***

Half of the participants spoke of sleep disturbances due to the stress associated with engaging in capital trial defense practice. Several participants spoke of frequent awakenings from sleep as a result of thinking about their work. For example, attorney Cameron spoke of “lots of . . . waking up in the middle of the night, worrying about clients.” Paralegal Drew talked about “lack of sleep, thinking about the cases.”

Similarly, Alexis, an attorney expressed:

I mean, we are talking about sometimes, sleepless nights, when you are waking up 3 o'clock in the morning, saying, maybe, things like, Oh my gosh, did I forget to

do this? Should I file this motion, Should I proceed with my case this way, ah, and just the worry that comes along with it.

It's often that you can wake up in the middle of the night, and wonder did I do the right thing here? Or just thinking about your case, wondering if the strategies that you are imposing on the case, employing on the case that should, I say, is the right strategy.

Resonating with Alexis's narratives, attorney Jesse stated:

It affects my sleep sometimes. Especially when you're getting closer to trial. You find yourself awake at 2:00 and you're just lying there and things are going through your head. . . . Like for a capital trial, the real stressful part can begin two months before the trial, the work up to it, the lack of sleep. . . . The sleepless nights.

Investigator Morgan described frequent awakenings, thinking of the work and the clients.

Morgan appeared to suffer from lack of sleep for a prolonged period of time:

The first couple of years of doing this type of work in depth when it's the death sentences, you never let it go. I think you never. . . you take it home every night. You think about the police reports, or you wake up in the middle of the night. I mean I think for the first three years I didn't sleep. Then you just finally say, "I'm exhausted. I need to sleep." I asked my doctor. I said, "I need a sleeping pill, because I'm not sleeping." Now, I'm okay. I can sleep again.

Avery, an attorney, spoke of waking up in the middle of the night and starting to work on cases:

I don't sleep very well. . . . During trial, definitely, just forget it. My mind is always going. . . . My mind just won't stop thinking and working on my cases. I'll get up, and I'll be sending emails to my team, 2:00, 3:00 in the morning. "Why are you awake?" "What else am I going to be doing? Who's got time to sleep?" It's not that I don't have time to sleep, it's just my brain won't stop thinking.

Paralegal Drew and attorney Cameron spoke of having work-related dreams and/or nightmares that negatively affect their quality of sleep. Cameron stated, "One of the biggest problems I have is, I will dream about my cases. So when I wake up I feel

like I've been at work the whole time I've been sleeping." Drew described having nightmares involving traumatic images associated with capital trial defense practice:

Sometimes I have a hard time sleeping or will have nightmares. I've had plenty of nightmares, stupid nightmares. I had a nightmare that we represented Hannibal Lector. Do you know who that is, from *Silence of the Lambs*? Stuff like that, nightmares. Sometimes it's the feeling of you almost don't want to do it anymore.

Mitigation specialist Marley and paralegal Casey spoke of difficulty in falling asleep due to stress associated with capital trial defense practice. For example, Marley stated, "My sleep is affected. I usually can't get to sleep." Casey mentioned, "Sometimes I have trouble sleeping. . . . After we got the autopsy photos. . . , I couldn't sleep for a couple of nights."

### ***Negative Effects on Moods and Mental State***

Half of the participants spoke of negative effects on moods and mental states. Some participants spoke of having a depressed mood developed by stress associated with capital trial defense practice. Casey, a paralegal, spoke of having depression and flashbacks that were triggered by exposures to traumatic materials. Also, paralegal Drew stated:

Sometimes it can make you a little depressed. Not depression like for a long period of time, but there are times where I come to work and I am good to go and I'm raring to go and let's get to work. By the end of the day, even though it hasn't been a particularly bad day, I mean I feel like I've had a crappy day. I'm in a bad mood, I'm depressed. . . . It can really affect your mood.

In contrast, the rest of the participants described their experiences of having a depressed mood when their clients received death verdicts. For example, Attorney Alexis stated, "a kind of a shadow of depression came down on me for a few days," being "tearful," and "not function[ing] very well" when a client received a death verdict.

Additionally, Angel, a paralegal, stated, “I just felt such a feeling of sadness and despair. . . . I know I could get past it and I’d be okay, but it really was hard” when a long-term client received a death verdict. Mitigation specialist Riley resonated, “You are just devastated. It’s like depression. . . . You are just numbed. . . . It’s like. . . haze.”

Some participants, who were all attorneys, spoke of a state of restless mind because they are “constantly thinking” of the work and the clients. Dakota stated: “You can be at home and thinking about it. When you get up you’re thinking about it. . . . It never goes away. It’s just always there. It’s like a little cloud that is always sprinkling on you.” Cameron said, “You wake up in the morning and the first thing you think about is something that you need to do in prep for the trial.” Also, Sean expressed:

It [closing argument] is something I think about almost. . . I think about what I’m going to say when I go to sleep. I am thinking about it when I wake up. It’s on my mind constantly. And really, I’m thinking about it before the trial even begins. In the preparation for the trial and during the trial, it’s always, I’m thinking about it, I’m envisioning myself there talking to them.

Jesse spoke of difficulty being fully present for your family members:

Even if you’re not in trial, even if you’re not about to be in trial, there’s a lot of times when you’re just sitting there at home and your mind is like somewhere else. You’re not always 100 percent there. . . because you’re constantly thinking about your cases.

That never ends, yeah. Even if you’re on vacation, it takes at least a day or two for work to get completely off your mind. Just the cumulative stress of always having these cases running through your head. Because there’s so many little intricate things that you have to think about all the time. You input data into your brain and then your mind continues to sort it out, sort of on automatic pilot at times that you aren’t even aware of it. That processing almost never stops.

Three attorneys (Alexis, Dakota, and Jesse) expressed increased irritability and tension because of stress associated with capital trial defense practice. For example, Alexis expressed “a lot of anger,” “shortness of temper,” and being “more irritated” as

experiences after a client received a death verdict. Dakota described being more “grouchy, uncommunicative,” as did Jesse, who was “more snippy” and “more tense.”

Alexis and Sean, who were both attorneys, spoke of how self-perception and/or self-esteem was negatively affected when a client received the death penalty. For example, Alexis stated, “I am questioning my capability as an attorney,” “more vulnerable, easily kind of insulted, very sensitive. . . , my self-esteem took a hit.” Alexis also stated, “I kind of kept to myself a lot. . . . Those feelings were too much. . . because it is heart breaking and demeaning. It’s a self-esteem issue.” Additionally, Sean stated, “I didn’t want to show my face. I was embarrassed, I was ashamed, there was some shame I felt about it.”

Two paralegals spoke of altered emotional sensitivity due to the constant exposure to violent and traumatic materials associated with capital trial defense practice. For example, Drew stated, “The cases you have get you desensitized because you’re in it all the time. . . . You see such horrific things and that’s all you see.” Casey provided detailed accounts in describing how the constant exposure to violent and traumatic materials have altered Casey’s emotional sensitivity:

At first it really bothers you, and sad to say after you’ve been doing it awhile you kind of become insensitive. I don’t like losing that sensitivity because it tends to affect other areas of my life, associating with friends and neighbors. When something tragic happens I’m not – I don’t respond as emotionally as I would have before I came and worked in the capital unit because it’s dulled my sensitivity. You have to put yourself in this little box where you try not to feel, and then when it’s time to go home the box is still there.

I’m kind of desensitized. With all that trouble in Haiti I wasn’t as empathetic as I would have been prior to working in this office. Those people are suffering but like I say, you build a little box that you put yourself in that insulates you from being touched by other people’s suffering.

When you do this kind of work you kind of put yourself in a box to shield yourself from emotion. When you go home it's hard to get out of the box. I feel like I'm a colder person. I used to be more empathetic, and I find it difficult to have empathy because I'm exposed to horrendous things.

Paralegal Drew spoke of experiencing intrusive symptoms:

I think there is a lot of trauma between having images etched in your brain or facts. . . . I'll think late at night when I'm trying to go to sleep, you just mull over the case and what you need to do, and certain things just really stand out in your mind as being horrific. I think it's very traumatic. Maybe not for everybody, but I definitely know it is for me. It's very traumatizing.

Drew also spoke of avoiding certain activities that may be a reminder of violence:

I don't watch the news anymore; I can't, because it disturbs me too much. My favorite novels used to be murder mysteries; I won't touch a murder mystery anymore because I do it for a living. I just don't want any more. I don't watch movies like that anymore because I try to get away from it, but it is very dark. I think it changes you.

I really have to tune myself out to the rest of, how can I put this, I don't really watch the news, because it affects me so much now that I deal with this all day. That on top of it just saddens me beyond, beyond, beyond, beyond. It's sad. I really try not to, like when we pick movies or go to movies I don't really want to watch anything real. . . . Violence now bothers me beyond belief, I think because I'm in it all the time.

### ***Physical and Mental Exhaustion***

Several participants spoke of physical and mental exhaustion due to stress associated with capital trial defense practice. For example, paralegal Drew stated, "Some days you just get headaches, you get burnt out and you're just so ready to go home."

Drew also expressed:

When I get home I'm exhausted, I'm so exhausted. . . . I have children so you've got lots more to do when you get home. Just because the work day is over that doesn't mean your work day is over. This will take so much out of me by the time I get home.

It is exhausting. There are days I'll go home and I feel like I've ran all day and I haven't. I mean I sit at a desk. I mean there's just nothing left. It is exhausting. I would say definitely that's how it affects me.

Alexis, an attorney, expressed physical and mental exhaustion experienced right after a client received a death verdict:

When I went through this, I had very physical symptoms, when this happened. There is no question. . . . I was functioning, I could function, but I could not function very well. You know, I could only do. . . very minimal kind of thinking in terms of my cases. . . .Physically, I was tired. . . . Mentally, I was exhausted. . . . I could not eat very well. . . . tearful. . . holding back tears.

Investigator Morgan and paralegal Casey expressed mental exhaustion due to stress associated with capital trial defense practice, particularly to the constant exposure to violent and traumatic materials. Both of them stated that they were too emotionally drained from work to get involved in volunteer work that involves trauma and suffering of other people:

I found that so much of this job is negative that I need to do other volunteer work that's not so traumatic. I had to get out of all of the trauma, . . . . There was just too much trauma here, and you saw too many horrendous things. I want good, fun things. Go to school with my child and do things for the school. . . . Do the things that still help. . . . I volunteer at bike races. I do the cancer runs and the walks. That is still. . . it's all about the people alive right then . . . volunteer to bring money or something for a cause. We help out with the people trying to restore their rights. I always volunteer for those kind of things that are positive. . . . Not the horrendous bad things people are in. I had to let that go (Morgan).

You kind of have to shut your feelings off in order to be able to deal with it. . . . It's hard to turn them back on. I have noticed a little bit of disconnect with my family and friends and neighbors that need help. In fact, I attend church regularly, and at my church they asked me to be in charge of what they call compassionate service which is where you help people that are in need. I had to tell them no. I told them that when I come home from work I'm just so emotionally drained that I just don't have anything to give. I just felt like it would be better to pick somebody else to do that. . . because when I come home it's my down time where I just want to kind of veg out and not have to think about suffering people. We deal enough with that in the office, and I don't want to have to do that in my spare time. It makes me less likely to do volunteer work with really needy people. I wouldn't mind doing things like teaching in my church because that doesn't require the emotional response that this compassionate service does where you help people that are sick. You help people prepare funerals for loved ones and that type of thing, bring in meals for families where

they've had a serious illness or they're in the hospital, that type of thing. I just felt like I couldn't do it. I was just too drained (Casey).

### ***Physical Health Complications***

Several participants spoke of physical health complications because of the engagement in capital trial defense practice. Some participants spoke of stress-induced illness and the worsening of the pre-existing medical conditions as a result of their work. For example, Sidney, a paralegal, said that a pre-existing health problem got worse because of the stress associated with capital trial defense practice, especially during a death penalty trial: "I am diabetic, so after my first trial, I got sick." Paralegal Casey expressed that various physical complications were accompanied by gaining weight due to stress associated with capital trial defense practice:

Because of the weight gain I now have other complications, high blood pressure. I'm a borderline diabetic now which is why I wanted to lose the weight. I don't want to have to go there. Also, because of the stress I've developed an immune system disorder.

Attorney Dakota spoke of increased blood pressure:

It's stressful because I think it's [it has] taken years off my life. I think it's slowly killing me. I used to be very healthy. My blood pressure is up. I'm on medication. I ride my bike to try and keep it down, but it's tough. It's really hard for me.

Morgan, an investigator, expressed various physical symptoms: "Stress will kill you. Yeah, this job can cause you to be physically ill." Morgan also stated, "Sores in your mouth because you're so stressed out," and "I try to eat healthier, but there's a lot of time where you go home you're actually physically sick." Additionally, attorney Avery stated, "In trial, I have more stomach problems." Drew, a paralegal, expressed, "It will bother my stomach, which I feel everything through my stomach." Drew also said,



“Sometimes it can make you a little nauseous, especially sentencing, because it’s just not a comfortable place.”

Attorney Cameron, paralegal Casey, and investigator Morgan spoke of changes in weight as a result of stress associated with capital trial defense practice. For example, Morgan stated, “You either put on a few pounds or you actually lose weight because you’re so stressed about what’s going on.” Additionally, Cameron mentioned, “I guess the stress has probably put some weight on me.” Furthermore, Casey recalled, “I’ve gained 40 pounds since I started working for this office, 30 of it working in the capital unit. . . in one year.”

### **Diminished Trust, Faith, and Sense of Security**

Several participants spoke of diminished trust, faith, and sense of security because of what they are witness to and have gone through as capital trial defense practitioners. Three sub-themes emerged: (1) Diminished trust in other people and the world; (2) Shaken faith in God; and (3) Diminished sense of security in the community.

#### ***Diminished Trust in Other People and the World***

Some participants spoke of diminished trust in other people and the world as a result of their engagement in capital trial defense practice. For example, attorney Alexis expressed:

That’s really caused me to re-think, ah, re-think a lot of my spirituality. I am, very, generally, very positive, optimistic kind of spiritual view, world view, and you know, to be honest, since this is happening, it’s really caused me, kind of, it’s really caused my spiritual, world view to be kind of, be more negative, I would have been much more cynical, in general, I mean, my world view as well, not just my spiritual world, my world view, I am much more cynical, after that.

Similarly, attorney Sean stated:

You realize how willing the typical juror, particularly when they get together and they empower one another, how quickly they decide to execute somebody. It affected my faith in human nature. . . made me question how good people are fundamentally.

Furthermore, Cameron, an attorney, said:

I . . . am not as trustful of people as I used to be before because we see the bad. We see a lot of the bad. I think I question people more than I did before. I'm not maybe as gullible as I was before I had this job.

Paralegal Drew provided detailed descriptions:

I know my viewpoint of other human beings has changed. . . . I used to honestly think, I'm such an optimist that way with human beings. I always thought that oh gosh, there's good in everyone, there has to be. I don't know about that any more. That's hard.

It really does bog you down. It makes you kind of darker. I've noticed as a person I'm far more dark because all I see is bad. You forget the good in the world a lot. It just makes you so very sad. It's hard.

Before. . . just like most Americans. . . unless it's something that their community is going through a lot, or faced with personally, you think, Oh, life is good. Then you see this. Just like I don't know how police officers do it. You see this all the time and I don't know how you could ever see a human being as good anymore.

I even watch my kids really closely. . . . Like, "Is there any signs? Don't hurt the cat? Uh-oh, Is he gonna be a client in the future?" That's terrible. . . . Very aware, but not of the positive side, of the negative side. You see a behavior. Say he bullies a kid in school and it's really not that big of a deal but I'm automatically like oh my gosh, should I have him in therapy. How can I stop this now so in the future he doesn't run into trouble with the law, even though it's probably completely normal?

### ***Shaken Faith in God***

A few participants spoke of a shaken faith in God due to what they witnessed through their work. For example, paralegal Casey stated, "It becomes a little more difficult to have faith in a benevolent God when you see what human beings can do to one another." Casey also stated: "You wonder how God could allow such a thing to

happen. I don't know. I don't have any answers for that. I haven't lost my faith, but my faith is definitely diminished." Similarly, paralegal Drew described:

It definitely hinders or makes you question your faith, because why? Why is this allowed? These are horrific things. Why? That's really, really hard. It's really hard to stay optimistic, because you know that this stuff is happening. You don't get to be blind to it anymore or naïve.

Attorney Alexis spoke of spiritual struggles after a client received a death verdict:

Trying to figure out where God is, in all this, why God allowed this to happen, I am going through that whole thing. Because of my, my religious background, I am kind of a very spiritual person, I have strong kind of religious belief, and I do believe everything happens for a reason, but trying to figure out how this could be a benefit, it is just perplexing to me, it really causes me some struggle with my faith; My faith life.

I try to pray about this, in terms of my spirituality, trying to reflect, try to figure this out in terms of you know what good is coming from this, what good can come from this. I am trying to put it into kind of my own spiritual perspective, and it has been very difficult. You know, and I am struggling, I mean, this is a huge struggle for me.

### ***Diminished Sense of Security in the Community***

A few participants spoke of a diminished sense of security because of their work. For example, attorney Cameron stated, "I'm much more aware of the possible dangers in the community." Cameron continued: "I'm much more aware of my surroundings when I go places. I always try to look and see where people are, what they look like, what they're doing when I'm out walking or I'm outside." Paralegal Drew articulated, "I'm definitely far more cautious." Drew also stated, "I am far more paranoid with my children than I ever was before as far as strangers and people out there that could hurt them, because I see it every day. I definitely, yeah, it's very stressful." Drew described a diminished sense of safety of surroundings in great details:

The thought of my kids going somewhere for a play date is terrifying, because you see. . . and what is the likelihood that they could possibly become a victim. I

mean it's probably not that big, but because that's all you see. . . . As far as at night, did you lock all the doors? I will never leave a window open as long as I live now, unless we are in that room, at that moment. I will never leave one open in the middle of the night when you're sleeping. I do think it affects you with other people, definitely.

You get paranoid. You see little scratches on your child and you go, "Okay, I hope nobody is abusing her. Oh my gosh." They get a little red in an area and you go, "I hope there's no abuse there," from day care or from other people that watch your children, just because that's all you see. . . . I know it changes me as a parent. I don't let my child ride her bike around the neighborhood, because I'm afraid that my next client could pick my child up and hurt her. It makes you very paranoid. You're in a parking lot and you look around a little bit more.

Resonating with Drew, Sidney, a paralegal, expressed:

I know that my work probably certainly has an effect on my home life, you know, the way I am with my child, the way I am, because you see at home, I see what really happened, I may be a paranoid [parent], because I see what happened. . . . You see horrible things, it does make you say, "God, how could he do that?"

### **Negative Effects on Personal Relationships**

Several participants, mostly attorneys, spoke of the negative effects on personal relationships, especially on their family members, because of the stress associated with capital trial defense practice. For example, attorney Hayden stated, "I suck at personal relationships," and "Personal relationships suffer." Additionally, Dakota, an attorney, stated, "It's been really hard on my family life. I go home at night exhausted, every day, grouchy and uncommunicative." Dakota also stated, "It's been really hard on my marriage doing this work." Attorney Alexis expressed the negative impact on family members when a client received a death penalty: "My relationships were affected. . . . I was more short of temper. I was more irritated during that period." Moreover, Jesse, an attorney, mentioned, "Sometimes you take the stress home and it makes you grumpy," and "It makes me more snippy with my kids sometime or with my [spouse]."

Attorney Sean provided a similar narrative:

People that I'm close to, they wanted to be comforting or wanted to be supportive. . . . That was not a source of comfort. In fact, it was, it turned me off, initially. Then after a period of time, you come back to the living, so to speak. You're more of . . . at first I wanted to be alone and I was angry and I was angry at everybody. I was just angry. You take it out on the people closest to you even though they're trying to be supportive. After a couple of days, then I stopped being as angry and I wasn't angry at the people around me.

Furthermore, paralegal Sidney spoke of being more withdrawn in response to the stress associated with capital trial defense practice:

It creates some stress, in your home life, because you are kind of focused, I have to get this done, you are quiet, I am not, maybe I am not in a mood to go out to dinner. . . . You are just not, you are not usual yourself, you cannot talk about it. . . because things are private and confidential.

### **Diminished Motivation and Sense of Burning Out**

A few participants stated that stress associated with capital trial defense practice negatively affected their motivation for engaging in this work. For example, Charlie, a paralegal, mentioned, “Lots of times in capital cases you're going to lose. It's hard. . . . It just gets hard,” and “I just got tired of it and wanted something where I didn't have to worry about what the sentence would be.” Additionally, attorney Dakota stated:

I focus on my children and their educations. I keep telling myself over and over again that I'm doing this so that my kids can get through college without borrowing money. . . . I don't know how much longer I can do it to be quite honest. But I'm going to keep. . . . I manage it by trying to stay fit. Losing battle, but I try and am devoting every day to my children because I'm their sole support. If something happened to me, if I vanished from the face of the earth, they would be up the creek. So I've got to get them launched.

Drew, a paralegal, provided detailed descriptions:

I got burned out probably in a year and a half. I was like I don't want to do this anymore. That's pretty much across the board with. . . . I know all the paralegals. I don't know how people make a career out of this. After a while you just, I don't want to see it anymore, I don't want to hear about it anymore, especially the stress. You don't realize how many violent, what people do to each other is horrific. In this position, working on capital cases that is all you see. You

inundate yourself with it, because you have to know the case in and out. You eat it, sleep it; it's constant.

It's getting harder to cope the longer I'm here. In the beginning, it didn't bother me. For the first year, I was able to actually justify and deal with it. As I'm here longer and longer, it's hard. It's hard to cope. As far as how, I have no idea other than I just keep saying, "I have to put food on the table for my kids. I have to do what I have to do and I have to do a good job." That's me as a person. I have to do my best I can and my ability regardless of how I feel personally.

There comes a point in the day, and I know the other paralegals are the same, where you're just like I can't do it any more. I gotta get out of here, I gotta, I don't know, go walk around, do something, because I cannot be on the case anymore. I gotta get some air or something.

### **Deepened Self-Reflection on One's Own Values and Perspectives**

A few participants spoke of the work as leading them to deepen self-reflection of their own values and perspectives. For example, Jesse, an attorney, referred to the value of life, stating, "The most profound philosophical issue that . . . we have to deal with every day. . . . It's forced me to think deeply about it." Mitigation specialist Cayden, expressed:

I think it really opened up my mind as to how I view things and realize, yeah, there's always more than one side to the story. Even with that, you may not be getting the entire story. There's still probably something that's hidden. I think that really helped me to view things a little bit differently.

Similarly, Cameron, an attorney, stated, "You start looking at different angles and different perspectives, instead of just jumping to conclusions and condemning somebody." Cameron also said:

I have a little more empathy for people who are in dire straits or desperate situations. I think I have a better understanding of why people do the things that they do, so I think I'm a little more. . . . forgiving of people.

This job and specifically like capital work, I think it helps me realize what a great life I've had because my clients have had such horrible lives. . . . It makes me appreciate what I have more because my clients are in such desperate situations. .

. . . It gives me a different perspective on my own life. . . . I have so much more than most people do.

## **Coping Strategies**

All 18 participants described how they coped with the stress associated with engaging in capital trial defense practice. Six themes emerged: (1) Balancing personal and professional life; (2) Taking care of health conditions; (3) Enjoying activities that rejuvenate oneself; (4) Utilizing inner resources; (5) Spiritual coping; and (6) Use of food or alcohol for comfort or relaxation.

The participants' narratives illuminated that they were engaged in a variety of coping strategies in response to a high level of stress associated with engaging in capital trial defense practice. The participants' narratives also indicated that coping with such stress was not easy and required conscious efforts for self-care at various levels. Each of the themes is described below:

### **Balancing Personal and Professional Life**

Many participants spoke of balancing personal and professional life as a critical coping strategy. Several participants spoke of "taking a breather" from work in order to relieve stress. For example, Alexis, an attorney, stated, "I took one day off from my work. I couldn't keep working [after a client received a death verdict]." Similarly, paralegal Angel expressed, "I took some time off [after a client received a death verdict]. The next day I came into work, but I wasn't feeling like I could work." Also, Sean, an attorney, expressed, "I took a week off. . . . Just staying away . . . have a week or some, a break was necessary [after a client received a death verdict]." Cayden, a mitigation specialist, expressed the need to "take a breather" after a trial ended, regardless of the result:



We just got out of trial and you need to kind of get away and just kind of leave everything at work and just say, “Okay, I’m going to be starting another trial, so let me just kind of take a breather.” That’s what I did.

Morgan spoke of the importance of taking time off, calling it “mental health day”:

Sometimes you just know you need a day off. You need, I call it my mental health day. I am not physically sick, but I will be sick if I go to the office today. It’s like you know what a mental health day is. . . . I’m going to take Friday off, so I have a long weekend. Then I don’t think about this place. I won’t check my email. I won’t call any of the other people on the team, and I won’t go visit the clients. . . . I just say, “I’m gone.” I need to just go hike the mountain, go take my dogs for a walk. Read a book. I just totally dissociate myself from this place. I really let it go. It will still be there when I get here Monday. There will still be a new client in jail or a current client. I just say, “Enough is enough.” You just have to.

Paralegal Charlie spoke of “taking a trip” to “go away [from work],” in order to cope with stress. Attorney Jesse stated: “We take a lot of little vacations for a weekend or something. Just getting away. It’s always worth it, even though it’s stressful getting out the door and packing up, once you’re there wherever you’re going.” Similarly, Sidney, a paralegal, spoke of the importance of taking time off:

I try in making an effort, right before we get ready to start the trial, I may take a couple days (off), before we start. . . . I want to make sure to tell my husband, “Okay, let’s take a couple days away.” So that I can feel okay, I am relaxed, now I can start, and then when work is done, take how long 3 days, and sometimes, I am not gone anywhere, but I’ve just been here, you know. It feels good to be at home, do laundry, you know, do normal things, like I said watch TV. It is just being here, sometimes that helps a lot.

We go on like a mini-vacation. It helps relieve, to try to get back to a normal scene. We have done that. . . . We have even done that in the middle of trial when we had a break. It had been an extremely stressful trial, so “Let’s just go away. We were on a break for a week.” And sometimes, I notice that it does help, if we get a break in between the trial.

Several participants spoke of the importance of setting a clear boundary between personal and professional life. For example, Cameron, an attorney, stated, “When I go home, I try to leave the work at work, if possible” and Marley said, “I really don’t take

much of it home.” Also, mitigation specialist Riley spoke: “I have very strong boundaries. When I go home, I don’t even think about work once. . . . Home is home, work is work. And I go home, after 8 hours, I am done. . . . I don’t overwork. I am not a workaholic.” Moreover, Morgan, an investigator, provided detailed narratives that described setting professional boundaries:

You just have to find that balance. You have to find what you enjoy doing in life. Love your family. I spend as much time as I can with my family. When I’m away from work, I even now shut my phone off. I used to never shut my phone off. . . . If my family needs me, I’ll answer my house phone. I don’t have to answer my cell phone anymore. I don’t need to read my email Saturday morning, if I took Friday off. I’ll read it Monday morning when I get there. . . . If you’re in a part where you got to do something. There’s something that has to be done in a case, you do it. If it can wait until the next day, it’s okay to let it wait until the next day. That’s a way of coping and balancing it out.

I made a life for myself. I made a life. I made my life out of work more important. . . . I have to not think about this place, focus on my family. Go scrapbook, go hike the mountain, go do whatever I like to do. Go to the gym and work off and kick the bag. . . . I can deal with it tomorrow. Before that I was like a train wreck. I knew that I was going to crash and burn. You have to find that other balance.

Just say, “Okay, work is over with today.” You have to do that. Otherwise, you will probably crack up or get physically ill where you can’t do this job anyway, so what good would you be? You have to find that. You have to find that outlet. Whatever it is and for everybody it’s different.

Resonating with Morgan, Sam, an investigator, expressed:

You talk about it and you think about it, but I don’t allow it just to overrule my home life. I try to not think about it as much as I can, and I’m able to do that. When I’m here, when you’re sitting here, you do think about it.

You just have to put it aside and move on with the next thing. I have all these years of doing this, and I know how to not let it eat away at me. I don’t let it eat away at me, but I’m also human and I think about it. . . . Initially in any job, when you’re new or you’re only in a few years. . . it eats away at you. I mean you see things, but then you start saying to yourself, “This is what my job is going to be for my career. I can’t let that affect me.” And you learn how to kind of file it away, I guess is a good word, like you put the folders and you put in the file. . . .

You put in a file, you know it's down that file but you just don't dwell on it anymore.

Avery, an attorney, empathized with the importance of slowing down to avoid getting stressed out:

I'm raising kids. They chill me out. . . . I can't afford to get too stressed out because they expect me to be fully engaged. They expect me to be there for them. Present for them mentally and emotionally and physically. They force me to take a break. I don't let the stress interfere with my kids or anything. . . . They're not paying the price for what I do. Absolutely not.

Several participants spoke of acknowledging that you did the best you could for clients and accepting whatever consequences happened without being harsh on yourself as a way of coping with the stress associated with engaging in capital trial defense practice. For example, attorney Alexis stated:

I have done everything. . . . I did my best for my clients. . . everything I could do to give them a chance, maybe, get the judge to kind of reverse the decision, even though I knew. . . it was not gonna probably. . . do any good. . . . I put a lot of effort into getting a new trial, motions for a new trial, motions for clemency for my clients, so that was one response.

Mitigation specialist Riley spoke of the importance of acknowledging that you did the best that you could, regardless of the result:

Staring at the mirror in the morning, [telling myself] you have to do the best you can . . . because there is nothing worse than looking back, could I possibly [have done more]. You're never gonna do everything, but as much as possible, so that if it [death verdict] happens, I can say . . . I did all I could. We just got a poor jury or one that did not want to listen. . . . That can be pretty traumatic.

Sam, an investigator, tried to avoid self-criticism:

I think about what could have done differently, but . . . don't want to penalize myself. . . . I just maybe want to . . . make myself better for the next case, but I want to realize that I'm human. You have to be. . . able to accept successes and you have to be able to accept failures. Just accept that you. . . give it the best you can when you go into it and whatever happens happened. You can't. . . hold it in and say, "Uh-oh," and let it eat you alive because you'll self-destruct if you do that.

Cameron, an attorney, expressed the importance of “accept[ing] whatever happened” after doing your best, in order to avoid “dig[ging] yourself into a hole that you can’t get out of.” Cameron continued:

I think the most important thing is that you have to put things into perspective. . . . I tell myself this a lot, and I tell other attorneys this a lot. You do as much work as you can, you do the best job that you can, you be as persuasive as you can, you present everything you can to either a judge or jury, whichever the case maybe, and at the end of the day, you have to be. . . . You have to accept it whatever happened. It’s hard to do that in some cases, but you have to accept. You have to say, “This was for the best, or this happened”. . . . I have had a few cases that have I think weighed me down a lot more than others, that I stress and worry about, even though they’re over, they’re past, that I continue to dream about, continue to wake up thinking about in the morning and I don’t even have that case anymore, but I still have sometimes it’s hard to get past that.

Cameron described a helpful technique for accepting negative outcomes:

If you don’t put it in perspective, and you don’t think of it as, “This is my work, it’s not my life,” then you could get in a really bad situation. I’ve known attorneys that have done that, but I think you have to keep it in perspective, and you have to know that as long as I’m doing everything I possibly can that it has to be good enough because you can’t do any more than that.

Similarly, Cayden, a mitigation specialist, spoke of letting it go after doing everything that could have been done, and entrusting the client to the next part of the legal process, as a way to cope with the stress:

I’ve kind of learned that I just have to let it go. I’ll kind of tell myself, well this isn’t the end. There’s still the appeals process. Maybe, when it gets to the appeals process, you don’t have the jurors looking at it. You’ve got professionals that’s got the law degrees that understand the law a little bit better. I kind of just say we’ve done everything that we can do on this end. Now we just have to wait for the courts of appeal to make the final decision.

Cayden also described use of negative outcomes as learning experiences as a helpful coping strategy:

Trying to use it as a learning experience, and say, “Well, okay, I did this, and I did A, B, and C in this trial. Maybe what I can do is to change it a little bit. Maybe do

more extensive studies and try to find some other experts and some other areas or combine it with experts that I've used in this particular trial. With each case, I try to take something from it, as something I've learned, and that can help me with future cases. To me, I see that as a means of being therapeutic. That's my way of saying, "Okay, I'm going to not only increase my knowledge base, but it's also going to help me with other cases that I work on."

Attorney Sean expressed similar sentiments:

You do it again and do it better. Don't make the mistake you made last time. Learn from that mistake. Then if that happens and regardless of the result, make you feel a little better. Then you try it again.

### **Taking Care of Health Conditions**

More than half of the participants spoke of taking care of physical health as a critical coping strategy in response to the stress associated with engaging in capital trial defense practice. Half of the participants expressed doing physical exercise was an important coping strategy in response to the stress associated with capital trial defense practice. For example, attorney Hayden stated, "I work out every day. Working out is very important to me. If I miss a workout, then I get stressed. I need to work out, otherwise my stress level goes up." Resonating with Hayden, attorney Cameron expressed, "I work out a lot. I exercise a lot. I think it's a big stress reliever. I try not to miss any of my workouts. . . . I work hard to keep it [stress] off." Similarly, attorney Sean mentioned, "I think physical exercise is so helpful . . . those endorphins, something physical." Furthermore, attorney Jesse stated, "I go to the gym. . . . I try to work out," and attorney Dakota expressed, "I ride my bicycle to work when I can." Additionally, Morgan, an investigator, stated, "I like to work out," and Jordan mentioned, "I exercise . . . exercising, walking." Also, Riley, a mitigation specialist, mentioned, "I exercise, all the things you're supposed to do to work it [stress] off." Similarly, Drew expressed:

The one way for me I do cope with a lot of that is I work out. That's honestly the only thing that has kept me here this long. I can go and tire myself a bit and not think about it anymore. That is one way that I do cope.

My only outlet is just working out which I know sounds stupid. . . . I go to a gym for an hour and just try to get all my stress out. That's it. It's really hard. Nobody understands, so it's hard to talk about it. Really, that's it, and just try to live my life and do my job the best I can. It's my only coping. I don't know how else to cope.

Mitigation specialist Riley and paralegal Sidney spoke of the importance of maintaining proper dietary routine in coping with stress associated with engaging in capital trial defense practice. For example, Riley simply stated, "Eating right. . . . I try to take good care of myself." Additionally, Sidney who had unique health care needs, expressed the importance of maintaining proper eating routine:

You have to take care of yourself. You have to take care of your health. . . . You have to realize that you're not good for anybody else if you get sick. Who are you going to help if you don't take care of yourself first?

When I first started, especially during trial, so many times, the focus is on trying to get, you are making sure. . . , you are meeting all the clients' needs, making sure everything is done. And I am diabetic, so after my first trial, I got sick, because I was not doing, I was kind of out of my own routine, because I was very, very focused on. . . . It's your first trial, in your first trial is somebody's life. . . . Okay, I will take care of me later . . . Some trials, we are even working ten hours a day, seven in the morning, I go home at six or seven at night, you know, because you're trying to get ready for the next day, and you are coming early because you are trying to get ready for that morning. So I think what I have to learn was that even if all of that, I have to take care of me, I have to stick to what I know from my diabetes and my eating schedule, because me getting sick is not gonna help him, because then I am out three days or whatever, somebody else is covering for me at this stressful time. . . so I think that is what I have to learn.

### **Enjoying Activities that Rejuvenate Oneself**

Half of the participants expressed that engaging in activities that rejuvenate, comfort, and/or stimulate oneself was helpful in coping with the stress associated with engaging in capital trial defense practice. For example, Charlie, a paralegal, stated, "I

was out planting flowers this weekend. That helps.” Investigator Morgan stated, “I like to go hike the mountain. I take my dogs for a walk, my grandbaby, my daughter.”

Morgan further stated, “I’m going to run on the mountain. I’m going to smell the flowers. I’m going to play with my dogs, my cat.” Additionally, Jesse, an attorney, stated that camping in nature was helpful: “We go camping and that helps. I’m almost always able to forget about work. . . . A day or two up there of hiking and no TV, just beautiful scenery. . . . That’s my way of really getting away from. . . . That’s when my mind finally turns off from work.” Attorney Cameron expressed that yardwork was helpful in coping with stress:

I have a beautiful yard that I like to work in. I like to work outside. I was born and raised on a farm. . . so I really enjoy working outside. I have a big backyard, and I work a lot in the yard which I think helps stress.

Cameron also pointed out:

I’m a big football fan. We go to a lot of football games. . . . I enjoy going and watching all different kinds of sporting events. . . . Just anything that takes your mind off work I think is a support for you because. . . it is all consuming and especially when you get to the trial point. It’s really hard not to think about your trial. It’s really hard not to think about it. Anything that you can do that distracts you from that, that puts you in a different frame of mind to entertain you, or whatever the case may be, whether it’s going to the movies or whatever, I think it’s important to do that because your brain needs a rest from the work.

Sean, an attorney, stated, “Doing something that’s totally not law related, takes my mind off it. All those things are really important.” Similarly, Casey expressed:

I do things that take me away from it. I go to movies a lot now. . . . Every Saturday, we go to a movie because it helps me to forget, and it gives me a view on a world where things can be happy. I try to just deal with things that are upbeat. Like the church thing, I don’t want to deal with any human suffering, because I deal with it enough in the office. Give me something like teaching children in Sunday school. That would be great for me, because it’s something that’s upbeat. It’s hopeful. It’s positive. That’s mostly how I try to deal with it on an emotional level to just escape.

Furthermore, paralegal Sidney expressed, “I do a lot of reading. I try new things to take my mind off, if I have a bad day.” Angel, a paralegal, mentioned, “I do read books about loss and how to deal with loss and that type of thing.” Angel also stated that “journaling” helped.

### **Utilizing Inner Resources**

Some participants spoke of inner resources, such as one’s own cognitive, psychological, and emotional capabilities in coping with the stress. For example, Attorney Hayden, mitigation specialist Riley, and investigator Sam spoke of using a sense of humor in order to cope with the stress associated with engaging in capital trial defense practice. Hayden stated, “I like to use humor to deal with stressful situations.” Riley expressed, “You always have your gallows humor. . . . You start joking about things just because. . . you are working with such intense situations day and day after, so you do laugh about it. Similarly, Sam emphasized, “Never forget to smile and laugh, because it’ll make you feel real good.” Sam further stated:

I’ve used humor to diffuse very bad situations, people are getting real bad. If you use humor, people lighten up a little when you. . . , but you have to be very careful when you’re using humor. You don’t use too much of it because they’re going to think you’re goofy or you use it at the wrong time. You don’t want to do that, but I think humor is a great way to relax somebody and to make you be able to deal with a situation a lot better. You can use humor. You have to know when and how much to use of it.

Attorney Jesse and paralegal Sidney expressed that capital trial defense practice aroused a variety of complicated feelings about clients and victims, and that allowing oneself to recognize and process such feelings was critical in coping with the stress of their work and being effective as a practitioner. For example, Jesse described that feeling



anger toward a client could be part of a natural emotional response as a human-being, and processing such emotions was helpful in being “a better lawyer”:

I had to allow myself to be very, very angry at my client, which again is maybe something that’s counterintuitive, but it’s something I think that’s healthy. If you don’t go through those emotions, those are normal emotions. Those are the emotions that the jury is going to feel too. If you don’t recognize them and process them, and then come out on the other side of them and still feel some compassion for the person that did this, then how are you going to ask the jury to do that? . . . I’m glad I went through that process, allowing myself to be very angry at my client for what he did. . . . That was a way of coping, instead of trying to prevent myself from going through that.

I feel sorry for the people that don’t allow themselves to process the emotions. Because I think it damages them as human beings. I think that it affects their ability to really effectively advocate for their clients. Because we can’t be apologists for what our clients do. Because the jurors are not going to approve of what they do. We have to be able to condemn them to some degree in order to build them back up and show that they’re human. If we don’t show that we’ve gone through that despair the same way as the jurors are going to go through it, we’re not going to be able to relate to the jury, and they’re not going to be able to relate to our client.

Moreover, Sidney expressed that accepting emotional responses aroused by pictures of victims is a part of being human:

I think that is the biggest thing. I have finally learned how to juggle that, and I know, it is okay, I mean, sometimes, clients are accused of committing horrific crimes, and it is okay, to show emotions, because I used to think, Well, if I am on the defense side, and then I can’t show any type of emotions, but you can’t help it, show it, when you got to see a picture, you know, a [young] girl that was brutally raped and murdered, and you have to look through the photos, and you have to be prepared for those photos to be shown to juries.

Riley spoke of the importance of reminding oneself of one’s own responsibilities for saving clients’ lives:

Keep moving. . . . You don’t sit and like dwell on it. Not that you are not acknowledging at all that you are just devastated. It’s like depression. You can’t just sit there. You have to move forward. You have to do something. Even though for the first couple of weeks, you are just numb. . . it’s like. . . haze. . . but you have to move forward. You can’t just stop. There are other people, other

lives [to save]. . . . So, it's acknowledging how you really feel. I am not gonna live in denial, and say, "It's not killing me." But you have to move on.

## **Spiritual Coping**

Some participants spoke of spiritual coping. For example, mitigation specialist

Riley expressed:

I really look to God a lot to tell me where to go and what to do. . . . That's way I am here. . . , regardless of how difficult it is. . . . It's where I am supposed to be. Therefore, I feel that I get the help that I need to be able to do it as difficult as it is. . . , when there is time to move on. . . . This is. . . my strong belief. . . . God. . . Ah. . . what he is done? There's times where normally I should fall completely apart, and I didn't, and I could not figure out why. Even the attorney was looking at me and goes, "How are you handling this so well? So like God. . . because if I was on my own, there is no way that I could do this. . . remain here. Most of the people are gone within three years. . . moving onto something better. . . or they just can't take it anymore. . . . Ah but me, I. . . am planning on staying. So you are determined to stay. . . then you have to learn how to cope and assess and re-assess and figure out. . . . One client at a time. Ah, it's not easy sometimes.

Additionally, Morgan, an investigator, stated:

You have to have qualities where you don't get all consumed. When I leave [the office], there's nights obviously that you can't let this place go. You also at some point just have to believe you're doing the best you can, and God has a plan. You just have to have outlets to let it go, because otherwise, it will eat you alive. It will consume you. It will. Because you'll always be like, "What if I would have done this?" or "Could I have done this?" . . . . I think at some point you have to believe in yourself, and that you did the best you could also, and the team did the best they could. Otherwise, I think it would eat you up inside that you always think you could have done something better.

Morgan also said:

In the back of your mind, I always know I have two death verdicts out there. I write to the clients. I accept a call [from them]. I talk to the family members when they call. It's not like you totally disassociate, but you have to find a balance. You have to find, okay, today if I talk to mom or a sister, and they cry, and I cry with them. Okay at the end of the day, maybe something is going to happen. Then you say your prayers and you say, "Watch out for them." You say your prayers that. . . God takes care of them too.

Mitigation specialist Cayden spoke of meditation, biblical reading, and prayers:

I think I try to do like meditation. I read my Bible. . . I just ask God to not only be with our client, but also to be with the victim's family. . . . I think a lot of times if you don't know the full story [of clients' lives]. That's why I think in a spiritual way I'm able to ask God to kind of take all those things into consideration. Because none of us are perfect, but I think some of us are more damaged than others, where you're not able to make wise decisions. That's where I'm able to ask for God to watch over both parties.

Moreover, Angel, a paralegal, stated, "You just never know what's going to happen in the future. I just have to hope and pray." Angel further expressed:

I am not a religious person, but I'm a spiritual person. I believe in the power of positive thinking. I tell myself that the people that are on death row are okay. I do hear from them from time to time. They write me a letter. . . . I have a strong belief that we have a really good team and that we did the very best we could. . . . That helps me a lot.

#### **Use of Food and/or Alcohol for Comfort or Relaxation**

Paralegal Casey, mitigation specialist Marley, and attorney Hayden spoke of use of food or alcohol to get comfort or relaxation. For example, Casey stated, "The other thing that I did was eat because eating made me feel good, especially chocolate. I would always feel better when I was eating that comfort food." Additionally, Marley mentioned, "Because of the stress, I probably drink now more than I used to," and Hayden stated, "I drink. It relaxes me."

## **Support Systems**

All 18 participants described their support systems in two different contexts: (1) Support system within personal contexts; and (2) Support system within the working environment. The participants indicated complicated views of their support systems as well as their felt needs for support in personal and organizational contexts.

The participants' narratives elucidated perceived support systems for engaging in capital trial defense practice within personal contexts as well as within the working environment. As for personal contexts, a significant number of the participants referred to family and/or their significant others as a source of support; however, a few participants expressed unique needs as single people. Other perceived support systems within personal contexts included friends outside of the working environment as well as a faith or religious community.

In terms of support within the working environment, the participants referred to colleagues in the capital unit, capital trial defense team, and organizational support, and provided mixed feelings toward each of them. As for colleagues in the capital unit, many participants described colleagues in the capital unit as a source of support; however, some participants spoke of a "closed culture" among colleagues in the capital unit, especially in terms of expressing painful feelings such as those related to receiving a death verdict for a client. Regarding the capital trial defense team, half of the participants described the team as a source of support; however, some participants expressed the team as a source of stress because of tension in the working relationship among the team members and lack of fluidity in team assignments. Finally, as to organizational support, several participants, mostly attorneys, recognized organizational support for capital litigation;

however, some participants expressed the lack of a formal mechanism in addressing trauma associated with engaging in capital trial defense practice. The two major themes are described below.

### **Support System within the Personal Contexts**

All 18 participants described their support system within their personal contexts, and three sub-themes emerged: (1) Family and/or significant others; (2) Friends outside of the working environment; and/or (3) Faith or religious community.

#### ***Family and/or Significant Others***

All except one of the participants referred to family and/or significant others when asked about their support system for engaging in capital trial defense practice; however, the participants expressed contrary views of family and/or significant others.

To begin with, most of the participants described family and/or significant others as a source of support in dealing with stress associated with their work. For example, Alexis, an attorney, stated:

My social support system is my family as a strong support for me. . . . When I come home from my office, I am blessed with a family that can kind of allow me to just leave my problems at work, experience the joys of being with my family, so that's been a real blessing for me.

Also, investigator Morgan expressed:

Mine is my family and appreciating them and doing things with them. Looking forward to going home to my dogs, my cat. I love them. Just sitting in the living room, sometimes just with my [partner] sitting next to me on the couch is good, because it's not thinking about this. My [child] walks by, she gives me a hug. . . . You have support of your family, and they know what you do. . . . It helps to have family that knows and understands what you do and know that. . . . When you go home and know that I get to hug them every day, I get to see them.

My family does support me a whole lot. I thank God every day that I have a loving [partner], a loving child. . . . We do a lot of family time. A lot of sitting by the pool. Even not just doing anything, but being together. We do a lot of

that. . . . We just do a lot of . . . play games at night with my child on the computer. We scrapbook. I spend a lot of time with my child scrapbooking. Making her memories. Yeah, my family is very, very important, very. I love them to death. All of them . . . my dogs and cat.

Similarly, Casey, a paralegal, said, “Sometimes I go home and I just want my [partner] to hold me, and that’s a big help to have that physical comforting.” Casey continued:

My [partner] has always been a great emotional support and my children. I have three grown children, and while I don’t discuss specifics about the case, they kind of bring me back to reality, kind of pull me out of that glass box. I don’t know what people without families do in this type of work because there’s nothing like family to make you realize that yes, there is still love in the world and yes, there’s still understanding and caring. It’s not all violence and death and tragedy.

Attorney Jesse stated, “Informal [support] would just be my family, basically. My partner has to hear all this all the time. . . . [My partner is] the one that I vent to about everything.” Jesse further described:

For me it's actually my family is a plus. Some people will tell you that if you do capital defense, you shouldn't have a family. . . . I know people that say that. I think it's really sort of the opposite. Yesterday was a good example. I was sort of having a stressful day. Then I go pick up my kids at school. . . . You feel good. Children provide a mental break.

I think overall the family thing's a good thing, it’s a good way to get your mind off of . . . you have to take your kid to the park on Saturday if it's a beautiful day, whether you have a trial starting or not. That's a good thing.

Additionally, attorney Cameron stated:

I have my [partner] that’s very willing to listen to me rant and rave and gripe about things to get them off my chest and relieve some of the stress if I have it. I can go home and yell about the things that happened during the day that upset me, so that’s always good.

I have a great family. . . . None of them really live here, but I have a really good family that I see two or three times a year. . . . They’re very supportive of me. They joke about my work and you know they’re very conservative as in if you commit a crime you need to go to prison type of people, but they keep it lighthearted. . . . We joke with each other a lot.

Moreover, Avery, an attorney, said:

I have a supportive partner. . . . My parents are supportive. . . . I can talk to my partner about any and everything. We're pretty close. I have . . . what do you call it? A morbid sense of humor. I just find . . . we have a black sense of humor. It's just really morbid. We . . . you laugh to keep from crying sometimes at some of the crazy stuff.

Attorney Sean stated:

My partner is wonderful because . . . during the trial, there's not the typical demands. Can you get dinner, do this chore, that chore. I don't have those demands. I'm in trial. I have a lot of support that way, that the case can take over my life and I don't have to be worried that I'm not giving fulfilling my role in regard with other people outside of work in my personal life.

Resonating with Sean, Sidney, a paralegal, expressed:

We are starting a trial in August, that is kind of what we both had to learn, my partner learned, so okay, from August to whenever, September, October, I am just gonna be quiet . . . it does not become the focal point of our relationship, my [partner] does not take offense to it. . . . [My partner] understands.

Furthermore, attorney Dakota stated, "My children are very supportive so they help me a lot. They support the work I'm doing." Charlie, a paralegal, stated, "My [parent] listens to me a lot. . . . I call and talk to my [parent]." Riley, a mitigation specialist, stated, "My [partner] is very supportive. [My partner] understands . . . says whatever makes me happy . . . makes it humorous . . . puts a spin on it. . . . [My partner] has a light touch, which really helps." Additionally, mitigation specialist Jordan and investigator Sam both spoke of their partners as people who listen to them.

In contrast, some participants referred to family and/or significant others unavailable as a source of support in dealing with the stress of their work. For example, Drew, a paralegal expressed mixed feelings about family as a source of support, saying, "My [partner] supports me with what I do for a living, but doesn't want to hear the gruesome details, so you have no outlets really." Additionally, Attorney Hayden

expressed, “I guess my [partner] is considered a support person. I don’t know. I don’t have a support system.”

Furthermore, paralegal Angel stated, “I’m a single person. I don’t have a partner or anybody like that.” Angel continued, “I can call up my sister. . . . She will let me laugh and cry and get it out and say, ’That’s too bad.’” However, Angel also stated, “I talk to my family, but they don’t really understand the full impact of what I’m going through.” Similar to Angel, Marley, a mitigation specialist, expressed difficulty as a single person:

I'm single, so I think that places an additional burden on me. . . . If you had a spouse or significant other, you could at least talk to them during alone time, about what's bothering you or what's going on at work. I don't have any of that.

### ***Friends Outside of Work***

Several participants referred to friends outside of work when asked about their support system for addressing work-related stress. For example, mitigation specialist Jordan and paralegal Angel spoke of friends that they could talk to. Similarly, attorney Dakota simply stated, “I’ve got some dear friends.” Cayden, a mitigation specialist, stated, “Outside of here, I have friends that work in the counseling and psychology field that I kind of debrief with.” Additionally, Charlie, a paralegal, stated, “I have two real good friends that I talk to a lot. . . . When [a death verdict] happened, they just listened.” Charlie further spoke of friends who work in the field of criminal defense, but not in the same office: “I talk to people who are in criminal defense. We all kind of support each other.” Moreover, attorney Cameron stated:

I have a lot of friends. . . . They’re all very interested in my work, so I bounce ideas off of them, and I do stuff with them that I think helps me in my job here. It gives me some extra support that I need and feedback and things. Sometimes you can’t get good feedback from other attorneys. You need people who don’t know



about the law to have, to bounce ideas off of, because as lawyers we all think certain ways. . . . But a lay person out on the street will give you a whole different perspective of what is important and what they think, so I bounce a lot of ideas off of friends and stuff.

I think I have a pretty good support group. If I ever had problems or I needed to talk to somebody, I have plenty of people I could talk to and I think that's important. I think that's really important. If you don't have anybody outside this building that you can rely on, I think it would be much, much more difficult to survive in this job because it would take over, and I don't ever want to be taken over by my profession, so but I think I do pretty well.

### ***Faith or Religious Community***

Mitigation specialist Riley and attorney Avery referred to their faith or religious community when asked about their support system in addressing stress associated with engaging in capital trial defense practice. For example, Avery said:

They are constantly affirming that what I do is necessary and good. . . . They are just very affirming and supportive of what I do. That's very important to me. . . . They understand it. They understand it fully, and are supportive. They don't say, "Oh my God, why would you do that? Why do you defend that?" They don't say that. . . . They get why I do it. They get why I do it because it's part of our world. I love it. It's very self-affirming. It's good for me.

They help me keep my faith in mankind. . . . I worship with them, and I know that their heart is like mine . . . who do it, not just talk it, but walk the walk and do it. Keeps my faith in humanity afloat. It keeps me from being cynical and losing hope.

In contrast, Riley's faith community members "are very supportive, but they do not understand." However, Riley perceived them as a source of support, expressing the following statement with tears: "Even though they don't totally understand why I do what I do . . . they will be very compassionate. . . . It's meaningful to me."

### **Support System within the Working Environment**

All 18 participants described their support system within the working environment. Three sub-themes emerged: (1) Colleagues in the capital unit; (2) Capital trial defense team; and (3) Management.

### ***Colleagues in the Capital Unit***

Many participants spoke of colleagues in the capital unit when asked about their support system in addressing stress associated with engaging in capital trial defense practice. However, their views were contrasting. Some perceived colleagues as a source of support, while others experienced the “closed culture” among colleagues.

For example, attorney Sean stated, “Each person [in the capital unit] provides something different for me that is supportive.” Also, Charlie, a paralegal, emphasized the importance of peer support from colleagues in the capital unit: “The people that you work with are very helpful on an individual personal level. . . . I don't think anybody understands what we do until you've done it, even the lawyers, other lawyers, other paralegals, unless they've done capital work.” Attorney Cameron expressed:

This capital unit, itself, is very supportive of each other. Attorneys share information all the time. We like to discuss our cases with each other, talk about what we're doing, and I think that's important because you can get very tunnel-visioned on your case, and you don't see some of the things that you should be seeing, and when you talk to another attorney they'll say, “Well, what about this,” and you're like, “I didn't even think about that.” So I feel very comfortable here. . . . When I first moved to the Capital Unit . . . , I was very intimidated because these are the best of the best attorneys up here. They really are. . . . They're what I would consider the most experienced attorneys. . . . They've been very accepting of me, very supportive. Everybody, you know, “If you need any help, let me know. If you have any questions, let me know.” People have shared their motions with me, their information on jury selection, and I mean they have just given me stuff to help me get . . . comfortable with being on the capital defense team, and I can't think of anything, any place more that I would want to work than here. I think this place is great.

Alexis, an attorney, stated:

They are just great people. People that are really care. They are very dedicated people, I am very proud that I work with the people that I work with, not just only on my team, but the whole unit, whom I consider the best attorneys in the state.

One nice thing is there are others in my office that have experienced [receiving death verdicts], and there is a level of support there, and sympathy, I think. You know, we all are potentially in the line for that, for that to happen to us, so there is, I think, there is more sympathy in that setting that would not be maybe outside in the world. So I think that's really a positive thing in a very negative, negative kind of light.

Avery, an attorney, spoke of camaraderie of colleagues in the capital unit:

My colleagues here in the unit are supportive . . . like I say if you take on one, you take us all on. I have absolutely no doubt that if I need something professionally or personally. . . . I could call on the unit, and they'd be there for me. No doubt in my mind.

Moreover, mitigation specialist Marley stated, "I have a very good friend here . . . there really would be nobody else to talk to. We kind of use each other to unleash." As a single person, Marley emphasized the importance of friendship with colleagues in the capital unit, especially as a source of emotional support. Cayden, a mitigation specialist, spoke of other mitigation specialists as a source of support:

All the other mitigation specialists, we try to get together and talk about the cases. We kind of brainstorm among ourselves to kind of get ideas. That's always very helpful. Then after we get a verdict, you always get the support of your other mitigation specialists. That's very good.

Resonating with Cayden, mitigation specialist Riley referred to other mitigation specialists as a source of support: "I think mitigation people are probably closer than any group of people, whether it's attorneys or paralegals, anything, because nobody really understands what you are going through, except for another mitigation person." Riley described how mitigation specialists helped each other:

We are a really tight group, because we go through a lot. . . . We know what the other person, what they are going through. When they are going trial, we always poke our head in the door when there is death verdict . . . say "We are

sorry” . . . We are helping them out with. . . . How do I talk to this family member? . . . We know exactly what they are going through.

Riley also stated, “It’s a really passionate bunch of people here, they really believe in what they are doing, and that helps. . . . It’s a good unit. . . . A good bunch of people. . . . Nobody in the capital unit is here by accident [laugh].” Riley continued, “I love the capital unit. They are very supportive about the mitigation people, they understand what we do.” Paralegal Drew spoke of one specific colleague in the capital unit as an important source of support:

My mitigation specialist is a close friend of mine, so she is a support. . . . I can talk to her and she understands. It doesn’t mean she feels the same way, but she definitely understands. We both, it will traumatize us both in different ways.

Casey, a paralegal, spoke of other paralegals as a source of support:

The support system on an organizational level is basically each other because we’re all experiencing the same thing. We understand what each of us is going through. For example, the paralegal that I mentioned that was in tears because their client got the death penalty, I mean, I was in tears with her because I knew even though it wasn’t my client, it wasn’t my trial, I understand how vested we get in our clients and in helping with trying to get them life with the work that we do.

Similarly, paralegal Sidney said:

The biggest informal [support system] is, I would say, my colleagues, the other paralegals, talking to them, helping each other, Okay. . . what do you need me to help you with this morning, because we have all been where you have got, 80 things to do in an hour, and so I think the biggest thing [support], a lot of us are each other’s support system, we help each other, what do you need, let me know, we have called each other from court, said I am busy, can you go to my room to make sure that I get this? Informally, we own each other as the support system for paralegals, I know I can call one of my co-workers, can you go to my office and get this? They know, if I am not in trial, they can do the same thing, okay, what do you need me to do? What do you need me to bring you? That helps a lot. We talk to each other, you know we go, I go and talk to one of my fellow paralegals, oh, this is what happened today, that seems to help a lot of stress, and then I think we help each other, if we know somebody is in trial, like that morning, if she looks in a hurry, I go and ask her, do you need help this morning,

just let me know. We are trying to help each other as best we can to try to relieve some of the stress.

Angel, a paralegal, expressed:

The other paralegals in this unit, we're a good support system for each other. Some of us have been doing this since it started and have been doing it a long time. If I feel like I have a problem that I can't really talk to my team about, I would go to them because they all are dedicated, and they all feel the same way I do to a certain extent, so that's a good support system.

It makes it easier, a lot of times, we have all learned, as a lot of things we can talk to each other with the other paralegals. We go, this is how my day went, because you can talk to them about it. They can have some understanding. It is hard for somebody who is not going through this experience. I think, even if you come home, able to talk with your partner, unless [s]he is in the same field, you are human, you may not necessarily understand, okay, you can tell me, but they don't necessarily understand what you are going through the stress, like you said, when you are dealing with family members [of clients]. . . . For me. . . talking with my other co-workers about things, we go and talk, about my days, this is what happened today, because it helps talking with somebody else who has some understanding, so you know, that has helped.

In contrast, some participants described the capital unit as having a “closed culture” in dealing with stress associated with engaging in capital trial defense practice.

For example, mitigation specialist Marley expressed, “People who work in capital are very . . . closed-off to their emotions, which is how they get through.” Also, attorney Alexis stated, “I think the people at work, there are two groups, one that just avoids that topic [death verdict] completely, and another one that is somehow sympathetic.”

According to Alexis, “people at work have been pretty understanding,” and “a number of people really show some interest in my well-being [when Alexis's client received a death verdict],” however, Alexis also expressed that “a lot of people just try to avoid the whole subject.” Alexis wondered if such avoidance resulted from fear that their client might receive a death verdict, which was not an easy topic to speak about for many capital trial defense practitioners. Additionally, Jesse, an attorney, spoke of the “closed culture” in

the capital unit whose atmosphere was “not very open” in Jesse’s observation. Contrary to Avery’s narrative above, Jesse felt a “lack of camaraderie” among colleagues in the capital unit:

I find it difficult at times, the culture and the atmosphere here. . . . I don't know if other people feel that way or not either, because I don't talk to them about it. That's part of the closed culture. . . . I don't know if other people feel that way. I think it's sort of a closed culture. I don't blame anybody for that. We have good management. Like I said, I like and I respect my colleagues. It's just not as open as I would like for it to be. We should be able to have a little bit of fun.

This office, even though I like and respect almost everyone I work with, it's not a very open atmosphere. It goes back to that cowboys with loaded guns thing. It's like if I were to walk into someone's office, they would talk and we'd have a conversation. There isn't a lot of that. When you're in the trial groups, there's a lot of camaraderie and a lot of support and a lot of just discussion about your cases and free flowing ideas. Here there's not. It's a lot more formal. The culture here is very different. It's like we're all just sort of in our offices and in our teams. I don't like that. I think it's dysfunctional, frankly. I think the unit is dysfunctional. Or it could be that that's just the nature of the practice once you get to this level. I don't know. Maybe I have to adjust my thinking just to accept the fact that there's not going to be a lot of camaraderie and slaps on the back.

Sometimes I get the feeling that some of us are almost rooting for other people to fail. . . . It shouldn't be that way. We should all be supporting each other and respecting each other. I get the feeling it's not always that way. Again, that may be the nature of the beast too. We're all highly competitive people. That's why we're here. It's no accident that we're in the capital unit. It's not because we're the best lawyers. I mean, I assume we're good lawyers, but we also like to compete. That's why we are here. We want to practice at the highest level. That sort of breeds this sort of competitiveness that sometimes can be negative as far as our colleagues.

The longer I'm here, the more maybe I'm coming to the realization, that's just the nature of the beast. It may not be dysfunction. It might be that way in any capital unit, just because of the job that we have to do. To me, still, I'm disappointed that I think there. . . . I wish there were more camaraderie. . . . We could support each other a lot more and be less judgmental, I think.

Moreover, Drew, a paralegal, expressed, “There’s really no one you can talk to about [feelings],” other than one particular colleague in the capital unit, whom Drew described as a source of support above. Drew further described:

You can speak with the people here but the people here are either extremely desensitized or the attorneys that can justify everything and they think you're not crazy, but they just don't get it because it doesn't affect them the same way. If it does, they don't. . . speak about it. You just have no outlets.

### *Capital Trial Defense Team*

Many participants referred to the capital trial defense team when describing their perceived support system in coping with stress; however, they showed contrasting views toward the team.

Half of the participants described the capital trial defense team as a source of support in dealing with stress associated with engaging in capital trial defense practice. For example, Hayden, an attorney, stated, "Maybe the team is a support, like a little mini support group, because we talk to each other about it [stress associated with capital trial defense practice]." Also, attorney Sean reflected upon the team as a source of support:

You're working with the same people and sometimes it's easy to work in a team when you have a success. It's when you have a failure that you see how strong the team is. We pretty much stayed pretty tight.

Angel, a paralegal, expressed, "My support system is . . . probably like my attorneys [on the team] are one of my strong support systems here." Similarly, paralegal Casey stated, "I feel very comfortable with this particular attorney [on the team] and didn't at all mind sharing these personal details that just by way of explaining why I had difficulty with the [mitigation] interview. Riley, a mitigation specialist, stated, "Everybody takes responsibility, because we work very closely as a team. So, we take responsibility for the death verdict, too." Riley also expressed, "They [attorneys on the team] are very understanding, in fact, they think about me first, if I am doing okay [when a client received a death verdict]."

Additionally, Alexis, an attorney, said:

There is the only thing that I would like to add as well, another social support system I have, I did not really mention, I should mention one more time is the team itself. We all go through this as a team. We are going through this together. That really helps. Even though it hurts so much, it helps to know that I was not the only one alone there doing my case, you know, I mean, we have another attorney involved, we have a mitigation specialist involved. We have an investigator, we have a paralegal. You know, all these people are, were engaging in trying to do their best for our clients. And they did their best for our clients in both cases that I got the death penalty, and in all the cases before that. They are a great team, they are a great support, in that sense, even though, we did a little bit of debriefing, but certainly, you know, the emotions are still very raw at that time, so it's hard to get too deep into it. That was another social support that I wanted to add, I kind of neglected it, too. Just kind of assumed, but then I felt, well, it's better to mention that, in particular.

Moreover, investigator Sam stated:

I just enjoy seeing the enthusiasm of the entire team. There's an acronym that says TEAM, T-E-A-M. What T-E-A-M stands for, and it's really true, is Together Everyone Accomplishes More, T-E-A-M. That's so true together, when you work on a team, you feed off each other, is what it is. I'm feeding off of all the other people in the team and it makes me feel . . . it motivates me knowing that I'm in an environment where others also are enthusiastic.

We work very closely with the attorneys. The way we work here is, we have. . . I'm on two different teams, but each team is the same. We have two attorneys. We have myself, an investigator, and we have a mitigation specialist and we have a paralegal. The attorneys involve us in everything. We have team meetings all the time. We discuss the case. We discuss theory and the attorneys are the final say. They pretty much run the show. We work as support staff, but once you've worked with these attorneys and you get to know them, they value what you have to say. You don't feel like you're just support. You feel like you're just on the same level. I do understand that the attorneys make the final decision because they are the ones that are out front. When you go to court, they have to stand in front of the judge; they have to face the jury; and they have to present a case. . . . It's so important to work as a team and when you have a team effort, it lessens the stress.

In the teams that I'm in, the attorneys, as I said, run the show. They run the show. The attorneys that I'm working with, I'm very lucky; I can't say about the other ones in this unit because I haven't worked with them. The ones I work with, you really feel that what you say makes a difference. It's not like, "Oh, I don't want to hear it." It's not like, "I'm the attorney; you're just the investigator." It is not like that. The attorneys listen to what you have to say and they respect your point of view. That is a motivating factor. . . . It makes me feel like I'm a part of the team and that motivates me . . . knowing that you're part of the team. . . . I feel I



get the support from the people that actually run the team. They give me the support and respect of listening to what I have to say.

Furthermore, Sidney, a mitigation specialist, stated:

On my team, I know if I am not here, there are other members of the team that will step up and be able to fill each other's spot, we are trying to do that. . . . I am trying to keep things organized, so they can find out on their own.

We help each other out, call each other and say, I am not gonna be here today, can you do that, the team communicates very effectively, I need your help, I can say, I need somebody, I am not gonna be here on Monday, and Monday is the PowerPoint presentation, and [someone on the team] would say, oh, I can run it for you, if you have got it done, I can do for you, and vice versa.

Finally, mitigation specialist Cayden described how the defense team valued and thanked each other for their contributions:

We just kind of like brainstorm over different ways that we can handle the case. We think of, what do you think the jurors would be thinking if we do A, B and C. We kind of try to think of how, what is the perception that the jurors will have if we present things this way. Or should we look at a different angle of presenting it. Everyone's input is valued. That's what's so good about it.

I think we work very well together. I'm not a very vocal person. I'm more one that likes to kind of sit in and research and kind of just think over things. Our paralegal is the same way, kind of like soft spoken and doesn't talk a lot. I feel that we're both very thorough in our professions and that we are able to give to the team. In that aspect, like I said, I think we all work very well. We all work very well together.

After each trial, when the jury is deliberating, we always get together and we thank each team member for their contribution. I'm not sure if all the other teams do that or not. I know our team, we always get praise from the attorneys for the parts that we worked on. We likewise praise them and let them know, you did a fantastic job in the closing or the opening. . . . They'll ask for our feedback, even when we're sitting there. We're writing notes to each other. We'll say, how did I do on this? Or do you want me . . . what do you think I could do differently? Or what questions do you think I should ask the jurors? We all got our pads out and we're writing back and forth and handing notes to each other. With that, that's how come I think we work very good as a team because it doesn't matter what position you hold, whether you're an investigator, paralegal, mitigation specialist, the attorney are always looking for your input. Your input is always valued.

In contrast, some participants spoke of tension in the working relationship among the team members in describing the team as unavailable as a source of support. For example, Hayden, an attorney, described the parallel process of stress within the defense team:

There's always a certain amount of stress when you work on a team, especially as you start to get closer to a trial or some sort of hearing or a deadline. Then the team will get stressed out. . . . They feel your stress. I mean, as a lawyer, the rest of the team feels your stress. Especially with me, I get very serious. I like to joke around a lot, relax. Then I get very serious and it stresses the team out. Then that creates stress on me because I'm like, oh gosh, why am I being such an asshole to them, I should slow down a little bit, make things nice.

Also, attorney Jesse described challenging aspects of the group dynamics within the defense team:

One of the difficult things about our job is having to work together on these teams, because they're like little families. You've got another lawyer you have to work with, you've got a paralegal you have to work with. You've got an investigator and a mitigation specialist. If you're all working together, it can be great. If you're not, if there's dysfunction on your team, it can be horrible. . . . That's one of the biggest challenges is trying to keep everybody together, everybody happy. It's not always easy to do that.

Sometimes there's just personality conflicts where you may be thinking one thing and the person on your team may interpret your actions or your words differently than what you intended. Like for example, maybe I'm in a hurry or I'm impatient to get something done, and maybe that shows on my face when I'm asking someone to do it. They think I'm impatient with them. I'm not impatient with them, I'm just under pressure, I need to move forward. Instead of being as nice and diplomatic as I would like to be in an ideal world, sometimes I'm just to the point. That can be misinterpreted sometimes as being rude. Without ever yelling or being aggressive but just being to the point, that sometimes when you're dealing with sensitive people, that can be a problem sometimes. Also, I think it's important for lawyers to. . . and I'm not always aware of how I'm perceived by other people. Because I see myself as very democratic and humble. Because I'm the lawyer, other people who are not lawyers see me differently. It's true of all of us lawyers that we're perceived as having higher status or whatever. When we say or do something, it has more force and effect than if we weren't lawyers. They may cause people's feelings to be hurt. Those dynamics are sometimes difficult.

Similarly, Charlie, a paralegal, pointed out personality conflicts within the defense team:

Sometimes if you're not in trial, I think part of the problem is personality of the teams. Sometimes you get along, sometimes you don't. That's just part of working on teams. I don't know if that's necessarily capital work or not. Lawyers are not the easiest people to work with.

Some of the teams are more helpful than others. They've been there, we talk about it, commiserate. It's just more on a personal level. Because there is some friction among the teams, within some of the teams and stuff, there is a problem. I don't know if—it's probably the nature of the work and probably the nature of the attorneys.

Investigator Morgan spoke of personality conflicts that could compromise the team's ability to create an effective working alliance:

You have different personalities also. You have . . . each person is their own person in their own right. It doesn't matter how easy going you are. You can still have conflict because you have a team of people. That conflict . . . sometimes you're not always matched right. No matter what, that person can't see eye-to-eye with you. You can't see eye-to-eye with them, and then you have conflict.

You can also have these personalities that you can't get along with that person. That creates stress in a team, because we're all human. If you absolutely don't like somebody, you shouldn't have to work with that person, because it's not good for the team. It's not good for the client.

I think that they're starting to see that you have conflict within a team that causes conflict all the way across the board. That can create a lot of stress when you can't get along. Even if you're the most congenial person, it's tough when there's turmoil inside a team. That causes a lot of stress. It causes stress for every person, because you don't want to take sides, or you don't want to get involved in the issues. Yet, you're affected.

Mitigation specialist Marley described a “traumatic” incident with an attorney on the defense team:

What was traumatic was an experience that I had with an attorney. . . [who] took his frustrations out on me. Threw paperwork, was pacing back and forth, I mean it was scary . . . took a stack of paper, just threw them down right in front of me. . . He was yelling and doing his thing. He was printing stuff off and he's telling me who had never wanted me hired. . . . I had to tell my supervisor. She said, “Well, you have to go to the head person and talk about it.” . . . You worry, Are you going to lose your job? What's going to happen? It's very complicated. . . . I

got the boot. . . . It was tricky and sneaky how they did it. It was like behind my back. . . . I was asked 'Do I want to switch teams?' I'm like 'No,' because for me it's about the clients. I wanted to keep the clients. I could deal with the attorneys, but it's the clients I wanted to be with. By switching teams, you don't keep the same clients and you start all over. You've already worked on this case for over a year. You have your rapport with the person. Things are going fine except for the attorney. That was awful. That was a nightmare, switching teams. I barely got through it.

Marley expressed a sense of helplessness and lack of respect or appreciation from the attorneys on the team:

I think [attorneys] really just use us. I'll never forget when I first started, thinking it was a team. I thought of a team . . . as my own way of thinking that everybody's on the same level. They're not. That's just how it is here.

I've talked to other mitigation specialists in capital who have the same problems. . . . It's very much run by the attorneys. The respect that we get is usually pretty little. . . . It's been an issue for years. It's not going to change.

I think sort of the helplessness, because we're not the attorneys. I can only speak for myself, I'm not an attorney. I might think that the best way to help this person is one way, whereas the attorney wants to go another way. That creates stress.

Marley also spoke of a sense of resentment toward those who lacked their motivation because they burdened the other team members:

One more thing with the stress. . . . People not pulling their weight in the team. . . . They're not really interested in it. They sit around. They don't self-initiate. . . . The rest of us have to take on that work. . . . You see this person. You have meetings with this person. You know they don't like you. I've got resentments towards them.

Additionally, some participants spoke of lack of the fluidity in the team assignment as being problematic, especially when the team members have already experienced difficulties in their interpersonal relationships. For example, mitigation specialist Marley stated:

The team concept, it works and it doesn't work. . . [in] different ways. Initially it seems like a great idea. I know other offices . . . capital mitigation (specialist) works in different teams, different cases with different teams. For us, we're the

same team, same cases. . . . You get one bad team and . . . you're stuck with them.

Similarly, Charlie, a paralegal, expressed:

You pretty much have to stay where you are. Once in a while there's an opening and they may change you, they may not. Then sometimes if you know the people you're working for, and certain times it's stressful. Sometimes it's easier to stay where you are.

It's really hard working with some of . . . to be truthful, some of the attorneys are easier to work with than others. . . . Because here we're an exact team, we work for the same lawyers and the same people all the time. It's sometimes good, sometimes bad.

Attorney Jesse wondered if rotating the team might be helpful, when considering frequent interpersonal conflicts within the team:

I don't know what it is. Maybe my personality, I don't know. It's also I think just the team dynamics. Other offices . . . they don't have teams like we do. They switch them around. Every time you get a new case, it's like, okay, you form a team, find a lawyer, find a mitigation specialist, etc. I think that might be a better model because it's not me alone. I mean, a lot of us have clashed with various people on our teams or with the other lawyer. It's very difficult to shift things around at our office. After like four years of being on the same team, it just gets sort of old. I think it would be better to rotate.

I'm in sort of a crisis now where I'm clashing with people on my team. I don't have that support. That's the problem if you aren't getting along well with your team. That's your support. . . . Because it is sort of a closed culture, you're stuck with your team. Then when that dysfunctions, your support system is just shattered. Then you have to try to rebuild it. . . . There have been lots of teams that have blown up and fallen apart for various reasons. Lots of different reasons. . . . Any imaginable reason.

Morgan, an investigator, called for more fluidity in the assignment of teams, where a team could be created with the staff whose strengths would best serve the uniqueness of each case:

I think it's just a true rotation. You're up next. You get a case. I know the attorneys have a little bit of say so. I know that they can say, "No, I don't want that one. I want the next one." We are fixed teams up here, and I think we should be more fluid. I think that if it's a case that the next investigator is more of a fit or they know DNA or their knowledge base is . . . it should be more fluid.

I think it should be looked at maybe that investigator, that mitigation specialist, that set of attorneys is a better fit because of the case. Or it's a black defendant from the south side Chicago, and you throw in a whole white team that have never lived on the south side of Chicago who has never. . . maybe not racist, because I don't think anybody in this whole office is racist. However, you may not understand their exact circumstances, or you might insult them, or even a different race. They have different parameters and it should be considered, I think. It should be considered for the family. You take a whole set of white attorneys and their mitigation specialists, their investigator, white, blond, blue eyes, and you take them to a Hispanic man who speaks no English, I think that culturally unless you step out of your box and get comfortable with their culture, you have to understand that. I don't think that's always looked at. I think it's just looked at this is your rotation, this is your team, you take this.

### ***Management***

Many participants referred to the management team when describing their support system for engaging in capital trial defense practice. Similar to their perceptions to colleagues and teams, however, the participants showed their contrasting views on the management.

Several participants spoke of the organizational support for capital litigation as helpful for them to engage in capital trial defense practice. For example, Attorney Alexis expressed:

I am really honored to be working for this particular management. They really understand capital defense practice, they are all, most of them are attorneys that have done some capital cases, capital case work. If not, they have been trial attorneys, they understand the attorney's needs, they do not get in our way, they do not make our job that difficult to do.

I like being in the capital unit, in the sense I can exclusively practice capital defense. . . . This situation is perfect, the public defender's office allows us to do that, practice exclusively, and . . . they give us full ability to practice and do our own cases the way we need to. They provide the resources that we need.

The stakes are much higher. . . . It's very important to have the time and resources to work our cases, we travel, we can go out of state often, to investigate to contact witnesses. The public defender's office flies us to various locations. . . . They really recognize the need and the importance of the work that we are doing,

and they back us up, both financially and . . . supporting us in a supportive manner.

Resonating with Alexis, Hayden, an attorney, stated:

In capital you have a full team and you have the time and you have the money, you can hire the experts, you can do the investigation, you can do all the things that you would like to have done for you if you were charged with a crime.

Attorney Cameron expressed a sense of trust in the management:

People always complain about their bosses and their administration. I've had a very good experience here. I've had nothing but support if I've ever had a problem. I've been able to go to my supervisors, administrators here, or whatever, discuss the problem, figure out what needs to be done and do it. I don't know if there's a lot of jobs out there where you think, no matter what I do they're going to support me, and from the very first day that I ever started this office the motto was, "You're going to screw up, when you screw up, let us know and we'll fix it," and that's exactly what this office does. You can't do legal work without screwing up. You're going to, and the thing about this office is, as long as you admit that you screwed up, and you go and say, "Look, this is what happened, this is what I did, what am I going to do now, how do I fix this?" They will help you get it fixed.

Sean reflected upon how this workplace helped Sean grow as an attorney:

This place, I've worked here so long. It's a place that I grow. . . I get support, I feel supported. It's an atmosphere where I get to work through. . . I work through the stress and the problems and the doubts and all the crap that comes with it. It enables me, I feel it enables me to take on the next case, do it again, try it again. That's the ultimate antidote.

Sidney, a paralegal, spoke of training opportunities provided by the management's

efforts:

There are quite a few death penalty seminars that go on throughout the year, and I think that does help too, because you meet people who have the same experiences that you have . . . and then you hear what it's like in their states, you can get an idea.

Twice a year, they used to send us to training trips, when you can get to meet and interact with different people from across the U.S. who do the same type of work that you do, and I think that helps, because you socialize with those people while you are there, whether in a classroom discussion about the issues or you meet them for dinner, you are in the same field.

Similar to Sidney, investigator Morgan talked about the importance of training opportunities: “You get to meet people. You get to discuss it with your team. You make rapport. . . . Those social outings there help you make your job better.”

Contrary to the view to the management as supportive, several participants spoke of lack of a formal mechanism for addressing secondary trauma and psychological harms associated with engaging in capital trial defense practice. For example, mitigation specialist Jordan, reflecting upon the time when a client received a death verdict, wondered, “Why don’t we have a response system here?” Jordan referred to “organizational formal response” to secondary trauma experiences of firefighters, and emphasized that capital trial defense practitioners need a similar system, because the work involved traumatic aspects:

Organizational formal response, yeah. Because I think fire departments do when they go in and they have a suicide. I mean, if you look around at others that might be similar in terms of the level of intensity there are those places that have a much more formal mechanism to deal with it than we do.

My gosh, what is being done for capital staff, mitigation specialists who again spend the most time hearing and experiencing these things? . . . I have friends and I exercise and I take care of it, but still it would be great if there’s an instant place to go. Maybe more formal than informal of dealing with it; because, if you don’t have good coping skills I could see where it could really harm someone, at least temporarily.

Jordan also expressed, “I think the office should have a formal mechanism” in providing immediate support for the capital trial defense practitioners when a client received a death verdict, such as information on secondary trauma and coping, a list of counselors who are trained on trauma, and leave of absence:

We can always, if you feel like it, you can call E.A.P. and ask for a counselor, but I think that there should be an immediate – you know, once you get that verdict there should be immediately people to talk to . . . that you’re given information on



who to contact for counseling not just E.A.P., but counselors in the community who may be really well trained on trauma or stress because you don't want to go to just any counselor. It doesn't have to be somebody who's ever worked in the death penalty, but just somebody . . . trauma or stress like any other type. Just given names of people; having your supervisor check back to see if you called them, maybe one time.

There's no formal way that you could . . . or immediately that you could go to your computer and be given a list of people to see or go to your computer and you have some articles immediately to read. I think they could do a better job of formalizing it.

I think you should be given time off formally, where you don't have to put in your own time, you're given whatever. . . up to a week or whatever you feel like you need to get out of the office and go do something else. I think all groups should get that same, if attorneys get it, but mitigation specialists don't, that doesn't make any sense. Every person who touches that case should be allowed to have the same time off – formal time off. Not just go to your supervisor and one says, “Yes” and one says “No”. . . office policy.

It needs to be recognized, allowed, and encouraged . . . almost maybe, be made to do it even if you say, “No, I'm fine”. Then you're told, “No, take at least two days away from here.” Whatever . . . something . . . yeah, I think they could do a better job of that

Echoing Jordan's narrative, Marley, a mitigation specialist, wondered why the office does not provide counseling services for the capital trial defense practitioners in dealing with secondary trauma:

I'll never forget when I first started this job, I was asking if they had counseling because I thought this job was . . . secondary trauma. . . . All day we're looking at horrific things. There's really nobody to go talk to. . . . There's nothing. . . . There's no crying in capital. . . . You've just got to be tough. You can't always be tough. . . . I'm sure there's like an Employee Assistance Program, where you would sign up with a counselor. I was hoping there would be something just for the Capital Unit. If things are really bothering you and you need to go talk to somebody. . . . Somebody who is not your boss, who can then use it against you or change your evaluation, or tell you that there's no crying in capital.

Similarly, paralegal Charlie spoke of a lack of organizational support for the capital trial defense practitioners in coping with secondary trauma and/or intense stress:

The office doesn't really help. I don't think as an organization, no. They don't do anything. . . . I don't know of anything. I mean, the county has depending upon their health programs, if you needed counseling. . . . I don't know of anything the office does.

The office doesn't offer anything too much through the office, no. It's just sometimes the people that you work with are very helpful on an individual personal level. . . . I don't think anybody understands what we do until you've done it, even the lawyers, other lawyers, other paralegals, unless they've done capital work.

I don't think they realize the amount of stress that you have or what you do. . . . Because the supervisor we have now for paralegals . . . never done a capital case. I don't think she has any idea of what we do. . . . She hears us talk, but she has never done one. I don't think they know.

Additionally, Angel, a paralegal, expressed, "It would be nice if they [the office] had some sort of a counselor or something that you could talk to [about your loss without anybody really knowing]," referring to psychological support provided for those who were affected by Hurricane Katrina. Angel suggested that the office provide such assistance for the defense teams in a way where secondary trauma is not perceived as "weakness":

It would be nice if they had some sort of a counselor or something that you could talk to. I think it would have to be somebody that would be personal and private. . . . When I talked to my supervisor and I broke down I was more worried that it was going to go further. I would think that you would want somebody that you could talk to that you didn't have to worry about that. If somebody is in crisis and has a trauma, for example, like Katrina, Hurricane Katrina, they had counselors that went there and helped the people. That type of thing where you can go, and you can talk about your loss without anybody really knowing. I didn't want my supervisor to feel that I was coming from a part of weakness because I didn't feel that I was being a weak person. I think I'm a very strong person. Like I said, I've been through a lot of life experiences, and I think I look pretty objectively at life. I know bad things happen. I know that there are bad people in this world. I think everybody has a story, but I didn't want it to go further with my supervisor, and so I asked her. . . . I don't want the higher up administration to know because if they've never done this before they might think, well, she can't handle it, and I didn't want any kind of retaliation.

If they had counseling or possibly peer group counseling. . . . I know that they don't have the funds to do that. . . . But it would be nice if they had some sort of. . . when you go through this if you want to talk to somebody there's a counselor available to call on the phone or go visit or something because I do have a lot of thoughts. Some of those thoughts I don't want to share with my team because I don't want to make them feel worse. It's not like they didn't do their job. It's more like they feel bad too, and I don't want to bring up something and they say, "Oh, yeah, that too. I remember." That's probably at this point what I can think of, maybe some sort of a counseling program for people who go through this. I don't think it's a weak thing. I think you have to be very strong to do this job. You have to be very strong to do this job, and I think I am a strong person, but it would be nice to have somebody to talk to without having the higher ups say you shouldn't be doing this anymore or it's too hard. I'm sure everybody in this unit really sad when they get a death verdict. That's why we work so hard not to get one.

Drew, a paralegal, described a lack of organizational support in coping with difficulties associated with this work:

There's nothing, there is absolutely nothing as far as anything. I mean you can talk, you can go and talk to your supervisor but your supervisor really has no answers for you. They don't know what to tell you, and you're kind of afraid to because what if that hinders or jeopardizes your job. There is nowhere for you to go. There's nowhere to have a different type of case, or this is it, you are considered specialized in capital. There is nothing as far as organizational [support].

Drew also shared an episode that made Drew feel that crying for a victim was discouraged in the capital unit:

When I first started, that baby case, I had to close my door because I was crying while looking at the photos. I mean it was just . . . of this little baby, its perfect little body. That was hard. I had to close my door because I know my boss was like, "Don't let anybody see you crying about a victim. It's not what we do here."

That's not professional. It's not considered, I don't think they want us really crying. I also don't want to jeopardize my job. That very, I mean, who knows, if she can't hack it maybe she shouldn't be here. . . . That was really tough.

Drew suggested that the office provide psychological education and therapy opportunities for assisting the defense team to cope with stress:

I think that they should have some form of therapy or something that we can talk to somebody. I really think that there should be something, and I think they should have classes where maybe you can learn to cope or learn to balance both worlds, the evil world and the normal world. That would be really, really helpful I think.

Some therapy, somebody we can talk to that's not going to judge us because we're not loving every minute of this; that kind of thing. . . . I think that's probably the best thing you can do. It should be provided, not something you have to pay for. It should be a part of it and not just for people that use the benefits here, because that's a lot of the things they do here. If you have their benefits then you get your flu shots, but if you don't, you don't get to. It should be for all employees or mandatory something, you know, just like officers.

Finally, Alexis, an attorney, expressed:

I do not know if they are so much, they have not dealt with in terms of organizational support in terms of. . . posttraumatic stress from receiving a death sentence. I do not think we have gotten there yet at this point, but I really feel they will be open to that kind of thing.

I do believe that they truly care about our needs. And you know, they want us to continue, I think they genuinely like people that are working for them, so I think they really want to see us continue, and you know, potential posttraumatic stress, from these kind of cases can obviously make people not want to continue, you know, it causes me to question whether I want to continue.

## DISCUSSION AND IMPLICATIONS

This exploratory qualitative study is the first of its kind to examine secondary trauma in capital trial defense practice for indigent clients facing capital murder charges which may result in the death penalty. Using a constructivist phenomenological approach, this study elucidated the lived experiences of capital trial defense practitioners for a deeper understanding of this phenomenon. In this chapter, I present a summary of findings and discussion, study limitations and strengths, and implications for social work drawn from this study.

### **Summary of Findings and Discussion**

#### **Motivation**

Participants' descriptions of their motivation for engaging in capital trial defense practice for indigent clients revealed that empathetic engagement with their clients with trauma was a hallmark of their reason to commit to this work. The participants also expressed other motivating factors, including opposition to the death penalty and racial injustice in death penalty jurisprudence, the desire to protect the right to a fair trial for indigent individuals, and the willingness to stand up for marginalized individuals and take on challenges. Some participants engaged in this work as their spiritual calling, and a salary increase was also an important compensating factor in response to added stresses.

All motivating factors are meaningful; however, it should be noted that commitment to clients emerged as a theme that was spoken of by the participants most frequently. Moreover, the sub-themes illuminated the nature of their commitment to their clients at a deeper level, such as the participants' humanizing lens to see clients and their behaviors in broader contexts, the participants' compassion and empathy for clients who

often had traumatic and oppressive experiences, and the participants' enjoyment of meaningful relationships built with their clients through their prolonged engagement in the process of getting to know them.

Previous studies (Figley, 1995; Illiffe & Steed, 2000; McCann & Pearlman, 1990; Pearlman & Saakvitne, 1999) suggest that helping professionals who work with traumatized clients are at risk of experiencing secondary trauma through their empathetic engagement with this population. Findings of this theme indicate that capital trial defense practitioners have a commonality with other helping professionals who work for clients with traumatic experiences, such as trauma therapists. Consistent with Adcock's (2010) suggestion, capital trial defense practitioners, in this sense, are at risk of experiencing secondary trauma as a result of their work, especially through their empathetic engagement with clients with traumatic backgrounds.

### **Challenges in Defending Clients Who Face the Death Penalty**

The ultimate challenge associated with capital trial defense practice for indigent clients that the majority of participants expressed was the responsibility for saving clients' lives. According to the participants, the stress from the responsibility for saving clients' lives was aggravated by the gravity of the consequence; namely, clients will get killed if they lose. Also, the pressure of saving clients' lives increased when capital trial defense practitioners got to know clients as persons including their traumatic upbringing and developed meaningful relationships with them through empathetic engagement.

Another challenging aspect of this work that a majority of the participants emphasized was the death penalty trial per se. In particular, the participants expressed difficulties in defending clients in a hostile courtroom with a jury who will have little or

no compassion and tolerance for their clients, and prosecutors will intentionally dehumanize the participants' clients as those who deserve the death penalty. The participants described themselves as the lone voice for clients, and making a defense in such an environment was difficult and extremely stressful. The participants also expressed increased demand in their work schedule during trials, capital jury selection, and waiting to hear a verdict as difficulties associated with death penalty trials.

Half of the participants described dealing with death penalty jurisprudence as stressful because it shook their faith in its fairness. Examples included unequal access to resources and information compared to prosecutors, law enforcement officers manipulating evidence and their testimonies on the witness stand in collaboration with prosecutors, and excessive sentences for plea agreements. Some participants expressed the fact that death penalty jurisprudence used capital trial defense practitioners to make it look like a fair system when it was not. The participants also expressed the fact that scrutiny for ineffective assistance of counsel and complications inflicted by the Victims' Bill of Rights in defending clients, especially in the context of intra-family homicides, were additional difficulties in relation to death penalty jurisprudence.

Negative community response was a topic that half of the participants spoke about as a source of stress resulting from this work. The participants' quotes illustrated that they frequently encountered negative reactions toward their work from community members, which led the participants to feel pressure to defend their position, and/or become reluctant to reveal their work in order to avoid criticism and stigmatization.

The participants revealed that working relationships with clients was another challenge associated with this work. The participants expressed difficulties in building a

working alliance with their clients, attending to their emotional needs, and speaking with them about entering into a plea agreement. Such difficulties were aggravated when clients wanted the death penalty, they proclaimed their innocence and refused to cooperate with the mitigation investigation, and/or they were around the age of study participants' own children. Some participants spoke of their contradictory feelings toward clients and an unexpected encounter of their clients' death as difficult experiences.

Working with clients' family members was another challenging aspect of this work. For example, the participants experienced stress when witnessing the emotional turmoil of clients' family members as a result of their loved one being charged with capital murder, who might potentially receive the death penalty, and interviewing the family members in search of mitigation evidence including traumatic experiences within the family. Some participants shared their view that clients' family members were victimized by death penalty jurisprudence, and described locating resources for clients' family members as extremely challenging because society did not see them as victims and therefore very little resources were available to them.

The participants also expressed their emotional pain when witnessing the sufferings of surviving family members in court and/or at the sentencing hearing. While the participants held firm regarding their primary duty for their clients, compassion for the victims and surviving family members was a natural feeling as human beings, and the participants expressed their compassion not only for their clients but also for the victims and surviving family members.



The participants emphasized that the violent nature of the cases and exposure to traumatic materials were difficult aspects of this work. Killings, rapes, abuse, and/or mutilation were often involved in the cases that they worked on, and the participants described frequent exposure to traumatic materials including photographs and interviews as highly stressful.

The findings of this theme indicate that capital trial defense practice for indigent clients is characterized as client-centered and trauma-involved. According to the participants, the core of this work was to save clients' lives, and relationships with clients and their family members constitute a significant part of their work. The participants expressed their caring feelings for clients and compassion for the victims and surviving family members; however, in the course of their work, they witnessed human suffering, violence, and tragic deaths. They felt terror for the gravity of the accused crimes, and a sense of estrangement from community. The participants' quotes suggest that part of the difficulties associated with this work is intertwined with vicarious experiences of the sufferings of their clients as well as the victim and their surviving family members. Their experiences appear to have a similar feature suggested by the literature on vicarious trauma among trauma therapists (Cunningham, 1999; Pearlman & Saakvitne, 1999).

The findings of this theme also indicate that challenges associated with this work involve fighting against "oppressive dehumanization" (Rotman, 2010, p. 533) of clients. According to Young's (1990b) criterion, the participants' clients can be deemed as an "oppressed" social group because they are "marginalized," "powerless," "dehumanized", experience "cultural imperialism", and they face the death penalty ("violence"). Therefore, fighting to save clients' lives becomes extremely challenging because it is

intertwined with resistance against systemic oppression as suggested by the participants' excerpts as well as literature (Banner, 2001; Bright, 1997; Haney, 1996, 2008; Rotman, 2010).

### **Emotional Reactions to Clients Receiving Death Verdicts**

Capital trial defense practice for indigent clients pertains to the various difficulties as described above; however, it appears that clients receiving death verdicts is the most difficult aspect of this work. The participants' excerpts indicate that this experience was emotionally evocative, and two thirds of them described this experience as traumatic.

Many of the participants who described this experience as traumatic also expressed that the relationships with clients and their family members made this experience even harder. A sense of closeness and compassion for clients and their family members had grown as the participants worked hard in order to save clients' lives. As a result, when clients received a death verdict, it hurt the participants, as if that happened to their family members or significant others, as shown in these excerpts: "It's almost like watching your brother being led off" (*Jordan*, Mitigation Specialist); "You are almost like family" (*Riley*, Mitigation Specialist); "This. . . to me, it is no different than getting a phone call that your child was killed in a car wreck or something" (*Morgan*, Investigator); "I walked out of the courtroom crying. . . . I think it's because I had really kind of grown attached to the client" (*Cayden*, Mitigation Specialist); "It [receiving a death verdict] gets to be more of an emotional thing . . . when you know them, and you know their life story, and you know their family" (*Angel*, Paralegal); and "These are loss experiences, these relationships are losses for me. It's almost as if somebody died" (*Alexis*, Attorney).

Additionally, several of the participants expressed that they experienced anger, frustration, and a feeling of being insulted when clients received a death verdict by jurors who were “judgmental” (*Jesse*, Attorney), “disconnect[ed]” (*Avery*, Attorney), and uncaring as evidenced by the fact that they took a very short time to decide to deliver a death verdict. Moreover, the participants’ excerpts indicate that their anger was evoked by the jurors’ racism against clients who were Black. The participants’ anger appeared to be toward death penalty jurisprudence that shakes their faith in fairness and justness.

While no previous studies on experiences of capital trial defense practitioners are available to date, the themes that emerged from the participants are consistent with anecdotal accounts reported by capital defense attorneys (Adcock, 2010; Mello, 1997).

### **Effects of the Stress**

The participants spoke in detail about how this work affected them. The participants’ words shed light on the adversarial effects of capital trial defense practice for indigent clients, which demonstrated commonality with the impacts of trauma-involving work reported in the literature (Figley, 1995; Harman, 1992; Pearlman & Saakvitne, 1999; Saakvitne, Tenne, & Affleck, 1998).

For example, many participants reported that they experienced changes in their physical and/or mental health conditions. Half of the participants experienced sleep disturbance, such as frequent awakenings from sleep, work-related dreams and/or nightmares, and difficulty in falling asleep. Half of the participants also spoke of changes in their moods and mental states. The reported symptoms included depressed mood, state of restless mind, increased irritability, a decreased sense of self-efficacy, lower self-esteem, altered emotional sensitivity, experiences of intrusive images, and avoidance of

the reminder of traumatic materials. Additionally, several participants experienced physical health complications including the onset of stress-induced illness and the worsening of pre-existing health conditions or changes in weight, and some participants reported experiencing physical and mental health exhaustion. Some of these symptoms reported by the participants have similarities with professional burnout symptoms (Kahill, 1988, cited in Figley, 1995; Conrad & Kellar-Guenther, 2006) and/or secondary traumatic symptoms (Bride, Radely, & Figley, 2007; Bride, Robinson, Yegidis, & Figley, 2004; Figley, 1995).

Moreover, some participants experienced changes in their “frame of reference” (Saakvitne, Tenne, & Affleck, 1998, p. 283), such as diminished trust in other people and the world, shaken faith in their spirituality, and increased awareness of possible dangers in community. Also, some participants reported that stress associated with this work negatively affected the relationships with their family members and/or significant others, and three participants expressed their diminished motivation and sense of burning out in engaging for this work. While the participants primarily reported the negative effects of stresses from engaging in capital trial defense practice for indigent clients, some participants reported that this work deepened their capacity to reflect on one’s own values and perspectives.

### **Coping Strategies**

The participants described various coping strategies that they utilized in response to the stress associated with capital trial defense practice for indigent clients. For example, most of the participants described balancing personal and professional life as an important coping strategy. The examples included “taking a breather” from work,

especially after a death penalty trial resulting in a death verdict for their client, setting a boundary between personal and professional life, and acknowledging one's own efforts and accepting the consequences.

Many participants emphasized the importance of self-care in order to cope with the stresses associated with this work. Popular self-care strategies among the participants included physical exercise and engaging in rejuvenating activities that were unrelated to this work. Two participants made conscious efforts for maintaining proper dietary routines in order to attend to their health care needs.

Some participants utilized their own cognitive, psychological and emotional capabilities as their coping strategy. A few participants used a sense of humor, and others allowed themselves to process emotions aroused by this work, such as anger toward clients and compassion for victims and surviving family members, without judgment. One participant spoke of a sense of responsibility for other clients who needed his or her help for saving their lives, in order to reignite his or her motivation.

Also, some participants, who all experienced their clients receiving a death verdict, expressed spiritual coping strategies such as prayers, biblical readings, and meditation, as part of efforts in searching for the meanings of what happened to their clients, and in keeping a hope for the future.

Coping strategies reported by the participants showed significant commonality with strategies suggested as helpful for restoring a "disrupted frame of reference" including "one's identity, world view, and spirituality" (Pearlman, 1999, p. 53). However, a few participants stated that they used alcohol or sugar products in order to get relaxed or comforted because of the stresses associated with this work. Use of substances

to cope with the stress from trauma-exposing work among helping professionals, and its negative effects including impaired functioning and disengagement, has been discussed in the literature (Famili, Kirschner, & Gomez, 2014; Levin & Gierisberg, 2003).

### **Support Systems**

The findings illuminated the participants' complicated experiences associated with their perceived support system in both personal and organizational contexts. According to the participants, support systems in personal contexts included family and/or significant others, friends outside of work, and their religious community, and the support system in organizational contexts involved colleagues in the capital unit, team, and organization.

As for support systems in personal contexts almost all participants spoke of family and/or significant others when discussing their personal support system. Many participants perceived family and/or significant others as a source of support; however, a few participants expressed difficulties unique to being single or feelings of not having emotional support from their partners. Also, several participants perceived friends outside of their work as a source of support; however, most of them referred to friends who work in a related field. Moreover, two participants spoke of religious community as a source of support to a different degree. For example, one participant confidently confirmed it as a significant source of support, while another participant described it as "supportive" but "not understand[ing]."

As for support systems in organizational contexts, most of the participants referred to colleagues in the capital unit when discussing their support system in organizational contexts; however, they expressed contrasting perceptions. Many

participants described the colleagues as a source of support, while some participants pointed out that the capital unit had a “closed culture” characterized by emotional disengagement, which may be a symptom that the capital unit and its culture was deeply influenced by the ongoing involvement in trauma-related work (National Child Traumatic Stress Network, 2011).

Additionally, most participants spoke of the capital trial defense practice team to which they belonged when asked about their support system in organizational contexts. Half of the participants positively described the team as a source of support; however, some participants experienced tension among team members and perceived it as a source of stress, instead of support. Also, some participants pointed out that team assignments lack fluidity or flexibility, with little consideration of the nature of the case and/or strengths of each practitioner, which can be problematic and create stress among team members.

Moreover, many participants referred to organizational supports. Several participants perceived the management as supportive for capital litigation; however, some participants expressed their concerns about lack of a formal mechanism for addressing secondary trauma associated with capital trial defense practice for indigent clients within the office. The participants’ descriptions appear to indicate a need for organizational changes based on a trauma-informed system (CSWE, 2012; NCTSN, 2011).

### **Concluding Summary**

The knowledge obtained by this study contributes to the expansion of theorizing about secondary trauma and oppression. For example, the findings illuminate how both witnessing trauma endured by clients and fighting systemic oppression against clients

affected the practitioners and led them to experience secondary trauma and related effects. Also, the findings in turn indicate that people working with oppressed populations may experience secondary trauma through their anti-oppression work, by vicariously experiencing oppression against their clients.

Based on the findings and literature, this study suggests that the experience of secondary trauma among those who work for oppressed populations involves distinct aspects, such as witnessing systemic dehumanization and violence against their clients and dealing with negative community sentiments that are attributed to their work. In this sense, their experiences are uniquely different from the ones among other helping professionals working with clients who have traumatic experiences that are not related to oppression. As emerging literature on trauma and oppression (Carter, 2007; Goodman & West-Olatunji, 2008; Kirmayer, Gone, & Moses, 2014) indicates, the experience of systemic oppression may result in the development of traumatic stress symptoms among those who are subjected to such oppression, and this study suggests that the experience of those who work for oppressed populations elucidate the intersectionality of secondary trauma and systemic oppression.

### **Study Limitations and Strengths**

This study has several limitations. First, this study depended on samples from a single study site which serves indigent clients exclusively. Capital trial defense practitioners who engage in this work as independent or contracted practitioners, those who work in other geographical areas where the political climates on the death penalty are different, or those who represent clients who are charged with capital murder but are



affluent, may have different experiences or perspectives as to the research questions examined in this study.

Also, this was a cross-sectional study, and data were collected by a single interview with each participant ( $N = 18$ ). While the sample size of this study met the number suggested by phenomenological studies for the saturation of the thematic identification (Creswell et al., 2007; Polkinghorne, 1989), multiple interviews with each participant, an increased sample size, or longitudinal observations may have shed more light on the phenomenon examined.

Moreover, data analysis was conducted by the author, using the data obtained from in-depth individual interviews with the study participants only. Self-reflexivity, thick description, and negative case analysis were utilized as strategies for trustworthiness; however, no measurement tools to assess the participants' mental and emotional health or their coping strategies were used for the data collection. Also, member checking was not conducted during the data analysis, in order to avoid placing an increased burden on the participants when considering their intense work schedule.

In spite of the limitations discussed above, this study has several strengths. For example, this study is the first scientific study to examine secondary trauma experiences among capital trial defense practitioners for indigent clients. Also, the study participants included a range of professionals, genders, and years of experience, which was helpful in illuminating this phenomenon more holistically. Semi-structured, individual interviews allowed the participants to describe their experiences on their words at a deeper level. This study sheds light on the phenomenon from the perspective of those who engaged in

this work and brings another aspect to consider when examining the human costs of the death penalty.

### **Implications for Social Work**

This study has several implications for social work. In particular, this study provides useful insight for “trauma-informed social work practice” (Council on Social Work Education, 2012) associated with this phenomenon at various levels, including individual and family interventions, organizational changes, community organization and advocacy practice, social work education, and social work research.

### **Implications for Individual and Family Interventions**

This study revealed that capital trial defense practice for indigent clients was highly stressful and trauma-involving work. Also, it found that very limited resources were available for clients’ family members who went through this extremely difficult and possibly traumatic process of death penalty trials where their loved one was charged with capital murder.

The study helps social workers recognize that capital trial defense practitioners who represent indigent clients and their clients’ family members have unique psychological and emotional needs as a result of their involvement in death penalty jurisprudence. It also helps social workers understand the complexity of their experiences that involve trauma, grief, violence, and oppression. Recognizing their needs and obtaining a deeper understanding of their experiences will guide social workers in building an effective working alliance with individuals and families, and/or to create new interventions with groups, such as in-person and/or online support groups, and psychoeducational workshops on trauma and death penalty jurisprudence.

As for the most critical components of individual and family interventions, this study suggests that social workers help practitioners develop personal and professional self-care strategies and get connected with a supportive community where their experiences will be validated and their sense of trust and hope in the world will be restored. Social workers can also help the practitioners' partners and/or significant others understand how secondary trauma may affect their loved one, and identify ways to support them for recovery.

Although the focus of this study is on practitioners, findings also suggest that social workers can support family members of those who are charged with capital murder by helping them locate resources that can address difficulties resulting from their loved one being charged with capital murder. In so doing, it is important for social workers to connect them to civic and/or religious organizations as well as family groups who work for the rights of those who are prosecuted and/or imprisoned in order to keep them from feeling alienated, to assist them in becoming fully informed in the legal procedures of the capital trial process, and to strengthen their informal support network to cope with stress and trauma associated with their involvement in death penalty jurisprudence.

### **Implications for Organizational Changes**

This study provides important implications for organizational changes in human service contexts. In this study, for example, the findings clearly indicate that capital trial defense practice for indigent clients significantly involves traumatic aspects, while little formal organizational responses are available. This study can inform the initial step for organizational efforts, such as the development of "the trauma-informed system," suggested by the National Child Traumatic Stress Network (NCTSN, 2011, p. 5), "as part

of an organizational risk-management policy or task force that recognizes the scope and consequences of the condition” (NCTSN, 2011, p. 5). The NCTSN (2011) describes the trauma-informed system as follows:

The trauma-informed system must:

- Recognize the impact of secondary trauma on the workforce;
- Recognize that exposure to trauma is a risk of the job serving traumatized [clients];
- Understand that trauma can shape the culture of organizations in the same way that trauma shapes the world view of individuals;
- Understand that a traumatized organization is less likely to effectively identify its client’s past trauma or mitigate or prevent future trauma;
- Develop the capacity to translate trauma-related knowledge into meaningful action, policy, and improvements in practice.

These elements should be integrated into direct services, programs, policies, and procedures, staff development and training, and other activities directed at secondary traumatic stress (p. 5).

Organizations providing capital trial defense practice for indigent clients may refer to the findings of this study in order to recognize “the impacts of secondary trauma on the workforce” (NCTSN, 2011, p. 5) and recognize this phenomenon as an occupational hazard or a risk associated with the nature of this work. This study also can inform organizational efforts to reflect upon their organizational cultures in response to trauma-involving work and to examine how an organization per se has been affected by trauma. Such efforts can in turn help an organization transform itself based on the

“trauma-informed system” perspective, which embraces (1) “incorporation of trauma awareness,” (2) “emphasis on safety,” (3) “opportunities to rebuild control and empowerment,” and (4) “emphasis on strengths-based approaches rather than deficit-oriented ones” (CSWE, 2012, p. 6).

### **Implications for Community Organizing and Advocacy**

This study provides useful information to promote community organizing and advocacy practice at various levels. For example, community organizing efforts can be undertaken in order to increase community awareness of the human costs of the death penalty, including the negative psychological effects on those who represent clients who are charged with capital murder and the clients’ family members, through holding symposia and/or workshops and the findings of this study can add a critical focal point to a discussion on trauma during these conferences.

Also, social workers in the states where the death penalty is in practice may organize a task force or caucus with other related organizations that express shared concerns in order to make legislative efforts to hold a moratorium to conduct systemic investigations on capital punishment including the negative psychological effects on involved parties, including defense practitioners and their clients’ family members. Social workers may also draft and submit amicus briefs in court to express concerns about related issues.

Moreover, social work professional organizations, such as NASW and IFSW may re-examine their position statements on the death penalty and incorporate information on the negative psychological effects on defense practitioners and their clients’ family members as part of the human cost of the death penalty.

### **Implications for Social Work Education**

The study provides helpful instructional tools for social work educators. For example, direct practice courses may be offered in order to learn about secondary trauma among helping professionals who work with trauma-involving populations and to discuss self-care strategies in coping with such adversarial effects resulting from trauma-related work including the context of forensic social work practice. Also, diversity and oppression courses may help students critically examine the death penalty using an anti-oppressive framework as well as the *Code of Ethics of the National Association of Social Workers* (NASW, 2008). Community organizing and advocacy courses may get familiar with policy statements issued by the NASW (2015), IFSW (2010), and related advocacy organizations, practice drafting talking points, and interview legislators and community leaders in grass-root organizations as part of their class assignments. Social work research courses may address the specific ethical considerations when conducting studies with participants involved in the criminal justice system in order to ensure that safeguards protect their confidentiality and privacy. Additionally, social work research courses may introduce research methodology that fits with addressing social issues involving oppression, such as critical inquiry and feminist research.

### **Implications for Social Work Research**

The findings of this study warrant further investigation of this phenomenon as an important inquiry. The findings may inform the development of an assessment instrument to measure secondary trauma experiences among helping professionals who work for not only traumatized but also stigmatized populations. The findings may also

provide insight when examining organizational culture and trauma on the workforce associated with capital trial defense practice for indigent clients.

Suggested future research includes further qualitative investigations with samples including those who work in different geopolitical areas, independent or contracted practitioners, practitioners who represent non-indigent clients, and those who work in different stages of capital defense practice, such as post-conviction appeals and corpus habeas proceedings. Such investigations may also include research questions associated with post-traumatic growth and protective factors, which provides useful insight into the development of prevention and intervention programs. Survey research, ethnographic studies, individual and/or focus-group interviews with direct practitioners, mid-management, and upper-management persons also will be helpful in obtaining a deeper understanding of organizational cultures including how trauma affects the organization. Also, quantitative examinations using representative samples may be helpful in identifying the prevalence of the phenomenon and examining the relationships among different variables such as the roles of the practitioners, gender, prior traumatic experiences, the types of crimes (e.g., child victims), and the conditions of clients (e.g., presence of mental illnesses).

### **Conclusion**

This study examined the lived experiences of capital trial defense practitioners who represent clients charged with a capital murder in light of secondary trauma. This study illustrated that capital trial defense practice for indigent clients was highly stressful. The practitioners were frequently exposed to traumatic materials. The practitioners also witnessed human suffering of not only clients and their family members, but also the

victims and surviving family members. The relationship with clients motivated the participants to engage in this work; however, their empathetic engagement with clients aggravated their emotional pain when clients received a death verdict. The participants utilized a variety of coping strategies in response to the stress associated with this work. Nevertheless, some participants appeared to experience symptoms of vicarious traumatization, secondary traumatic stress, and/or professional burnout, and no formal mechanism for addressing secondary trauma was available at their place of work.

These findings suggest that organizations providing capital trial defense for indigent client need to develop a trauma-informed system for the practitioners in order to prevent and/or minimize risks for secondary trauma among the practitioners. This will in turn be helpful for the practitioners in maintaining the quality of legal representation for their clients. This study also suggests that further examination of the negative psychological effects of death penalty jurisprudence on all involved parties be undertaken in order to obtain a more complete understanding of the human costs of the death penalty.



## REFERENCES

- Adocock, C. F. (2010). The collateral anti-therapeutic effects of the death penalty. *Florida Coastal Law Review*, 11(2), 289-320.
- Adams, R. E., Boscarino, J. A., & Figley, C. R. (2006). Compassion fatigue and psychological distress among social workers: A validation study. *American Journal of Orthopsychiatry*, 76(1): 103-108. doi: 10.1037/0002-9432.76.1.103
- American Bar Association (2008). Supplementary guidelines for the mitigation function of defense teams in death penalty cases. *Hofstra Law Review*, 36(3), 677-692.
- American Psychiatric Association (1980). *The diagnostic and statistical manual of mental disorders* (3<sup>rd</sup> ed.). Author.
- Antonio, M. E. (2006). Jurors' emotional reactions to serving on a capital trial. *Judicature*, 89(5), 282-288.
- Bandes, S. A. (2006). Repression and denial in criminal lawyering. *Buffalo Criminal Law Review*, 9(2), 339-389.
- Banner, F. (2001). Rewriting history: The use of feminist narratives to deconstruct the myth of the capital defendant. *New York University Review of Law and Social Change*, 26(4), 569-613.
- Barnett, C. (1995). Covering executions. *American Journalism Review*, 17, 27-31.
- Beck, E., Blackwell, B. S., Leonard, P. B., & Mears, M. (2003). Seeking sanctuary: Interviews with family members of capital defendants. *Cornell Law Review*, 88, 382-418.
- Becker, H. S. (1996.) The epistemology of qualitative research. In R. Jessor, A. Colby, & R. Shweder (Eds.), *Ethnography and human development: Context and meaning in social inquiry* (pp. 53-71). Chicago, IL: The University of Chicago Press.
- Benoit, L. G., Veach, P. M., & LeRoy, B. S. (2007). When you care enough to do your very best: Genetic counselor experiences of compassion fatigue. *Journal of Genetic Counseling*, 16(3), 299-312. doi: 10.1007/s10897-006-9072-1
- Berg, B. L. (2009). *Qualitative research methods for the social sciences* (7<sup>th</sup> ed.). Boston, MA: Allyn & Bacon.
- Bernard, H. R. (2006). Interviewing: Unstructured and semi-structured. In H. R. Bernard *Research methods in anthropology: Qualitative and quantitative approach* (5<sup>th</sup> ed.) (pp. 210-250). New York, NY: Altamira Press.

- Bdrzoff, J., & Kita, E. (2010). Compassion fatigue and countertransference: Two different concepts. *Clinical Social Work Journal*, 38(3), 341-349.
- Bienen, L. B. (1993). Helping jurors out: Post-verdict debriefing for jurors in emotionally disturbing trials. *Indiana Law Journal*, 68, 1333-1355.
- Brady, J. L., Guy, J. D., Poelstra, P. L., & Brokaw, B. F. (1999). Vicarious traumatization, spirituality, and the treatment of sexual abuse survivors: A national survey of women therapists. *Professional Psychology: Research and Practice*, 30(4), 386-393.
- Bride, B. E., Robinson, M. M., Yegidis, B., & Figley, C. R. (2004). Development and validation of the secondary traumatic stress scale. *Research on Social Work Practice*, 14(1), 27-35.
- Bride, B. E., Radey, M., & Figley, C. R. (2007). Measuring compassion fatigue. *Clinical Social Work Journal*, 35(3), 155-163.
- Bright, S. B. (1992). In defense of life: Enforcing the Bill of Rights on behalf of poor, minority and disadvantaged persons facing the death penalty. *Missouri Law Review*, 57, 849-870.
- Bright, S. B. (1997). Neither equal nor just: The rationing and denial of legal services to the poor when life and liberty are at stake. *Annual Survey of American Law* 1997(3), 783-836.
- Canfield, J. (2005). Secondary traumatization, burnout, and vicarious traumatization. *Smith College Studies in Social Work*, 75(2), 81-101. doi: 10.1300/J497v75n02\_06
- Carter, R. T. (2007). Racism and psychological and emotional injury: Recognizing and assessing race-based traumatic stress. *The Counseling Psychologist*, 35(13), 13-105. doi: 10.1177/0011000006292033
- Coetzee, S. K., & Klopper, H. C. (2010). Compassion fatigue within nursing practice: A concept analysis. *Nursing and Health Science*, 12(2), 235-243.
- Conrad, D., & Kellar-Guenther, Y. (2006). Compassion fatigue, burnout, and compassion satisfaction among Colorado child protection workers. *Child Abuse & Neglect*, 30, 1071-1080. doi: 10.1016/..chiabu.2006.03.009
- Council on Social Work Education (2012). *Advanced Social Work Practice in Trauma*. Retrieved March 1, 2016 from <http://www.cswe.org/File.aspx?id=63842>

- Creswell, J. W., Hanson, W. E., Clark, V. L. P., & Morales, A. (2007). Qualitative research designs: Selection and implications. *Counseling Psychologist, 35*(2), 236-264.
- Creswell, J. W., & Miller, D. L. (2000). Determining validity in qualitative inquiry. *Theory into Practice, 39*(3), 124-130.
- Cunningham, M. (1999). The impact of sexual abuse treatment on the social work clinician. *Child & Adolescent Social Work Journal, 16*(4), 277-290.
- Darr, O. A. (2008). TJ and zealous advocacy: Tension and opportunity. In D. B. Wexler (Ed.), *Rehabilitating lawyers* (pp. 162-169). Durham, NC: Carolina Academic Press.
- Davis, A. Y. (2005). *Abolition democracy: Beyond empire, prisons, and torture*. New York, NY: Seven Stories Press.
- Davis, P. C. (2010). Popular legal culture: Law as microaggression. In S. L. Brooks & R. G. Madden (Eds.), *Relationship-centered lawyering: Social science theory for transforming legal practice* (pp. 239-254). Durham, NC: Carolina Academic Press.
- Death Penalty Information Center (2012). Arbitrariness. Retrieved February 27, 2016, from <http://www.deathpenaltyinfo.org/arbitrariness>
- Death Penalty Information Center (2016). *Facts about death penalty*. Retrieved February 18, 2016, from <http://www.deathpenaltyinfo.org/documents/FactSheet.pdf>
- De Lilly, L. M. (2014). Note – “Antithetical to human dignity”: Secondary trauma, evolving standards of decency, and the unconstitutional consequences of state-sanctioned executions. *Southern California Interdisciplinary Law Journal, 23*, 107-145.
- Du Bois, W. E. B. (2005). *The souls of Black folk*. Stilwell, KS: Disgireads.
- Dutton, M. A., & Rubinstein, F. L. (1995). Working with people with PTSD: Research implications. In C. R. Figley (Ed.), *Compassion fatigue: coping with secondary traumatic stress disorder in those who treat the traumatized* (pp.82-100). New York: Brunner/Mazel.
- Eastman, K. (2000). The progress of our maturing society: An analysis of state-sanctioned violence. *Washburn Law Journal 39*(3), 526-554.
- Elwood, L. S., Mott, J., Lohr, J. M., & Galoski, T. E. (2010). Secondary trauma symptoms in clinicians: A critical review of the construct, specificity, and

- implications for trauma-focused treatment. *Clinical Psychology Review*, 31, 25-36.
- Elwork, A., & Benjamin, G. A. H. (1996). Lawyers in distress. In D. B. Wexler, & B. J. Winick (Eds.), *Law in a therapeutic key: Developments in therapeutic jurisprudence* (pp.569-584). Durham, NC: Carolina Academic Press.
- Fahy, A. (2007). The unbearable fatigue of compassion: Notes from a substance abuse counselor who dreams of working at Starbuck's. *Clinical Social Work Journal*, 35(3), 199-205.
- Figley, C. R. (1995). Compassion fatigue as secondary traumatic stress disorder: An overview. In C. R. Figley (Ed.), *Compassion fatigue: Coping with secondary traumatic stress disorder* (pp.1-20). New York, NY: Brunner/Mazel.
- Figley, C. R. (1999). Compassion fatigue: Toward a new understanding of the costs of caring. In B. H. Stamm (Ed.). *Secondary traumatic stress: Self-care issues for clinicians, researchers, and educators* (2<sup>nd</sup> ed.) (pp.3-28). Lutherville, MD: Sidran.
- Fondacaro, M. R. (2010). Toward an ecological jurisprudence rooted in concepts of justice and empirical research. In S. L. Brooks, & R. G. Madden (Eds.), *Relationship-centered lawyering: Social science theory for transforming legal practice* (pp. 223-235). Durham, NC: Carolina Academic Press.
- Freedman, E. M. (2008). Introduction: Re-stating the standard of practice for death penalty counsel: The supplementary guidelines for the mitigation function of defense teams in death penalty cases. *Hofstra Law Review*, 36(3), 663-676.
- Freinkel, A., Koopman, C., & Spiegel, D. (1994). Dissociative symptoms in media eyewitnesses of an execution. *American Journal of Psychiatry*, 151(9), 1335-1339.
- Gil, A., Johnson, M. B., & Johnson, I. (2006). Secondary trauma associated with state executions: testimony regarding execution procedures. *Journal of Psychiatry & Law*, 34(1), 25-35.
- Goodman, R. D., & West-Olatunji, C. A. (2008). Traumatic stress, systemic oppression, and resilience in post-Katrina New Orleans. *Space for Difference: An Interdisciplinary Journal* 1(2), 51-68.
- Guba, E. G., & Lincoln, Y. S. (1994). Competing paradigms in qualitative research. In N. K. Denzin, & Y. S. Lincoln (Eds.). *Handbook of qualitative research* (pp.105-117). Thousand Oaks, CA: Sage Publications.

- Haney, C. (1995). The social context of capital murder: Social history and the logic of mitigation. *Santa Clara Law Review*, 35, 547 -609.
- Haney, C. (1997). Violence and the capital jury: Mechanisms of moral disengagement and the impulse to condemn to death. *Stanford Law Review*, 49(6), 1147 -1186.
- Haney, C. (2004). Condemning the other in death penalty trials: Biographical racism, structural mitigation, and the emphatic divide. *DePaul Law Review*, 53 (4), 1557-1590.
- Haney, C. (2005). *Death by design: Capital punishment as a social psychological system*. New York, NY: Oxford University Press.
- Haney, C. (2008). Evolving standards of decency: Advancing the nature and logic of capital mitigation. *Hofstra Law Review*, 36 (3), 833-922.
- Harding, S. (2006). Transformation vs. resistance identity projects: Epistemological resources for social justice (p. 246-263). In L. M. Alcoff, et al. (Eds.), *Identity politics reconsidered*, New York, NY: Maacmillan.
- Harman, J. (1992). *Trauma and Recovery: The aftermath of violence - from domestic abuse to political terror*. New York, NY: Basic Books.
- Hartley, C. C., & Petrucci, C. J. (2010). Practicing culturally competent therapeutic jurisprudence: A collaboration between social work and law. In S. L. Brooks, & R. G. Madden (Eds.), *Relationship-centered lawyering: Social science theory for transforming legal practice* (pp. 272-286). Durham, NC: Carolina Academic Press.
- Henning, K. (2008). Defining the lawyer-self: using therapeutic jurisprudence to define the lawyer's role and build alliance that aid the child client. In D. B. Wexler (Ed.) *Rehabilitating lawyers* (pp.327-350). Durham, NC: Carolina Academic Press.
- Illife, G., & Stead, L. G. (2000). Exploring the experience of working with perpetrators and survivors of domestic violence. *Journal of Interpersonal Violence*, 15(4), 393-412. doi: 10.1177/088626000015004009
- International Federation of Social Workers (October 11, 2010). *World day against the death penalty*: IFSW Statement. Retrieved February 27, 2016, from <http://ifsw.org/news/world-day-against-the-death-penalty-ifsw-statement/>
- Jenkins, S. R., & Baird, S. (2002). Secondary traumatic stress and vicarious trauma: A validation study. *Journal of Traumatic Stress*, 15(5), 423-432.
- Johnson, J. L., & Johnson, C. F. (2001). Poverty and the death penalty. *Journal of Economic Issues*, 35(2), 517-523.

- Joinson, C. (1992). Coping with compassion fatigue. *Nursing*, 22(4), 16-122.
- Jones, S. J., & Beck, E. (2007). Disenfranchised grief and nonfinite loss as experienced by the families of death row inmates. *Omega*, 54(4), 281-299.
- Kirmayer, L. J., Gone, J. P., & Moses, J. (2014). Rethinking historical trauma. *Transcultural Psychiatry* 51(3), 299-319. doi: 10.1177/1363461514536358
- King, R. (2006). The impact of capital punishment on families of defendants and murder victims' family members. *Judicature*, 89(5), 292-296.
- King, R., & Norgard, K. (1999). What about our families? Using the impact on death row defendants' family members as a mitigating factor in death penalty sentencing hearing. *Florida State University Law Review*, 26, 1121-1176.
- Klein, K. L. (1995). In search of narrative mastery: Postmodernism and the people without history, *History and Theory*, 34(3), 275-282.
- Lanier, C. S., & Acker, J. R. (2004). Capital punishment, moratorium movement, and empirical questions: Looking beyond innocence, race, and bad lawyering in death penalty cases. *Psychology, Public Policy, and Law*, 10(4), 577-617.
- Levin, A. P., & Gerisberg, S. (2003). Vicarious trauma in attorneys. *Pace Law Review*, 24, 245-252.
- Levin, A. P., Besser, A., Smith, D., Zelenski, A., Rosenkranz, S., & Neria, Y. (2011). Secondary traumatic stress in attorneys and their administrative support staff working with trauma-exposed clients. *Journal of Nervous and Mental Disease*, 199(12), 946-55. doi: 10.1097/NMD.0b013e3182392c26
- Levin, A. P., Besser, A., Albert, L., Smith, D., & Neria, Y. (2012). The effect of attorney's work with trauma-exposed clients on PTSD symptoms, depression, and functional impairment: a cross-lagged longitudinal study. *Law and Human Behavior*, 36(6), 538-47. doi: 10.1037/h0093993
- Lietz, C. A., Langer, C. L., & Furman, R. (2007). Establishing trustworthiness in qualitative research in social work, *Qualitative Social Work* 5(4), 441-458.
- Lietz, C. A., & Zayas, L. E. (2010). Evaluating qualitative research for social work practitioners. *Advances in Social Work*, 11(2), 188-202.
- Lifton R. & Mitchell, G. (2000). *Who owns death?* New York, NY: HarperCollins Publishers, Inc.

- Lincoln, Y.S., & Guba, E. G. (1984). *Naturalistic inquiry*. Beverly Hills, CA: Sage Publications.
- Lind, E. A., Tyler, T. R., & Huo, Y. (2010). Procedural context and culture: Variation in the antecedents of procedural justice judgments. In S. L. Brooks, & R. G. Madden (Eds.), *Relationship-centered lawyering: Social science theory for transforming legal practice* (pp. 211-215). Durham, NC: Carolina Academic Press.
- Lyotard, J. (1993). The other's rights. In S. Shute, & S. Hurley (Eds.). *On human rights: The Oxford Amnesty lectures 1993* (pp.135-148). New York: Basic Books.
- Madden, R. G., & Wayne, R. (2010). Constructing a normative framework for therapeutic jurisprudence using social work principles as a model. In S. L. Brooks, & R. G. Madden. (Eds.), *Relationship-centered lawyering: Social science theory for transforming legal practice* (pp. 41-50). Durham, NC: Carolina Academic Press.
- Mahr, R. M. (2008). The ABA and the supplementary guidelines for the mitigation function of defense teams in death penalty cases. *Hofstra Law Review*, 36(3), 763-774.
- McCann, I. L., & Pearlman, L. A. (1990). Vicarious traumatization: A framework for understanding the psychological effects of working with victims. *Journal of Traumatic Stress*, 3(1), 131-149.
- Meekins, T. M. (2008). "Specialized justice": The over-emergence of specialty courts and the threat of a new criminal defense paradigm. In D. B. Wexler (Ed.) *Rehabilitating lawyers* (pp.46-91), Durham, NC: Carolina Academic Press.
- Mello, M. (1997). A letter on a lawyer's life of death, *South Texas Law Review*, 38, 121-224.
- Mohanty, C. T. (2003). "Under Western eyes" revisited: Feminist solidarity through anticapitalist struggles. In C. T. Mohanty, *Feminism without borders: Decolonizing theory, practicing solidarity* (pp. 221-251). Durham, NC: Duke University Press.
- Morse, J. M. (2008). Editorial: Confusing categories and themes. *Qualitative Health Research*, 18(6), 727-728, doi 10.1177/1049732308314930
- Mugliston, P. (2008). Should the role of a barrister change to enable the adoption of a more therapeutic approach to the practice of law? In D. B. Wexler (Ed.) *Rehabilitating lawyers* (p.355-370). Durham, NC: Carolina Academic Press.

- National Association of Social Workers (2008). *The 2008 NASW code of ethics*. Retrieved February 27, 2016, from <http://www.socialworkers.org/pubs/code/code.asp>
- National Association of Social Workers (2009). *Social work speak (8<sup>th</sup> ed.): NASW Policy Statements 2009-2012*. Washington DC: Author.
- National Association of Social Workers (2015). *Social work speak (10<sup>th</sup> ed.): NASW Policy Statements*. Washington DC: Author.
- National Child Traumatic Stress Network (2011). *Secondary traumatic stress: A fact sheet for child-serving professionals*. Los Angeles, CA, and Durham, NC: Author. Retrieved March 1, 2016 from [http://www.nctsn.org/sites/default/files/assets/pdfs/secondary\\_traumatic\\_tress.pdf](http://www.nctsn.org/sites/default/files/assets/pdfs/secondary_traumatic_tress.pdf)
- New Jersey Death Penalty Commission (January 2007). *New Jersey death penalty commission report*. Retrieved March 4, 2010 from [http://www.njleg.state.nj.us/committees/dpsc\\_final.pdf](http://www.njleg.state.nj.us/committees/dpsc_final.pdf)
- Newell, J. M., & MacNell, G. A. (2010). Professional burnout, vicarious trauma, secondary traumatic stress, and compassion fatigue: A review of theoretical terms, risk factors, and preventive methods for clinicians and researchers. *Best Practices in Mental Health*, 6(2), 57-68.
- Osofsky, M. J., & Osofsky, H. J. (2002). The psychological experience of security officers who work with executions. *Psychiatry*, 65(4), 358-370.
- Padgett, D. K. (2008). *Qualitative methods in social work research (2<sup>nd</sup> ed.)*, Thousand Oaks, CA: Sage Publications.
- Palinkas, L. A., Horwitz, S. M., Green, C. A., Wisdom, J. P., Duan, N., & Hoagwood, K. (2015). Purposeful sampling for qualitative data collection and analysis in mixed method implementation research. *Administration and Policy in Mental Health and Mental Health Services Research*, 42, 533-544. doi 10.1007/s10488-013-0528-y
- Parker, L. M. (2007). *Increasing law students' effectiveness when representing traumatized clients: A case study of the Katharine & George Alexander community law center*. Retrieved from <http://ssrn.com/abstract=1001982>
- Pateman, C. (2007). Race, sex, and indifference. In C. Pateman, & C. Mills, *Contract & domination* (pp.134-164). Malden, MA: Polity.
- Patton, M. (1990). Purposeful sampling. In M. Patton, *Qualitative evaluation and research methods* (pp.169-186). Beverly Hills, CA: Sage Publications.



- Pearlman, L. A., & Mac Ian, P. S. (1995). Vicarious traumatization: An empirical study of the effects of trauma work on trauma therapists. *Professional Psychology, Research and Practice*, 26(6), 558-565.
- Pearlman, L. A. & Saakvitne (1999). Treating therapists with vicarious traumatization and secondary traumatic stress disorders (p.150-177). In C. R. Figley (Ed.) *Compassion Fatigue: Coping with secondary traumatic stress disorder in those who treat the traumatized*. Levittown, PA: Brunner/Mazel.
- Pelle, N. L. (2004). Simplifying qualitative data analysis using general purpose software tools. *Field Methods*, 16(1), 85-108. doi:10.1177/1525822X03259227
- Pfohl, S. (2008). The reality of social construction (p.645-667). In J. A. Holstein, & J. F. Gubrium (Eds.). *Handbook of constructionist research*, New York, NY: The Guilford Press.
- Polkinghorne, D. E., (1989). Phenomenological research methods. In R. S. Valle & S. Halling (Eds.). *Existential-phenomenological perspectives in psychology* (pp. 41-60). New York: Plenum.
- Radelet, M. L. (2001). Humanizing the death penalty. *Social Problems*, 48(1), 83-87.
- Radelet, M. L., Vandiver, M. , Berardo, F. M. (2003). Families, prisons, and men with death sentences: The Human impact of structured uncertainty. *Journal of Family Issues*, 4(4), 593-612.
- Robertson, N. Davies, G., & Nettleingham, A. (2009). Vicarious traumatization as a consequence of jury service. *Howard Journal*, 48(1), 1-12. doi: 10.1111/j.1468-2311.2008.00539.x
- Rotman, E. (2010). Therapeutic jurisprudence, the death penalty, and the significance of life. *Journal Jurisprudence*, 8(3), 677-692.
- Saakvitne, K. W., & Pearlman, L. A. (1996). *Transforming the pain: A workbook on vicarious traumatization*. NY: W.W. Norton & Company Inc.
- Saakvitne, K. W., Tenne, H., & Affleck, G. (1998). Exploring thriving in the context of clinical trauma theory: Constructivist self development theory. *Journal of Social Issues*, 52(2), 279-299.
- Sabo, B. (2011). Reflecting on the concept of compassion fatigue. *Online Journal of Issues in Nursing*, 16(1), n. pag. doi: 10.3912/OJIN.Vol16No01Man01.
- Schauben, L. J., & Frazier, P. (1995). Vicarious trauma: The effects on female counselors of working with sexual violence survivors. *Psychology of Women Quarterly*, 19 (1), 49-64.

- Schroeder, J., Guin, C., Pogue, R., & Bordelon, D. (2006). Mitigating circumstances in death penalty decisions: Using evidence-based research to inform social work practice in capital trials. *Social Work, 51*(4), 355-364.
- Schuman, D. W., Hamilton, J. A., & Daley, C. E. (1996). The health effects of jury services. In D. B. Wexler, & B. J. Winick (Eds.), *Law in a therapeutic key: Developments in therapeutic jurisprudence* (pp.949-977). Durham, NC: Carolina Academic Press.
- Schwandt, T. A. (2001). *Dictionary of qualitative inquiry* (2<sup>nd</sup> ed.), New York, NY: Sage Publications.
- Schweizer, T. (1998). Epistemology: The nature and validation of anthropological knowledge. In R. H. Bernard (Ed.). *Handbook of methods in cultural anthropology* (p.39-87). New York: Altamira Press.
- Silver, M. A., Portnoy, S., & Koh Peters, J. (2004). Stress, burnout, vicarious trauma, and other emotional realities in the lawyer/client relationship: A panel discussion. *Touro Law Review, 19*, 847-874.
- Silver, M. A. (2010). Love, hate, and other emotional interference in the lawyer/client relationship. In S. L. Brooks, & R. G. Madden (Eds.), *Relationship-centered lawyering: Social science theory for transforming legal practice* (pp. 303-306). Durham, NC: Carolina academic press.
- Sinclair, H. A. H., & Hamill, C. (2007). Does vicarious traumatization affect oncology nurses? A literature review. *European Journal of Oncology Nursing, 11*, 348-356.
- Smykla, J. O. (1987). The human impact of capital punishment: Interviews with families of persons on death row, *Journal of Criminal Justice, 15*(4), 331-347.
- Srivastava, P., & Hopwood, N. (2009). A practical iterative framework for qualitative data analysis. *International Journal of Qualitative Methods, 8*(1), 76-84.
- Sturgis, B. J. (2009). Protecting well-being while pursuing justice. In R. F. Schopp, R. L. Wiener, B. H. Bornstein, & S. L. Willborn (Eds.), *Mental disorder and criminal law: Responsibility, punishment and competence* (pp.103-115). New York, NY: Springer.
- Trippany, R. L., Kress, V. E. W., & Wilcoxon, S. A. (2004). Preventing vicarious trauma: What counselors should know when working with trauma survivors. *Journal of Counseling and Development, 82*, 31-37.
- Vasquez, D. B. (1993). Trauma treatment: Helping prison staff handle the stress of an execution. *Corrections Today, 33*(4), 70-73.

- Voss Horrell, S. C., Holohan, D. R., & Didion, L. M. (2011). Treating traumatized OEF/OIF veterans: How does trauma treatment affect the clinician? *Professional Psychology: Research and Practice*, 42(1), 79-86.
- Wayland, K. (2008). The importance of recognizing trauma throughout capital mitigation investigations and presentations. *Hofstra Law Review*, 36(3), 923-962.
- Wexler, D. B. (1996). Reflections on the scope of therapeutic jurisprudence. In D. B. Wexler, & B. J. Winick (Eds.), *Law in a therapeutic key: Developments in therapeutic jurisprudence* (pp.811-829). Durham, NC: Carolina Academic Press.
- Wexler, D. B. (2008). Therapeutic jurisprudence: An overview, In D. B. Wexler (Ed.) *Rehabilitating lawyers* (pp.3-10), Durham, NC: Carolina Academic Press.
- Winick, B. J. (1996). The jurisprudence of therapeutic jurisprudence. In D. B. Wexler, & B. J. Winick (Eds.), *Law in a therapeutic key: Developments in therapeutic jurisprudence* (pp.645-668). Durham, NC: Carolina Academic Press.
- Young, I. M. (1990a). Displacing the distributive paradigm. In I. M. Young, *Justice and the politics of difference* (pp.15-38). Princeton, NJ: Princeton University Press.
- Young, I. M. (1990b). Five faces of oppression. In I. M. Young, *Justice and the politics of difference* (pp.39-65). Princeton, NJ: Princeton University Press.
- Young, I. M. (1990c). The ideal of impartiality and the civic public. In I. M. Young, *Justice and the politics of difference* (pp. 96-121). Princeton, NJ: Princeton University Press.