February 8, 2016

TO: Committee to Review the Criminal Justice Act Program

FROM: Richard Burr, member, Texas Regional Habeas and Assistance Project, and partner, Burr and Welch, PC, Leggett, Texas

RE: Written Comments in advance of testimony on February 18, 2016[1]

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**The quality of representation in federal capital habeas cases handled by CJA counsel in Texas**

Federal habeas corpus provides the last opportunity for a condemned person to bring to the courts' attention factual and legal issues that could provide a basis for relief. Accordingly, any exhausted issue that has potential merit must be included in the petition, and any previously unexhausted, unavailable, or unknown factual/legal issue must be the subject of investigation, development, and litigation. There is virtually no right to pursue any form of judicial relief beyond the initial federal habeas proceeding, so the work of federal habeas counsel has to be thorough, diligent, and to the extent possible, free from mistake or oversight.

For these reasons, counsel appointed in federal capital habeas proceedings must understand the scope of his or her responsibilities, what is at stake for the client, and the arduous nature of the work being undertaken. Counsel cannot treat federal habeas as if it were another direct appeal, simply raising record-based issues and the issues already exhausted, but often undeveloped factually, in state habeas proceedings. At the very least, federal habeas counsel must take another look at the whole case -- investigating matters that could be material but that have not been investigated or have been only superficially investigated, and looking at the evolution of the law and its intersection with the case to see if any legal issues that were previously identified now may have more significance or if any legal issues previously unavailable are now cognizable. And, as important as these matters, federal habeas counsel must spend significant and meaningful time communicating with his or her client, recognizing that one of the sources of unfairness in these cases is the failure of previous counsel to listen to the client's concerns and ideas.

[1] These comment have drawn heavily on written comments submitted by my Texas Habeas Assistance and Training project colleague, Jim Marcus, in connection with the Committee's meeting in Washington, DC in September, 2015. As such, it is a collaborative effort between us.

These are the bedrock standards that define effective assistance in a federal capital habeas proceeding.

Measured by these standards, the quality of capital habeas representation in Texas is, at best, uneven. There is a limited supply of lawyers who provide effective representation and are able to accept appointments in capital habeas cases. Most of these lawyers always have full capital habeas caseloads. As a result, counsel are often appointed who do not provide effective representation. The results are disastrous for their clients.

In at least ten (10) Texas capital habeas cases, lawyers have missed the statute of limitations -- including one Houston lawyer who missed the deadline in three (3) cases. The lawyer who missed three deadlines continued to receive federal capital habeas appointments until a reporter interviewed the Chief Judge of the Southern District at the time, who had been unaware of the problem. *See* Lisa Olsen, *Texas Death Row Lawyers' Late Filings Deadly To Inmates: Tardy Paperwork Denies Final Appeals for 9 Men, 6 of Whom Have Been Executed*, Hou. Chron., Mar. 22, 2009, A1 ("Most of the late filings came in death row cases overseen by federal judges in the Southern District of Texas. In an interview, U.S. District Judge Hayden Head, the Corpus Christi-based chief judge of the Southern District, said he was unaware of the problem and could not comment.").

In more than half of the capital federal habeas petitions filed in Texas, counsel raise only record-based issues. Only on rare occasions can record-based issues lead to relief in federal court. The reason is obvious: Numerous other courts have reviewed the same issues and found them wanting. The rate of success is exponentially higher if the petition includes well-investigated-and-developed, non-record-based issues such as ineffective assistance of counsel for failing to investigate material facts, the concealment of facts by the prosecution that would have been helpful to the defense, and the demonstrable unreliability of scientific evidence presented by the prosecution. These are the kinds of issues that change the equities in a case and that lead to relief.

In an extreme example of failed lawyering that omits any non-record-based issue, a petition was just filed this week in the Western District of Texas in *Gamboa v. Stephens*. Counsel raised only record-based claims but even worse, raised only boilerplate claims challenging the Texas death penalty statute -- claims concerning the death penalty process in Texas in general which have been repeatedly rejected by state and federal courts and never taken up by the Supreme Court. The petition has no case-specific claims at all, not even record-based ones. There were record-

based claims specific to the client's case raised on direct appeal and in state habeas and some non-record-based claims raised in state habeas, but federal counsel omitted all these claims.

While this example is extreme, it is sadly typical of the majority of federal habeas petitions, which raise only record-based claims or non-record-based claims which have not been investigated and developed and are therefore preordained to fail.

Several of the lawyers who raise only record-based and/or undeveloped non-record-based claims have way too many cases to provide any sort of effective representation. This may contribute to their handling the cases as if they were direct appeals. To put this into perspective, the recommended maximum case load for a full time Capital Habeas Unit ("CHU") attorney is between four (4) and six (6) cases. Committee on Defender Services, *Report on Death Penalty Representation*, Sept. 19, 1995. But CJA counsel -- who often lack the support staff and other assistance available to assistant federal public defenders in CHUs -- do not turn away appointments when their caseloads exceed the recommended maximums. For example, in 2013 a Northern District judge and Southern District judge appointed the same lawyer to two capital habeas cases with petitions due on the same day in 2014. This same lawyer was appointed to two capital habeas cases from different districts due within the same week in 2016, and he has 11 other capital habeas cases *as well as* a significant non-capital CJA appellate workload.

There appears to be no system in place to track appointments and assess the caseloads of counsel. Lawyers with impossibly large caseloads cannot perform the work necessary for adequate representation in these complex and labor-intensive cases.

A significant number of CJA lawyers rarely communicate with their clients after their initial visit with the client. Because of this, counsel does not learn critical information about the trial, the case against his client, or the performance of trial counsel known only to the client. No full or even meaningful investigation of the case can be undertaken without regular and frequent communication with the client, yet this lack of communication infects numerous cases in Texas.

In a recent example of this deficient performance by CJA counsel, *Holiday v. Stephens*, Mr. Holiday told Texas Regional HAT counsel[2] that he only met with his

[2] Texas Regional HAT counsel are members of the Texas Habeas Assistance and Training project, comprised of experienced capital 2254 lawyers who contract through the Office of Defender Services, Administrative Office of the Courts, to consult with and assist CJA counsel appointed to federal habeas cases in Texas.

CJA counsel two or three times over the approximately five years counsel represented him. In each visit, Mr. Holiday tried to bring up facts that were erroneous at trial and tried to direct counsel to facts, previously uninvestigated, that would have shown the crime to be far less aggravated. Counsel told him these facts were irrelevant because he was bound to the facts of record. Mr. Holiday was executed in November, 2015, with these facts never having been investigated.

Finally, a significant number of CJA lawyers fail to appreciate their duty to represent their clients in post-Supreme Court proceedings. The duty of CJA counsel extends beyond Supreme Court proceedings:

> Unless replaced by similarly qualified counsel upon the attorney's own motion or upon motion of the defendant, each attorney so appointed shall represent the defendant throughout every subsequent stage of available judicial proceedings, including pretrial proceedings, trial, sentencing, motions for new trial, appeals, applications for writ of certiorari to the Supreme Court of the United States, and all available post-conviction process, together with applications for stays of execution and other appropriate motions and procedures, and shall also represent the defendant in such competency proceedings and proceedings for executive or other clemency as may be available to the defendant.

18 U.S.C. § 3599(e). Despite this clear direction, numerous lawyers terminate their representation after certiorari is denied, even when available remedies may remain. In 2015 alone, for example, the Texas Court of Criminal Appeals stayed the execution of seven prisoners whose federal habeas proceedings had concluded. Most of these clients were represented in the new proceedings by volunteer counsel who jumped into the cases to try to help a person otherwise unrepresented. The case of Perry Williams is illustrative of the plight of clients abandoned by their CJA counsel after cert denial on federal habeas. Mr. Williams was scheduled to be executed on September 29, 2015, but he had no lawyer because his CJA counsel had moved to withdraw after cert denial. *The State of Texas* moved the federal district court to appoint counsel just one month before the execution. At the urging of the federal district court, the Texas trial court withdrew the execution date and the federal court appointed new counsel to represent him.

When effective counsel with adequate time are appointed to a case, the remaining obstacles to adequate representation are securing reasonably necessary ancillary services, like investigators and experts, and securing compensation for the many hours such lawyers work on a case. As described below, issues related to obtaining these services, and attorney compensation, bog down even the most qualified CJA counsel.

**Judicial involvement in the appointment, compensation, and management of panel attorneys and investigators, experts, and other service providers**

The current case budgeting process and system for authorizing petitioners' requests for services like investigators and experts in capital cases is inefficient and, from the perspective of the CJA attorney, very frustrating. In the absence of a Capital Habeas Unit ("CHU") in Texas, representation in capital § 2254 cases has been left primarily to CJA counsel, supplemented by pro bono civil firms and, in a handful of cases, out-of-state CHUs. Because federal courts in Texas rely mostly on appointed CJA counsel, the burden for managing the case budget for counsel, investigators, experts, and other service providers falls on the courts and their staff. However, few if any of the court staff, including the death penalty staff attorneys, have any firsthand experience in the investigation and preparation of a capital habeas petition.[3] Absent a grounding in the amount of work necessary to, for example, compile a client's social history, the court staff has little basis for assessing the reasonableness of a request for investigative services or the amount of attorney time necessary to both supervise an adequate investigation and research and write a meritorious habeas petition. The lack of experience and expertise related to capital post-conviction investigation and litigation, coupled with the low presumptive caps on funding for both CJA counsel and ancillary services, results in an inefficient and ineffective system for funding case work.

The courts' lack of in-house experience has had another negative consequence for the funding of necessary work in capital habeas cases. Due to pressure from a longstanding Fifth Circuit rule (discussed later in this memo) designed to limit attorney's fees in capital cases and the strongly asserted view of the previous Chief Judge of the Fifth Circuit that it was her job to keep capital habeas costs down, many federal district judges have developed a preconception that CJA counsel always ask for more funding than they really need to represent their clients effectively. Thus, by any objective measure, even though counsel justify their requests as reasonably necessary in keeping with 18 U.S.C. § 3599(f), courts are often skeptical and predisposed to cut requests. This apparent bias against funding is at odds with the recognition by Congress that reasonable funding is necessary to provide effective assistance in capital habeas cases, curtails reasonable necessary investigation that could lead to the development of winning claims, and contributes to poorer representation in the Fifth Circuit than in other circuits.

The most extreme example of this sort of bias is evident in the uniform practice of a district judge in the Northern District of Texas. This judge has an announced

[3] Texas Regional HAT members are aware of at least one death penalty staff attorney who is a former assistant prosecutor who opposed capital state habeas applications. Responding to a habeas application, however, is very different from investigating and preparing a capital post-conviction case.

practice of providing no funding for any investigative, expert or other services provided for by Section 3599(f). To the knowledge of Texas Regional HAT counsel, this judge has never deviated from this practice. His theory is that he cannot entertain unexhausted claims, so he will not provide any funding for claim development. His policy not only collides with the explicit provisions of Section 3599(f) but also fails to recognize that the mission of capital federal habeas proceedings is to permit counsel to undertake meaningful representation of a client facing the ultimate punishment.[4] Investigating and developing facts about a client and his case does not necessarily lead to the assertion of unexhausted claims, but even if it does there are well-established stay-and-abey procedure for allowing he client to return to the state courts to exhaust those claims, *see Rhines v. Weber,* 544 U.S. 269 (2005), and if the claim is an ineffectiveness of trial counsel claim, there is now an established procedure for litigating the procedural posture of such claims in federal court, *see Martinez v. Ryan*, 132 S.Ct. 1309 (2012).

In addition to the problems inherent in the courts' exclusive management of CJA counsel's requests for resources, requests for resources have become the subject of adversarial opposition by the Respondent in Texas cases. Although case budgeting and requests for ancillary services relate only to the representation being afforded a capital prisoner in a habeas proceeding, and hence are administrative in nature, the process has become enmeshed in adversarial litigation, and therefore more inefficient and much more costly than necessary. CJA counsel often must engage in

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[4] It is important to understand that, as it was originally enacted, Section 3599 was intended to provide effective representation in all capital cases, included capital habeas cases. In 1988 Congress enacted 21 U.S.C. § 848(q), which provided for the appointment of counsel in federal capital trial proceedings and federal capital habeas proceedings (under 28 U.S.C. §§ 2254 or 2255) in the federal courts. (This provision was re-codified in 2006 as 18 U.S.C. § 3599.) In *McFarland v. Scott*, 512 U.S. 849 (1994), the Court had occasion to interpret Congressional intent with respect to various aspects of this statutory right to counsel. The Court explained that in enacting this provision, Congress made

> a determination that quality legal representation is necessary in capital habeas corpus proceedings in light of "the seriousness of the possible penalty and ... the unique and complex nature of the litigation." § 848(q)(7). An attorney's assistance prior to the filing of a capital defendant's habeas corpus petition is crucial, because "[t]he complexity of our jurisprudence in this area ... makes it unlikely that capital defendants will be able to file successful petitions for collateral relief without the assistance of persons learned in the law."

*Id*. at 855-56. In explaining that counsel appointed pursuant to § 848(q) must be available prior to a prisoner's scheduled execution, the Court noted that "the [statutory] right to counsel necessarily includes a right for that counsel meaningfully to research and present a defendant's habeas claims." *Id*. at 858. And indeed, in a very recent decision by the Supreme Court referring to *McFarland* and this right to counsel, the Court referred explicitly to "the myriad ways that § 3599 seeks to promote effective representation for persons threatened with capital punishment." *Martel v. Clair*, ___ U.S. ___, 132 S.Ct. 1276 (2012). Thus, Congress *intended* that counsel appointed to represent indigent petitioners in capital federal habeas corpus proceedings provide effective assistance.

extensive advocacy, at a CJA rate of $181.00/hour, to request investigative services that cost half as much. Until recently, federal courts in Texas routinely granted CJA counsel leave to seek ancillary services in *ex parte* proceedings. However, lately, merely obtaining permission to seek such services without divulging counsel's investigative plan to the respondent (which is something never required of CHU counsel or the attorneys representing the respondent) has become a contested and thus time-intensive area of litigation.[5] By the time CJA counsel has litigated for both the right to proceed *ex parte* and the requested ancillary services, counsel's fees for doing so may be as much or more than the funding sought. This is a grossly inefficient manner of administering indigent representation.

The system for providing ancillary services is also ineffectual because of the delays associated with the adversarial nature of the litigation required to obtain them. Counsel who seek ancillary services must first litigate to proceed *ex parte*, and then litigate for the services. When services are approved that exceed $7,500.00 in cost -- which is a near certainty in a state like Texas because of the historically poor representation in state habeas proceedings and the Supreme Court's decision in *Martinez v. Ryan*, *supra*, allowing federal habeas counsel to raise new ineffective-assistance-of-trial-counsel claims in federal court -- then the excess services must further be approved at the circuit level. The delays associated with this process as a whole too often means that, even if the requested services are eventually authorized, they arrive too late for counsel to make effective use of the services before the statute of limitations expires.

While judicial involvement might always be necessary for the management of appointed counsel and all associated service providers, the review of funding requests and cases budgets should be informed by lawyers with experience in capital habeas defense practice and familiarity with the standards of care and practice reflected at national seminars, such as the Habeas Assistance and Training Project's annual National Habeas Corpus Seminar. In some states, for example, CJA vouchers are first submitted to the Federal Public Defender Office. Such a process affords the court the input of learned counsel which will provide an informed perspective on the necessity of the work contemplated by counsel.

Additionally, ancillary services should be authorized in a timely manner. Case investigations often unfold more slowly than counsel would like, for reasons beyond their control. Obtaining records and documents from law enforcement agencies, social service agencies, and even schools can sometimes be a long, drawn-out

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[5] Counsel representing a capital prisoner have an ethical obligation to seek these services *ex parte*. *See* ABA Guidelines, Guideline 10.4 -- The Defense Team, commentary ("Because the defense should not be required to disclose privileged communications or strategy to the prosecution in order to secure these resources, it is counsel's obligation to insist upon making such requests *ex parte* and in camera.") (footnotes omitted).

process. When CJA counsel seek to expedite the process by, for example, seeking subpoenas requiring the production of social services records, the Respondent opposes such requests which only further bogs down the preparation of the case while the statute of limitations runs. Yet, document collection is almost always necessary before witnesses can be identified and interviewed. Timely advice from learned counsel regarding requests for ancillary services will also help expedite the process. Prompt responses to such requests will increase CJA counsel's ability to substantially complete investigations before the limitations period expires.

To further reduce the time and unnecessary expense associated with obtaining funding, this Committee could ask Congress to amend 18 U.S.C. § 3599 in two respects. First, Congress should amend § 3599(f) to reinstate a petitioner's pre-AEDPA right to seek funding in *ex parte* proceedings as a matter of course. In jurisdictions like Texas, in which the State routinely opposes requests to proceed *ex parte* and requests for ancillary services, the process is needlessly litigious. There is no reason to pay CJA counsel $7,500.00 in attorney's fees for litigating the right to $7,500.00 for an investigator. And, when the Respondent opposes *all* funding requests as matter of policy, and does so for purely partisan reasons, then its participation in indigent defense funding decisions ceases to be of any value to a court assessing whether the services are actually reasonably necessary for the representation in a particular case. If anything, the Respondent's participation muddies the waters because courts must assess whether, beyond the state's reflexive opposition to funding, lies any substance to its arguments. Moreover, it is not clear what standing the Respondent has to be heard on matters which strictly concern the representation of a habeas corpus applicant. Better would be the advice of a federal defender or learned counsel with the experience necessary to assess the need for the services requested.

Second, the Committee could ask Congress to amend § 3599(g)(2) to raise the presumptive cap on reasonably necessary services that can be obtained from the district court without approval from the chief judge of the circuit. The current amount of $7500.00 is usually insufficient to pay the fees for a qualified mitigation specialist to conduct an adequate background investigation.[6] Most cases will also require other services, such as fact investigators, mental health experts, and/or other forensic experts. A presumptive cap at $7,500.00 is now so low that the chief judge will have to review funding requests in every case in which qualified counsel is appointed. This creates needless delay and unnecessarily burdens scarce judicial resources. With or without the assistance of learned counsel, federal district courts are equally qualified to assess the reasonableness of a request for resources. Circuit

[6] The $7,500 presumptive limit was originally enacted in 1996. Using the CPI inflation calculator of the Bureau of Labor Statistics, this would correspond to an amount equal to $11,407.17 in 2015. Thus, the current statutory limit no longer even reflects Congress's judgment at the time about what presumptively reasonable ancillary services should cost in a capital case.

review should be more the exception than the rule. Raising the presumptive cap to $25,000.00 would be more consistent with such a policy.

**The adequacy of compensation for legal services provided under the CJA, including maximum amounts of compensation and parity of resources in relation to the prosecution**

In 1998, the Fifth Circuit adopted a presumptive cap of $35,000.00 for representation in the district court and $15,000.00 in the court of appeals for a capital habeas corpus proceeding. At the time, the hourly CJA rate was $125. Thus, 280 hours of attorney time in the district court, and 120 hours in the court of appeals was deemed presumptively reasonable. These caps have remained in place even though the CJA rate has risen during the last seventeen years to $181.00 hour. Accordingly, the presumptive caps are now reached after 193 hours of work in the district court and 83 hours for work on an appeal. These presumptive caps, coupled with a history in some cases of actually capping counsel's fees at these amounts, have operated as deterrent to competent counsel accepting appointments in capital habeas cases.

At the same time that the number of hours presumptively available has decreased by 31 percent, the complexity and labor-intensiveness has increased for a variety of reasons, including:

- *Martinez v. Ryan*-related conflicts. Prior to *Martinez*, state habeas counsel represented the petitioner in federal proceedings in approximately 50% of capital habeas cases. Thus, in approximately half of the cases, federal counsel was already familiar with the trial, direct appeal, and state habeas records. Post-*Martinez*, federal courts rarely appoint state habeas counsel for the federal proceedings, so almost every lawyer will be new to the case and will be required to spend many hours familiarizing herself with not only the prior court records, but also prior counsel's files and activities.[7]

- *Martinez*-related work. Prior to 2012, petitioners could not raise new trial ineffectiveness claims in federal court and demonstrate cause for any default based on ineffective state habeas representation. Now, federal counsel must investigate the possibility that state habeas counsel failed to discover a viable ineffectiveness claim. This increases the time and resources reasonably necessary for capital federal habeas representation, especially in a jurisdiction like Texas with a long and

[7] Even without *Martinez*, the federal courts in Texas will be required to appointed new counsel in almost all Texas capital habeas corpus cases. In 2010, the Office of Capital Writs ("OCW") assumed responsibility for the vast majority of the capital state habeas cases in Texas. The OCW is a state agency that is prohibited by statute from representing its clients in federal court.

well-documented track record of providing inadequate capital state habeas representation.

- The increased complexity of post-AEDPA federal habeas corpus jurisprudence.

- The increasingly litigious process, described *supra*, for obtaining *ex parte* review of funding requests and the funding itself.

The current presumptive cap of 193 attorney hours for capital § 2254 case, in which CJA counsel who is new to the case must necessarily review the trial, direct appeal, and state habeas proceedings, as well as the files of all prior counsel, is facially inadequate. With the presumptive limit set too low, there is widespread perception that counsel will not be adequately compensated for her time—a perception that has been reinforced by a history of voucher cutting. Labelling what should be routine attorney's fees in capital habeas cases as "presumptively excessive" is contrary to a policy of providing adequate compensation to CJA counsel. The presumptive cap should be re-evaluated in light of both the increased CJA rate and the increased complexity of the representation.

There is no parity of resources with the Respondent in capital § 2254 cases. The State of Texas is represented by a division of the Office of the Texas Attorney General staffed by salaried lawyers who specialize in federal habeas corpus litigation.

**The adequacy and fairness of the billing, voucher review, and approval processes relating to compensation for legal and expert services provided under the CJA**

Some members of the judiciary, at both the district court and circuit level, have expressed the sentiment that the CJA is not meant to be fully remunerative of counsel's services, and that the premise of the CJA is to merely provide *some* payment to counsel. This is not, however, an understanding shared by the CJA panel attorneys who agree to be appointed into capital habeas cases at a specified hourly rate. In addition, in our Circuit, the court has applied a variety of rationales for cutting vouchers that were announced only after the services were provided, such as an unwillingness to fully compensate law professors or lawyers who work at non-profit agencies. Such cuts, based on rationales first articulated after the services have been rendered and the vouchers submitted, strike counsel as arbitrary and unfair and inhibit their willingness to accept future CJA appointments. This is particularly unfortunate because these are some of the most qualified lawyers to represent capital prisoners in habeas corpus proceedings.

Further, some voucher cuts have been substantial, such as reducing an $80,000.00 voucher to $20,000.00. For many CJA lawyers, this level of financial uncertainty and potential loss is too great to bear.

Because there is no recourse for counsel who have been deprived of their fees—and at least one lawyer in a capital § 2255 case had his fees cut *further* in response to a request that the circuit reconsider the prior reduction in payment—some highly qualified lawyers will no longer accept appointment in Texas capital habeas cases. As a result, CJA lawyers are incentivized to take on a higher volume of cases and do less work on behalf of each client while the most conscientious attorneys are disincentivized from accepting appointment in capital habeas cases.

Improvements to the transparency, predictability, and review of the voucher review process would increase the pool of available, qualified counsel.

**The timeliness of appointment of counsel**

There is currently no judicial mechanism for addressing the appointment of federal habeas counsel before the limitations period begins to run. In some cases, this has created significant delays in the appointment of counsel and thus truncated the statute of limitations. Texas Regional HAT Counsel have recently received some additional resources, some of which have been devoted to the recruitment of counsel. For the reasons explained above, however, locating available competent counsel is not an easy task.

The judiciary could ensure the timely appointment of counsel by working with the Federal Defender or Texas HAT counsel to secure federal counsel while cases are still pending in the late stages of state capital habeas corpus review.

**The adequacy of support provided by the Defender Services Office to federal defender organizations and panel attorneys**

The DSO has been supportive and responsive to the need for support in Texas. Because Texas does not have a CHU, the DSO funds several part-time lawyers to consult with CJA counsel, through the Texas regional HAT counsel. And while this funding has been increased several times over the years, Texas HAT counsel still cannot meet the demand for services.[8]

[8] Texas HAT counsel have learned to devote most of our consulting efforts to counsel who understand and accept the standard for effective assistance in federal habeas proceedings. We have learned through years of vain effort that the lawyers who treat federal habeas as direct appeals are impervious to our training and recommendation. Even with the devotion of our consulting efforts to lawyers who can provide effective assistance, we cannot provide meaningful assistance in all such cases.

**The availability and effectiveness of training services provided to federal defenders and panel attorneys**

The training services provided by the (national) Habeas Assistance and Training Project for capital habeas cases are impressive. There are regular, high-quality free trainings and a sufficient number of scholarships to defray the expenses of CJA attorneys for whom travel would be a significant financial burden. Texas HAT counsel routinely encourage panel attorneys (as well as *pro bono* counsel) to attend HAT trainings and they benefit enormously from the programs. However, for many CJA attorneys, the true efficacy of the training is tied to the adequacy of the representation services afforded, including investigative and expert assistance: lawyers deprived of the resources necessary to perform the work for which they have been trained will fare no better than poorly trained lawyers.