

[*Buck v. Davis*](#), 580 U.S. ____ (Feb. 22, 2017). In this Texas capital murder case, the defendant's Sixth Amendment right to effective assistance of counsel was violated when his lawyer introduced evidence from a psychologist that the defendant was statistically more likely to act violently because he is black. A Texas jury convicted the defendant of capital murder. Under state law, the jury could impose a death sentence only if it found that the defendant was likely to commit acts of violence in the future. The defendant's attorney called a psychologist to offer his opinion on that issue. The psychologist testified that the defendant probably would not engage in violent conduct. But he also stated that one of the factors pertinent in assessing a person's propensity for violence was his race, and that the defendant was statistically more likely to act violently because he is black. The jury sentenced the defendant to death. With respect to first prong of the *Strickland* attorney error standard, the Court held that counsel's performance fell outside the bounds of competent representation. Counsel knew that the expert's report reflected the view that the defendant's race disproportionately predisposed him to violent conduct; he also knew that the principal point of dispute during the trial's penalty phase was whether the defendant was likely to act violently in the future. Counsel nevertheless called the expert to the stand and specifically elicited testimony about the connection between the defendant's race and the likelihood of future violence. Additionally counsel put into evidence the expert's report stating that the defendant's race, "Black," suggested an "[i]ncreased probability" as to future dangerousness. This report "said, in effect, that the color of [the defendant's] skin made him more deserving of execution. It would be patently unconstitutional for a state to argue that a defendant is liable to be a future danger because of his race." The Court went on to hold that the second prong of the *Strickland* test—prejudice—also was satisfied, finding that it was reasonably probable that the proceeding would have ended differently had counsel rendered competent representation. It noted that the evidence at issue was "potent" and "appealed to a powerful racial stereotype—that of black men as 'violence prone.'" The expert's opinion "coincided precisely with a particularly noxious strain of racial prejudice, which itself coincided precisely with the central question at sentencing." The court concluded: "the effect of this unusual confluence of factors was to provide support for making a decision on life or death on the basis of race." This effect was heightened because the witness took the stand as a medical expert, "bearing the court's imprimatur." The Court rejected the notion that any mention of race was de minimis, concluding "Some toxins can be deadly in small doses." [This case also addresses a number of procedural issues that apply in federal court; because they are not relevant to state court proceedings they are not summarized here.]