THE *FINLEY* FAILURE: AN EMPIRICAL ACCOUNT OF HOW *FINLEY* "NO-MERIT" LETTERS FOSTER A CULTURE OF UNETHICAL LAWYERING AND UNDERMINE THE RULE OF LAW

*John "Yahya" Moore & Thomas Roberts**

INTRODUCTION

All lawyers are bound by the ethical rules of the legal profession. However, newly collected empirical evidence suggests that a subset of court-appointed attorneys in Pennsylvania routinely violate basic ethical principles when they employ a particular procedure: the *Finley*[1] "no-merit" letter.[2] Such letters permit court-appointed lawyers in postconviction cases to seek withdrawal by publicly advocating against their clients' litigation interests.[3] The high prevalence and tolerance of ethical violations in this theater of law warrant recognition of a discrete *culture* of unethical lawyering. This culture routinely condones facially improper attorney behavior,[4] including the prejudicial disclosure of privileged and confidential information.[5] Moreover, the striking adversity documented between attorneys and clients in the *Finley* context calls into doubt whether *Finley*-filers truly function as "lawyers" within the Anglo-American legal tradition, which has long assumed that lawyers are agents of their clients.[6] Pennsylvania's *Finley* procedure is discordant with core principles of the legal profession and palpably undermines the rule of law.

A preliminary study ("Study") of 335 *Finley* cases led by one of this Essay's authors illustrates how this procedure normalizes a legal subculture distinguished by unethical lawyering and deficient legal

* The authors would like to thank Stephen Lazar, Craig Elias, and the members of Philadelphia's Best Outcomes Participatory Defense Hub for deepening this project with the wisdom they have won through experience. We would also like to thank Phillips Black attorneys Jennifer Merrigan and Elie Kirshner for their vital support and thoughtful feedback throughout the research and writing process, as well as developmental editor Dr. Patricia Way for her assistance with the drafting process. Finally, we want to thank: Samantha Bass, Eva Faenza, Alexandra Melishkevich, and Anna Sacks for their tireless work analyzing *Finley* letters; Chris Alrutz, a Data Analyst from the Quattrone Center for the Fair Administration of Justice, for helping us use technology to structure and analyze our data; and clinical students from the Washington University School of Law Post-Conviction Relief Clinical Practicum who helped collect hundreds of *Finley* letters. Thank you all — this project could not have happened without your support, guidance, and insight.

1 *See* Commonwealth v. Finley, 550 A.2d 213, 214 (Pa. Super. Ct. 1988).

2 *Id.* (citing Commonwealth v. Turner, 544 A.2d 927, 928–29 (Pa. 1988)).

3 *See infra* p. 144.

4 *See infra* section III.A, pp. 148–53.

5 *See infra* section III.A.1, pp. 148–51.

6 *See* Shinn v. Ramirez, 142 S. Ct. 1718, 1733 (2022) (quoting Coleman v. Thompson, 501 U.S. 722, 753 (1991)).

analysis.[7] A subset of 100 *Finley* letters — those filed in Philadelphia County in homicide cases involving Life-Without-Parole (LWOP) sentences — was substantively reviewed and coded for forty-nine discrete patterns of unethical behavior and deficient analysis.[8] All 100 letters contained evidence of both.[9] Among all 335 letters, the poor stewardship of this subculture over a diminished rule of law *exclusively* affected people who are poor[10] and disproportionately affected people who are Black.[11] The *Finley* procedure fosters this subculture by abandoning the adversarial system, allowing attorneys to abuse the trust placed in them by their clients, tolerating an unhealthy degree of attorney-client adversity, and systematically under-examining postconviction claims. Part I traces the emergence and structure of the *Finley* procedure.

The Study was inspired by the lived experiences of people who are poor, incarcerated, and appointed a *Finley*-filer — a group that included one of this Essay's authors until his conviction was vacated and he was freed. As John "Yahya" Moore conveys in his own voice in Part II, his lawyer filed a "no-merit" letter more than two decades before his homicide conviction and LWOP sentence were vacated. Mr. Moore's lived experiences are woven throughout this Essay to illustrate the human anguish caused by unethical lawyering, the extreme power imbalance between attorneys and their court-appointed clients, and the profound stakes of neglecting the rule of law.

Part III illustrates how "no-merit" letters sustain a culture of excessive disloyalty among *Finley*-filers. This culture first takes shape through *Finley*-filers' documented abuses of the trust that both clients and courts place in them by virtue of their attorney role. The culture is amplified by *Finley*-filers' disparagement and mistrust of clients,[12] as well as their failure to communicate with clients before aggressively rebutting their claims.[13] Lastly, the culture of disloyalty reveals itself in the discretionary, argumentative choices that *Finley*-filers resolve against their clients' interests.[14] The picture of unethical lawyering that emerges from Part III evidences profound breakdowns in the attorney-client relationship and the adversarial system.

Part IV demonstrates this legal subculture's failure to uphold the rule of law. *Finley*-filers' twin failures to scrutinize facts of record and

---

[7] *See* PHILLIPS BLACK, EXAMINING *FINLEY* "NO-MERIT" LETTERS: AN EMPIRICAL REVIEW OF ATTORNEY ETHICS AND LEGAL PROCESS IN PHILADELPHIA LWOP CASES (2026) [hereinafter *Finley* Report], https://www.phillipsblack.org/finleyreport [https://perma.cc/A3HV-39DY].

[8] *Id.* at 6.

[9] *Id.*

[10] Of all *Finley* letters in the wider dataset, none was filed by a privately retained attorney. *See id.* at 4.

[11] *See id.*

[12] *See infra* section III.B.1, pp. 153–55.

[13] *See infra* section III.B.2, pp. 155–57.

[14] *See infra* section III.C, pp. 157–60.

to develop extra-record facts through investigation undermine judicial fact-finding. Furthermore, *Finley*-filers' documented failures to faithfully ascertain, accurately communicate, and objectively apply the substance of the law in "no-merit" letters sharpen the picture of a legal subculture failing to uphold the rule of law.

The Conclusion highlights how the *Finley* procedure appears incompatible with the assumption that appointed postconviction lawyers are agents of their clients. It also discusses the inherent difficulty with different approaches to reforming this broken legal subculture and calls for a more comprehensive empirical study to assess how to repair the damage wrought by *Finley*.

I. THE *FINLEY* PROCEDURE

The *Finley* letter procedure emerged as Pennsylvania's response to the sharp constitutional line the Supreme Court drew between direct appeal and state postconviction proceedings in 1987.[15] The question before the Court was whether — when a client mounts a collateral attack on his conviction, but his court-appointed postconviction lawyer "sees no basis" for the action — the Constitution dictates whether and how she can withdraw.[16] The Court answered in the negative.[17] Declaring that the Sixth Amendment right to an effective lawyer "extends to the first appeal of right, and no further," the Court held that states therefore have "substantial discretion" to fashion their postconviction procedures.[18]

On remand, the Pennsylvania courts exercised this discretion to adopt the *Finley* procedure,[19] which made it easier for state postconviction lawyers to withdraw.[20] Before withdrawal on direct appeal, the Sixth Amendment requires counsel to conclude that their client's case is "wholly frivolous" and submit a so-called *Anders* brief "referring to anything in the record that might arguably support the appeal."[21] By contrast, before withdrawal in state postconviction, *Finley* merely requires counsel to conclude that their client's case contains "no arguably meritorious issues"[22] and submit a so-called "no-merit" letter containing an

---

15 *See* Pennsylvania v. Finley (*Finley I*), 481 U.S. 551, 555 (1987).

16 *See id.* at 553–54 (quoting Commonwealth v. Porter, 479 A.2d 568, 570 (Pa. Super. Ct. 1984)).

17 *Id.* at 554.

18 *Id.* at 555, 559.

19 Commonwealth v. Finley, 550 A.2d 213, 215 (Pa. Super. Ct. 1988).

20 *See id.* By contrast, New Jersey prohibits appointed state postconviction counsel from withdrawing. *See* N.J. Ct. R. 3:22-6(d) ("Assigned counsel may not seek to withdraw on the ground of lack of merit of the petition. Counsel should advance all of the legitimate arguments requested by the defendant that the record will support.").

21 Anders v. California, 386 U.S. 738, 744 (1967).

22 Commonwealth v. Finley (*Finley II*), 479 A.2d 568, 569–70 (Pa. Super. Ct. 1984).

"'explanation' . . . of why the petitioner's issues [a]re meritless."[23] The *Finley* procedure is an explicit relaxation of the constitutional procedure.[24]

The duties of state postconviction lawyers who seek to withdraw via *Finley* letters are different from the duties of direct appeal lawyers who seek to withdraw via *Anders* briefs. A direct appeal lawyer in Pennsylvania can raise *only* claims that arise within the four corners of the record[25] and typically *cannot* litigate whether his client's prior counsel was constitutionally ineffective.[26] By contrast, a state postconviction lawyer *must* investigate beyond the record *because* she can now litigate for the first time whether her client's former counsel was constitutionally ineffective.[27] "[B]y their very nature," constitutional ineffectiveness claims "often . . . are not apparent on the record," so postconviction lawyers have "the additional burden of raising any extra-record claims that may exist by interviewing the client, family members, and any other people who may shed light on claims that could have been pursued before or during trial and at sentencing."[28]

Postconviction counsel must meet these client-communication and extra-record investigation obligations in a distinct procedural context. On direct appeal, the constitutional right to counsel still applies, and lawyers typically file documents enumerating their clients' appellate claims in the first instance.[29] By contrast, although a statutory right to counsel applies to initial state postconviction petitions in Pennsylvania,[30] a lawyer is not appointed under the Post Conviction Relief Act[31] (PCRA) until *after* petitioners independently commence proceedings by filing a pro se petition outlining their claims for relief.[32] Thus, imprisoned laypeople file the documents enumerating postconviction claims in the first instance. The PCRA court then automatically appoints a postconviction attorney.[33] Instead of amending her client's pro se petition, this court-appointed lawyer may move to withdraw under *Finley* by "listing each issue the petitioner wishe[s] to have reviewed" and explaining "why the petitioner's issues [a]re meritless."[34] If the court, after an "independent review of the record," agrees with the *Finley*-filer, it can dismiss the petition and allow the *Finley*-filer to withdraw.[35] The

---

[23] *See Finley*, 550 A.2d at 215 (quoting Commonwealth v. Turner, 544 A.2d 927, 928 (Pa. 1988)).
[24] *See id.* at 215; *Turner*, 544 A.2d at 928–29.
[25] *See* FED. R. APP. P. 10(a); PA. R. APP. P. 1921.
[26] *See* Commonwealth v. Grant, 813 A.2d 726, 738 (Pa. Super. Ct. 2002).
[27] *See id.* at 737.
[28] *Id.*
[29] *See Finley I*, 481 U.S. 551, 555 (1987); PA. R. APP. P. 1925(b).
[30] PA. R. CRIM. P. 904(C).
[31] 42 PA. CONS. STAT. §§ 9541–9546 (2025).
[32] *See* § 9545(a).
[33] *See* PA. R. CRIM. P. 904(C).
[34] Commonwealth v. Finley, 550 A.2d 213, 215 (Pa. Super. Ct. 1988) (citing Commonwealth v. Turner, 544 A.2d 927, 928–29 (Pa. 1988)).
[35] *Id.*

petitioner may then appeal the PCRA court's dismissal pro se or hire private counsel.[36]

II. THE HUMAN TOLL OF *FINLEY*: MR. MOORE'S EXPERIENCE

Like so many others in the Study, I am a Black man from an under-resourced community; in my case it was a poor neighborhood in one of the poorest zip codes in Philadelphia. I was twenty-nine when I received my *Finley* letter,[37] but the seeming inevitability of that letter started long before then.

In my neighborhood, the conventional wisdom was: "If you get into trouble, you are not smart enough to fight the system. You need a lawyer." We all believed legal terms were too complex for us to grasp — only lawyers knew how to translate them. And we all believed that lawyers were more than just professionals — they were "saviors" because without one, you were doomed. The idea of navigating the legal system without a lawyer was unthinkable. So I trusted that my court-appointed trial lawyer knew best. When I felt that he missed something, ignored evidence, or wouldn't hear me out, I swallowed my doubts. *He's the expert*, I told myself. But with every doubt I swallowed, my fear grew, until on May 9, 2000,[38] I was convicted of a crime I did not commit.

Those fears grew throughout my direct appeal, which was handled by the same lawyer and denied,[39] and on through the appointment of my postconviction lawyer.[40] I suppressed my fears yet again with my postconviction attorney because of the persistent, ingrained belief that attorneys knew best. I *had* to hope that my postconviction lawyer would do better because the real nightmare wasn't a *bad* lawyer, it was having *no* lawyer. Despite my trust, though, my first attorney had failed me at trial and on appeal. When I was thrust into pro se status to write my own postconviction petition, I realized even more clearly that I did not have a clue; I was more dependent on my lawyer than ever. But she was about to betray me.

More than two years after I was sentenced to die in prison, I sat in my cell and read my lawyer's "no-merit" letter in disbelief.[41] This lawyer had given me a flicker of hope. Unlike my first lawyer, who never sent me anything, this lawyer actually sent me an introduction letter asking me about my claims. She sent me my discovery and trial transcripts, neither of which I had when I wrote my postconviction petition. My first lawyer had made me feel like an irritating checkbox on a form.

---

[36] *Id.*

[37] *See* Letter from Barbara A. McDermott to Hon. Steven R. Geroff 1 (Nov. 13, 2002) [hereinafter John Moore Letter] (on file with the Harvard Law School Library).

[38] *See* Moore v. DiGuglielmo, 489 F. App'x 618, 620 (3d Cir. 2012).

[39] *See id.* at 620, 622.

[40] *See id.* at 620.

[41] *See* John Moore Letter, *supra* note 37.

I hoped this lawyer might actually see me as a fellow human being, terrified, facing life and death in prison.

The letter I held in my hands smothered that hope. At the time, I didn't know how much collective hope had been smothered by "no-merit" letters. But during the long days, weeks, and years in the prison law library that followed, I began hearing of "no-merit" letters like a legend that hung heavy in the air, visiting that familiar devastation upon countless men I knew.

This betrayal was hard to stomach. My "savior" had treated my life like a clerical error. Among her many mistakes and betrayals, the very first sentence she wrote about my case was false: "Petitioner was arrested on January 3, 2001."[42] I had been arrested in December 1997 and convicted in 2000.[43] What hope could I have of a fair shake if even my own lawyer got these basic facts wrong? I read on and learned that she was arguing against all of my claims.[44]

I did what we all did to keep our cases alive: I let myself feel the pain only briefly, and then I went to the law library to begin my pro se battle — a previously unthinkable path. Within the week, the court sent a notice of intent to dismiss my petition.[45] The rules gave me twenty days to respond to my lawyer's "no-merit" letter,[46] but routine prison mail delays left me with only eight days to do so. I scrambled, filing objections in time,[47] but it didn't matter. The court accepted my lawyer's "no-merit" letter and dismissed my case.[48] I would pass more than two decades in prison before my wrongful conviction was finally vacated.[49] The evidence that would ultimately lead to my release — evidence that another person committed the crime — was evidence that both she and my trial counsel had in their files.[50]

I share my story in the hope that humanizing the client-side of the "no-merit" letter procedure can help to heal the damage it has done to the attorney-client relationship. I have come to understand that lawyers

---

[42] *Id.* at 1.

[43] *See Court Summary, Moore, John*, FIRST JUD. DIST. OF PA., at 3, https://ujsportal.pacourts.us/Report/CpCourtSummary?docketNumber=CP-51-CR-0201061-1998&dnh=w%2BWsudOeBaAyma4QXmp%2FdA%3D%3D [https://perma.cc/M9FR-W2LX].

[44] *See Moore*, 489 F. App'x at 620.

[45] *See* Second Amended Complaint at 4, Commonwealth v. Moore, No. 0106 (Ct. C.P. Phila. Cnty. Feb. 1998) (on file with the Harvard Law School Library).

[46] *See* PA. R. CRIM. P. 907(1).

[47] *See Moore*, 489 F. App'x at 620.

[48] *See id.*

[49] *See* Commonwealth of Pennsylvania v. John Moore, CT. OF COMMON PLEAS OF PHILA. CNTY., https://ujsportal.pacourts.us/Report/CpDocketSheet?docketNumber=CP-51-CR-0201061-1998&dnh=w%2BWsudOeBaAyma4QXmp%2FdA%3D%3D [https://perma.cc/4N33-HS7P] (entry for June 27, 2023).

[50] *See* Petitioner's Answer to Notice of Intention to Dismiss PCRA Petition Pursuant to Rule 907(1) of the Pennsylvania Rules of Criminal Procedure at 452, Moore v. DiGuglielmo, No. 05-cv-02796 (3d Cir. filed Aug. 18, 2011).

are not "saviors" but flawed human beings who are part of a broken system — a system I know all too well.

III. A CULTURE OF DISLOYALTY

The *Finley* procedure has produced a disloyal, inquisitorial legal subculture that does not abide by our tradition of adversarial justice. *Finley*-filers in the Study routinely abused the trust placed in them by their clients and the courts by misusing their clients' information, snubbing their clients, and assessing postconviction claims with a hostile eye. Where this tainted legal culture prevails, no trust between lawyers and clients can survive.

A. Abuse of Attorney Role

> *A fundamental principle in the client-lawyer relationship is that, in the absence of the client's informed consent, the lawyer must not reveal information relating to the representation. . . . This contributes to the trust that is the hallmark of the client-lawyer relationship.*
>
> — ABA Model Rules of Professional Conduct.[51]

1. Abuse of Client Trust: Confidentiality and Privilege. — Clients trust their lawyers with sensitive information. Two doctrines prevent lawyers from using that information against their clients. First, pursuant to their broad duty of confidentiality, "[a] lawyer shall not reveal information relating to the representation" absent client authorization or limited, enumerated circumstances.[52] Second, the more specific attorney-client privilege "protect[s] confidential client-to-attorney or attorney-to-client communications made for the purpose of obtaining or providing professional legal advice."[53] Together, confidentiality and the attorney-client privilege are designed to encourage every client "to communicate fully and frankly with the[ir] lawyer even as to embarrassing or legally damaging subject matter."[54]

The *Finley*-filers in the Study routinely violated the duty of confidentiality, the attorney-client privilege, or both. *Finley*-filers in 36% of reviewed LWOP cases disclosed their own clients' protected information to bolster arguments *against* their clients' litigation interests,[55] and courts frequently relied on these disclosures to deny postconviction claims.

---

[51] MODEL RULES OF PRO. CONDUCT r. 1.6 cmt. 2 (A.B.A. 1983).

[52] *Id.* r. 1.6(a)–(b); 204 PA. CODE § 81.4 r. 1.6 (2025).

[53] Commonwealth v. Schultz, 133 A.3d 294, 313 (Pa. Super. Ct. 2016) (quoting Gilliard v. AIG Ins. Co., 15 A.3d 44, 59 (Pa. 2011)).

[54] MODEL RULES OF PRO. CONDUCT r. 1.6 cmt. 2 (A.B.A. 1983); 204 PA. CODE § 81.4 r. 1.6 cmt. 2 (2025).

[55] *Finley* Report, *supra* note 7, at 8.

First, roughly one in three LWOP letters violated the filers' duty of confidentiality.[56] Often, a *Finley*-filer violated confidentiality by using information learned from either their client or case-related documents to discover, contact, and interview a witness.[57] The filer then used information learned from that witness against their client.[58] For example, Kinoll McCormick claimed that his trial counsel ineffectively failed to call several witnesses.[59] After interviewing the witnesses, Mr. McCormick's *Finley*-filer stated to the court: his impression that Mr. McCormick had "no doubt" tampered with the witnesses, multiple inculpatory facts putatively told to him by these witnesses, and his unilateral conclusion that "none of these witnesses provided any exculpatory information."[60] Then, as though his own lawyer were a fact witness for the state, both the trial and appellate courts relied on counsel's disclosure to reject Mr. McCormick's ineffectiveness claim,[61] which died on the disloyal word of his own lawyer.

About one in four LWOP letters appeared to disclose privileged information.[62] Anthony Pitts experienced such betrayal when he argued for postconviction relief based on discovery of a new eyewitness.[63] Mr. Pitts met with his court-appointed lawyer about the claim.[64] Then, two days later, his counsel wrote to the court to disclose that Mr. Pitts "informed me that although [Mr. Pitts] had reason to believe the witness would be cooperative at one time, the witness [was] presently unwilling to speak with an investigator or otherwise give a sworn affidavit in

---

[56] *Id.* at 15. By contrast, the Model Rules of Professional Conduct prohibit lawyers from disclosing confidential information when moving to withdraw from a representation, even when withdrawal is mandatory, absent limited exceptions. A.B.A. Comm. on Ethics & Pro. Resp., Formal Op. 519 (2025).

[57] *See, e.g.*, *Finley* Report, *supra* note 7, at 8–9 (discussing cases of Tyrone Martin and Corey Williams).

[58] *See, e.g.*, *id.*

[59] Letter from Barnaby C. Wittels to Hon. Shelley Robins New 11 (May 17, 2010) [hereinafter Kinoll McCormick Letter] (on file with the Harvard Law School Library).

[60] *See id.*; *cf.* A.B.A. Comm. on Ethics & Pro. Resp., Formal Op. 519 (2025) ("The Model Rules require that any disclosure in support of withdrawal be narrowly tailored, protective of the client's interests, and undertaken only within the scope of an applicable exception.").

[61] *See* Commonwealth v. McCormick, No. CP-51-CR-0605161-2005, at 6 (Ct. C.P. Phila. Cnty. Jan. 10, 2013) (on file with the Harvard Law School Library) ("Counsel in his *Finley* letter cited that he interviewed all three [witnesses] and that none provided any exculpatory information."); Commonwealth v. McCormick, No. 1627 EDA 2011, at 6–7 (Pa. Super. Ct. Feb. 12, 2013) (on file with the Harvard Law School Library) ("PCRA counsel stated that he personally contacted each of the proposed witnesses and none provided exculpatory information.").

[62] *See Finley* Report, *supra* note 7, at 16. Far more frequently, the *Finley* procedure vitiated the privilege by forcing petitioners to communicate with their lawyers about their claims on the public docket. *See id.* at 5 (documenting that petitioners publicly filed objections in 59.2% of *Finley* cases).

[63] *See* Letter from Jeremy C. Gelb to Anthony Pitts 3 (Mar. 27, 1998) [hereinafter Anthony Pitts Letter] (on file with the Harvard Law School Library). *See generally* 42 PA. CONS. STAT. § 9543(a)(2)(vi) (2025) (describing the role of newly discovered exculpatory evidence in a PCRA petition).

[64] *See* Anthony Pitts Letter, *supra* note 63, at 3.

support."[65] After reviewing this letter, the court dismissed Mr. Pitts's petition.[66] Mr. Pitts, like many others in his position,[67] could reasonably feel betrayed. His court-appointed counsel was supposed to be a trustworthy advocate. Based on that trust, his counsel gained access to legally damaging information — the difficulty it would pose to engage the eyewitness — before revealing that, in fact, he would advocate for the other side.[68]

The *Finley* subculture readily tolerates such prejudicial betrayals. Lydell Swinson's court-appointed lawyer reacted to communications from her client not by responding to him, but by writing to the court and disclosing "[t]he information that [Mr. Swinson] sent [her]" about his mental health.[69] The court denied Mr. Swinson's petition as "[f]rivolous" the same day it received the *Finley* letter.[70] Similarly, Tyrone Martin's court-appointed lawyer helped rebut his alibi defense by reporting details of his sex life based on "information present counsel received from petitioner."[71] The day it received the *Finley* letter, the court noticed its intent to dismiss Mr. Martin's petition.[72]

A legal culture that countenances routine double-dealing vitiates "the trust that is the hallmark of the client-lawyer relationship."[73] By straddling the incompatible roles of the defense lawyer with access to privileged and confidential facts and the agent of the state eager to report them, *Finley*-filers abandon their role as trustworthy advocates. With lifelong liberty at stake, it may be in postconviction petitioners' best interest not to "communicate fully and frankly" with court-appointed lawyers who might switch sides.[74] Yet petitioners are normally denied the autonomy to assess this important choice because counsel is automatically appointed, and petitioners receive no systematic notice that their court-appointed lawyer might betray them.[75]

* * *

---

[65] *Id.*

[66] Report and Recommendation at 3–4, Pitts v. Wydner, No. 06-cv-05354 (E.D. Pa. Aug. 16, 2007).

[67] *See Finley* Report, *supra* note 7, at 16.

[68] Counsel also appeared content to accept the truth of this information without investigating its accuracy by, for example, interviewing the witness. *See* Anthony Pitts Letter, *supra* note 63, at 3. Such failures to investigate are common. *See infra* section III.A.2, pp. 151–53.

[69] Letter from Emily B. Cherniack to Hon. Teresa Sarmina 1 (July 26, 2007) (on file with the Harvard Law School Library).

[70] Order Denying PCRA Petition as Frivolous at 8, Commonwealth v. Swinson, No. CP-51-CR-0502901-2005 (Ct. C.P. Phila. Cnty. July 27, 2007).

[71] *See* Letter from Barbara A. McDermott to Hon. Pamela P. Dembe 4 (Feb. 3, 2008) (on file with the Harvard Law School Library).

[72] PCRA Dismissal Notice Under Rule 907 at 10, Commonwealth v. Martin, No. CP-51-CR-1100501-2001 (Ct. C.P. Phila. Cnty. Feb. 5, 2008).

[73] MODEL RULES OF PRO. CONDUCT r. 1.6 cmt. 2 (A.B.A. 1983); 204 PA. CODE r. 1.6 cmt. 2.

[74] MODEL RULES OF PRO. CONDUCT r. 1.6 cmt. 2 (A.B.A. 1983); 204 PA. CODE r. 1.6 cmt. 2.

[75] *See* PA. R. CRIM. P. 904(C).

My *Finley*-filer's letter asked about my claims, and I sent a letter back, answering in full, including my key issue: Counsel failed to investigate, interview, and call Lapricia Jessup to the stand. For context, Ms. Jessup is my daughter's mother, and her brother was my codefendant. He had made statements to Ms. Jessup about the crime. At that time, we spoke here and there because I called to check on my daughter. It wasn't a solid relationship in terms of support, but it was a relationship that was important to me to maintain because I wanted to have a relationship with my daughter. It was fragile. I gave my lawyer Ms. Jessup's last known address and the phone number that I had for her. Apparently, my *Finley*-filer used that information to contact Ms. Jessup, but Ms. Jessup expressed reluctance to help, presumably because it could harm her brother.[76] Instead of talking with me about it (I never spoke with my *Finley*-filer), sending a qualified investigator to meet with the witness in person, or subpoenaing the witness, my *Finley*-filer simply reported that the witness said she would not testify.[77] That was how my *Finley*-filer rejected my key issue.

* * *

2. Abuse of Judicial Trust: Candor. — Lawyers are "officers of the court."[78] Pursuant to that role, lawyers may not knowingly "allow the tribunal to be misled by false statements of law or fact."[79] This "duty of candor" is designed to qualify attorneys' loyalty to their clients by proscribing the submission of inaccuracies that may advance their clients' cases.[80] This qualification exists "to avoid conduct that undermines the integrity of the adjudicative process."[81]

One of the Study's most disturbing findings was that, in about one in every eight LWOP cases, *Finley*-filers misconstrued the relevant facts or law in a manner that *disadvantaged* their clients.[82] This uniquely pernicious dynamic is the canary in the coal mine for a radical breakdown in the adversarial system. A straightforward illustration involves mischaracterization of a prior court opinion to bolster procedural arguments against a petitioner's claims.[83] For example, Pedro Reynoso's *Finley*-filer argued several of his client's claims were previously litigated

---

[76] *See* John Moore Letter, *supra* note 37, at 6.

[77] *See id.* at 6–7.

[78] MODEL RULES OF PRO. CONDUCT r. 3.3 cmt. 2 (A.B.A. 1983).

[79] *Id.*

[80] *See id.*

[81] *Id.*

[82] *See Finley* Report, *supra* note 7, at 16.

[83] Though an independent review of each factual record was beyond the scope of the Study, several prejudicial factual inaccuracies were uncovered by this preliminary review alone. *See, e.g.*, Letter from Patricia M. Dugan to Hon. Jane Cutler Greenspan 2 (July 10, 2000) [hereinafter Jamal Ball Letter] (on file with the Harvard Law School Library) (falsely reporting convictions of petitioner); *see also Finley* Report, *supra* note 7, at 17 (describing the contradiction).

(and therefore barred from postconviction review[84]) by attaching the direct appeal opinion and asserting that it adjudicated "issues 1, 2, 3, 7, 8, and 9."[85] However, the attached opinion contained no discussion whatsoever of the final three issues.[86] In another case, Bobbie Lee Sims's *Finley*-filer falsely stated Mr. Sims had failed to file a direct appeal.[87] Both *Finley*-filers reported they had "reviewed" their clients' files before inaccurately characterizing them.[88]

Beyond inaccurate facts, "false statements of law"[89] permeated "no-merit" letters. Several filers in the Study specifically misstated the relevant legal standard for ineffective assistance of counsel claims. Under *Strickland v. Washington*,[90] petitioners claiming ineffectiveness must demonstrate "a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different."[91] Pennsylvania courts adhere to this prejudice standard.[92] Nonetheless, letters in the Study invoked inaccurate standards by inquiring into the existence of "*sufficient* evidence,"[93] "*ample* evidence,"[94] and "*definitive* evidence."[95] Other letters invented onerous legal requirements that do not exist, requiring, for example, a showing "that [petitioner] is innocent of the charges"[96] or that a "miscarriage of justice" occurred.[97]

The legal profession lacks a framework to constrain lawyers who are both disloyal to clients and undependable to courts. The adversarial system would ordinarily provide a check on attorneys who advance

---

84 *See* 42 PA. CONS. STAT. § 9544(a)(2).

85 Letter from MaryAnn F. Swift to Hon. Benjamin Lerner 5 (May 29, 2001) [hereinafter Pedro Reynoso Letter] (on file with the Harvard Law School Library).

86 *See* Ex. 3 to Petition for Habeas Corpus, Reynoso v. Link, No. 16-cv-01721 (E.D. Pa. filed Apr. 8, 2016).

87 *Compare* Letter from Martin I. Isenberg to Bobbie Sims 3–4 (Mar. 8, 1999) [hereinafter Bobbie Lee Sims Letter] (on file with the Harvard Law School Library) (stating petitioner did not file direct appeal), *with* Sims v. Patrick, No. 04-cv-0887, 2005 WL 1025150, at *2 (E.D. Pa. Apr. 29, 2005) ("Petitioner appealed his conviction to the Pennsylvania Superior Court . . . .").

88 Pedro Reynoso Letter, *supra* note 85, at 1; Bobbie Lee Sims Letter, *supra* note 87, at 1.

89 MODEL RULES OF PRO. CONDUCT r. 3.3 cmt. 2 (A.B.A. 2025).

90 466 U.S. 668 (1984).

91 *Id.* at 694.

92 *See* Commonwealth v. Pierce, 527 A.2d 973, 976–77 (Pa. 1987).

93 Letter from Elayne C. Bryn to Hon. Benjamin Lerner 5 (Mar. 30, 2012) [hereinafter Wesley Carpenter Letter] (emphasis added) (on file with the Harvard Law School Library).

94 Letter from Richard W. Hoy to Hon. John J. Poserina 6 (July 6, 2000) [hereinafter Jarmaine Trice Letter] (emphasis added) (on file with the Harvard Law School Library).

95 Letter from Stephen O'Hanlon to Hon. M. Teresa Sarmina 6 (Aug. 25, 2016) [hereinafter Kahhim Odom Letter] (emphasis added) (on file with the Harvard Law School Library); *see also* Letter from David S. Rudenstein to Hon. Rose Marie Defino-Nastasi 14 (Feb. 22, 2017) [hereinafter Rashan Mickens Letter] (on file with the Harvard Law School Library) (omitting "reasonable probability" language altogether). *Finley*-filers also invoked the wrong standard of review for *Finley* letters themselves. *See Finley* Report, *supra* note 7, at 26; *see also infra* section IV.B, pp. 166–71.

96 Letter from James S. Bruno to Hon. James A. Lineberger 3 (Oct. 23, 2003) (on file with the Harvard Law School Library).

97 Letter from Fortunato N. Perri, Jr., to Hon. Joseph D. O'Keefe 2 (July 16, 1997) (on file with the Harvard Law School Library).

inaccurate factual and legal propositions, but the *Finley* procedure voids that check: In 93.5% of *Finley* cases, the district attorney's office filed nothing after defense counsel filed a *Finley* letter.[98] Although courts are required to complete an independent review of the record in *Finley* letter cases, courts are ill-adapted to fill the lawyer's shoes as an advocate,[99] lack access to extra-record materials needed to evaluate claims, and appear loath to disagree with *Finley*-filers, accepting "no-merit" letters and dismissing petitions in 95.0% of cases in the Study.[100] *Finley* letters thus appear to short-circuit the adversarial system.

B. Attorney Repugnance and Lack of Communication

1. Repugnance. — Any attorney should decline a court appointment "when the client or the cause is so repugnant to the lawyer as to be likely to impair the client-lawyer relationship or the lawyer's ability to represent the client."[101] Under these circumstances, accepting the appointment "would result in an improper conflict of interest."[102] In one respect, the interests of *Finley*-filers and their clients are facially in conflict — the attorney seeks withdrawal and must attack the petitioner's interests to obtain it.[103] While the *Finley* procedure implicitly condones this species of conflict, the LWOP "no-merit" letters in the Study illustrated an extraordinary degree of attorney-client adversity, which produces and conceals the type of conflict proscribed by the repugnance standard. The *Finley* system incentivizes lawyers to push the boundaries of adversity and provides cover for lawyers to faithlessly represent clients against whom they are prejudiced. This system is incompatible with the principles animating the repugnance standard.

Nearly two-thirds of LWOP "no-merit" letters in the Study contained criticism or mistrust of petitioners.[104] In some cases, *Finley*-filers appeared to disdain their clients. For example, after Theodore Przybsewski was sentenced to life in prison, his *Finley*-filer set forth an aggravated account of his offense and argued it actually warranted *death*.[105] Counsel then used a letter authored by the district attorney's office to disparage Mr. Przybsewski as an abuser of the judicial

---

98 *Finley* Report, *supra* note 7, at 5.

99 *See, e.g.*, Commonwealth v. Hallowell, No. 1210 WDA 2024, 2025 WL 1625675, at *3 (Pa. Super. Ct. June 9, 2025) ("This Court has repeatedly emphasized that we 'will not act as counsel[.]'" (alteration in original) (quoting Commonwealth v. Hardy, 918 A.2d 766, 771 (Pa. Super. Ct. 2007))).

100 *See Finley* Report, *supra* note 7, at 5.

101 MODEL RULES OF PRO. CONDUCT r. 6.2 cmt. 2 (A.B.A. 1983).

102 *Id.*

103 In Philadelphia, extremely low fee caps for appointed postconviction counsel amplify the adversity between petitioners and *Finley*-filers. *See Finley* Report, *supra* note 7, at 5.

104 *Id.* at 7.

105 Letter from Norris E. Gelman to Hon. James D. McCrudden 2 (July 19, 1991) [hereinafter Theodore Przybsewski Letter] (on file with the Harvard Law School Library) (arguing petitioner "tortured his victim, and did so with an almost fiendish cruelty of such monumental scope that it would well warrant the ultimate punishment, to wit, death").

system.[106] Another *Finley*-filer dehumanized his client as the faceless agent of malevolent forces, writing: "This case is, unfortunately, one in a seemingly endless series of such cases. In this case, as in so many others, the dark forces of thirst, greed and addiction collided leaving, in their wake, death and ruination."[107]

Some *Finley*-filers insulted their clients more casually. One suggested that his client had a bad reputation in the community without describing any consultation with community members.[108] Another pedantically attacked his client's understanding of legal issues.[109] *Finley*-filers also complained about the volume and character of correspondence they received from their client, which is especially troubling given that the *Finley* procedure places great responsibility on petitioners to identify relevant issues for their attorneys.[110] Bald refusals to credit client allegations were also common.[111] For example, Gregory Samuels's *Finley*-filer flatly rejected as "beyond inconceivable" the allegation that trial counsel failed to call twenty-five witnesses.[112]

In almost half of LWOP cases, *Finley*-filers blamed their clients for putative wrongdoing.[113] Several *Finley*-filers speculated that their clients were witness tamperers.[114] Frequently, *Finley*-filers blamed their clients for litigation errors made while the client was represented by a lawyer.[115] In one instance, trial counsel had filed a motion "requesting that the sentence of life imprisonment be vacated and a death sentence be imposed instead," and the *Finley*-filer assumed without basis that the grossly improper motion was filed "at the insistence of the Petitioner."[116] *Finley*-filers also routinely blamed their clients for litigation errors made during periods of self-representation[117] and for failing to develop the

---

106 *See id.* at 4.

107 Letter from Barnaby C. Wittels to Hon. Eugene H. Clarke, Jr. 3 (Mar. 24, 1998) (on file with the Harvard Law School Library).

108 *See* Letter from Lee Mandell to Hon. Barbara A. McDermott 8 (Jan. 3, 2017) [hereinafter Ridley Shields Letter] (on file with the Harvard Law School Library).

109 *See* Letter from Stephen O'Hanlon to Hon. Barbara A. McDermott 13–14 (July 5, 2016) [hereinafter Shawn Hill Letter] (on file with the Harvard Law School Library) ("Petitioner simply does not understand the subtleties of evidentiary proof or non-proof as the case may be."); *see also Finley* Report, *supra* note 7, at 18 ("Attorneys regularly insulted their clients. This often took the form of criticizing clients' understanding of the law . . . .").

110 *See* Commonwealth v. Antill, No. 1368 WDA 2024, 2025 WL 2375247, at *4 (Pa. Super. Ct. Aug. 15, 2025) ("We will not hold counsel responsible for failing to raise a claim which was not identified to her.").

111 *See Finley* Report, *supra* note 7, at 18.

112 Letter from David S. Rudenstein to Hon. James A. Lineberger and Hon. D. Webster Keogh 15 (Sep. 23, 2004) [hereinafter Gregory Samuels Letter] (on file with the Harvard Law School Library).

113 *Finley* Report, *supra* note 7, at 9.

114 *See, e.g.*, Kahhim Odom Letter, *supra* note 95, at 12 ("The witnesses clearly recanted because they were afraid . . . ."); *see also Finley* Report, *supra* note 7, at 15.

115 *See Finley* Report, *supra* note 7, at 9–10.

116 Jamal Ball Letter, *supra* note 83, at 2.

117 *See Finley* Report, *supra* note 7, at 9–10.

factual record from prison.[118] Such client-blaming was commonplace — one letter's only footnote admonished the petitioner for using the wrong pronoun to refer to an assistant district attorney.[119]

When attorneys denigrate, insult, mistrust, and complain about their clients, they generate irresolvable conflicts of interest.[120] Instead of filing a legally damaging *Finley* letter, attorneys who cannot set aside their disapproval of court-appointed clients should either decline the appointment in the first place or seek to withdraw from it, citing the repugnance standard.[121] Yet those who are prejudiced but nevertheless file a letter are near-indistinguishable from other *Finley*-filers, who are systematically motivated to attack their clients' claims. This opacity further corrodes the legal process under *Finley*.

* * *

When I was poor and in prison, I sent my *Finley*-filer a letter by certified mail so I would know she had received it. She told me she would only accept first-class mail moving forward. I was confused at first and thought she was joking.

* * *

2. Failure to Communicate. — Lawyers must "reasonably consult with the client about the means by which the client's objectives are to be accomplished."[122] The objective of postconviction cases is to overturn a conviction or sentence,[123] and the means to pursue that objective must include the development and presentation of postconviction claims.[124] When counsel is appointed to a PCRA matter, the client has

---

[118] *See id.*

[119] *See* Letter from Barbara A. McDermott to Hon. Gregory Smith 5 n.1 (May 20, 2004) (on file with the Harvard Law School Library); *see also Finley* Report, *supra* note 7, at 19 ("Over one-third of letters in the data set contained instances where counsel undermined their own client's position by implying some nefarious omission or action by the client.").

[120] *See* MODEL RULES OF PRO. CONDUCT r. 6.2 cmt. 2 (A.B.A. 2025) (explaining that good cause to decline appointment "exists if . . . undertaking the representation would result in an improper conflict of interest, for example, when the client or the cause is so repugnant to the lawyer as to be likely to impair the client-lawyer relationship or the lawyer's ability to represent the client").

[121] *See* MODEL RULES OF PRO. CONDUCT r. 1.16(b)(4) ("Except as stated in paragraph (c), a lawyer may withdraw from representing a client if . . . the client insists upon taking action that the lawyer considers repugnant or with which the lawyer has a fundamental disagreement.")

[122] *Id.* r. 1.4(a)(2).

[123] *See* 42 PA. CONS. STAT. § 9546(a) (contemplating that relief will be accompanied by "orders as to rearraignment, retrial, custody, bail, discharge, correction of sentence or other matters that are necessary and proper"); Commonwealth v. Young, 35 A.3d 54, 64 (Pa. Super. Ct. 2011) ("Generally, when a petitioner is granted PCRA relief for ineffective assistance of counsel, a new trial is granted.").

[124] *See* § 9543(a)(2).

already filed a pro se postconviction petition.[125] Counsel has a duty to "reasonably consult with the client" regarding legal claims therein.[126]

The majority (56%) of LWOP letters contained evidence that counsel failed to communicate with the petitioner.[127] Many *Finley*-filers conceded they did not understand claims contained in their clients' pro se petitions but still rejected them.[128] Darrian Deans's *Finley*-filer, for instance, candidly reported, "I do not understand this claim," but nonetheless refuted the claim in a manner that strongly suggested he did not clarify the claim with his client.[129] Some *Finley*-filers requested information about claims from their client but filed a "no-merit" letter before receiving a response.[130] Others ignored evidence of structural barriers to client communication, including a diagnosed mental illness following a head injury.[131]

In lieu of communicating with clients about their claims, in nearly half of LWOP cases, *Finley*-filers in the Study demeaned their clients' claims.[132] They reported that various claims were "self-serving,"[133] "raised at the last minute in an attempt to obtain a new trial,"[134] "difficult to view . . . as anything more than regret,"[135] "ludicrous,"[136] and "preposterous."[137] In roughly one quarter of LWOP cases, *Finley*-filers leveraged clients' drafting or technical errors against them to reject claims.[138] One faulted his client for using the word "theory" to describe new evidence.[139] And almost one in every five LWOP letters derided

---

125 *See* § 9545(b)(1).

126 MODEL RULES OF PRO. CONDUCT r. 1.4(a)(2) (A.B.A. 2025).

127 *Finley* Report, *supra* note 7, at 19.

128 *See id.*

129 *See* Letter from Gary S. Server to Hon. Jeffrey P. Minehart 6 (Apr. 7, 2017) (on file with the Harvard Law School Library) (stating that petitioner's claim "concerns the 'extrajudicial' (whatever that means) statement" of the petitioner). Counsel need not have surmised what his client meant by "extrajudicial" — he could have simply asked.

130 *See, e.g.*, Letter from Gary S. Server to Hon. John J. Poserina, Jr. 2 (May 2, 2000) (on file with the Harvard Law School Library) (stating counsel wrote to his client on March 31, 2000, requesting evidence, and had not received a response as of the filing of counsel's *Finley* letter).

131 *See* Letter from Mark S. Greenberg to Hon. William J. Mazzola 2 (Jan. 24, 2004) [hereinafter Kevin Mobley Letter] (on file with the Harvard Law School Library) (failing to consider whether client's diagnosed orbital frontal lobe syndrome, which two doctors found to preclude specific intent, would impact petitioner's ability to correspond about claims via mail).

132 *See Finley* Report, *supra* note 7, at 10.

133 Letter from Stephen O'Hanlon to Hon. M. Teresa Sarmina 3 (Feb. 24, 2017) (on file with the Harvard Law School Library).

134 *Id.*

135 Letter from Barnaby C. Wittels to Hon. M. Teresa Sarmina 10 (Feb. 11, 2016) [hereinafter Jamaar Richardson Letter] (on file with the Harvard Law School Library).

136 Letter from John M. Belli to Hon. Pamela Pryor Dembe 8 (Apr. 21, 2006) (on file with the Harvard Law School Library).

137 Shawn Hill Letter, *supra* note 109, at 23.

138 *See Finley* Report, *supra* note 7, at 20.

139 *See* Letter from James A. Lammendola to Hon. Jeffrey P. Minehart 2 (Feb. 19, 2016) [hereinafter Qadir Taylor Letter] (on file with the Harvard Law School Library).

the quality of their clients' pro se filings,[140] reporting, for example, that one client-supplied affidavit was "rife with misspellings and appear[ed] to have been cobbled together from several documents and then copied."[141]

Routine disparagement of clients' claims may be rhetorical cover for a breakdown in attorney-client communication. Petitioners typically have extremely minimal resources in prison and no legal training when they write their pro se petitions.[142] Naturally, the petitions contain unartfully drafted claims.[143] A defense attorney must "consult with the client"[144] about these claims, not disparage them. *Finley*-filers' tendency to take the latter path signals a cultural failure to communicate with clients and understand both their claims and their circumstances.

* * *

My *Finley*-filer stated in her "no-merit" letter that I had not "amplified on" my claim that my trial lawyer should have filed a motion in limine.[145] I was disappointed because I thought that was her job. I had read about what seemed like a similar case in which a motion in limine was used, and it seemed like it could apply to me, so I included it. She never asked me about it, and she wrote that she "believe[d]" the claim had to do with my codefendant,[146] but she was totally wrong — it pertained to a different witness. I never got to explain my thinking on the matter to her.

* * *

C. Argumentative Lawyering Against Client Interests

Counsel's sole ground for rejecting a postconviction claim via *Finley* letter is that the claim lacks "arguable merit."[147] Thus, if a claim has *any* arguable merit, counsel must file an amended petition so that the claim can be adjudicated through the adversarial process. But *Finley*-filers systematically short-circuit this process, understate the merits of petitioners' claims, and deprive petitioners of the adversarial testing to which they are entitled.

---

140 *Finley* Report, *supra* note 7, at 18.

141 Shawn Hill Letter, *supra* note 109, at 3 n.4.

142 Ira P. Robbins, *Ghostwriting: Filling in the Gaps of Pro Se Prisoners' Access to the Courts*, 23 GEO. J. LEGAL ETHICS 271, 273 (2010).

143 *See Finley* Report, *supra* note 7, at 23.

144 MODEL RULES OF PRO. CONDUCT r. 1.4(a)(2) (A.B.A. 2025).

145 John Moore Letter, *supra* note 37, at 5.

146 *Id.*

147 *See* Commonwealth v. Finley, 550 A.2d 213, 215 (Pa. Super. Ct. 1988) (clarifying that the approved procedure is no different from the procedure described in *Finley II*); *Finley II*, 479 A.2d 568, 572–73 (Pa. Super. Ct. 1984) (requiring counsel to conclude "that no arguably meritorious issues existed," *id.* at 569, before filing a "no-merit" letter).

Finley-filers in the Study were unreliable judges of available arguments, taking noncompulsory, anti-petitioner positions in 84% of cases.[148] Some of their judgments were baldly unsound: Esheem Haskins's *Finley*-filer argued that one of his constitutional claims lacked merit,[149] but the U.S. Court of Appeals for the Third Circuit found "no room for fair-minded disagreement" that the claim was *meritorious* and granted relief.[150] In more than one-third of cases, *Finley*-filers articulated an anti-petitioner argument even though a pro-petitioner argument was facially discernible.[151] And some *Finley*-filers appeared to concede arguable merit before reaching for tenuous anti-petitioner arguments.[152] For example, one *Finley*-filer minimized an ineffectiveness claim that "appear[ed] to be of arguable merit"[153] by speculating that trial counsel may have been "happy with how the trial was going"[154] — a nonspecific conjecture applicable to any case that has gone to trial.

This unreliability is underscored by *Finley*-filers' gratuitously anti-petitioner factual inferences and legal characterizations. In two-thirds of LWOP letters, *Finley*-filers "made at least one discretionary, adverse factual inference against their client's interests."[155] One *Finley*-filer made an adverse inference against his client for exercising his constitutional right not to testify.[156] Another dubiously rejected a claim of prosecutorial misconduct for failure to disclose ballistics evidence because "[n]o ballistics evidence was ever presented to the jury,"[157] apparently inferring that, because no ballistics evidence was presented at trial, none

---

148 *Finley* Report, *supra* note 7, at 12.

149 Letter from John M. Belli to Hon. M. Teresa Sarmina 13 (June 30, 2010) (on file with the Harvard Law School Library).

150 Haskins v. Superintendent Greene SCI, 755 F. App'x 184, 190 (3d Cir. 2018) (per curiam). The incorrect takeaway would be that federal habeas adequately protects against overzealously anti-petitioner *Finley* letters. As a result of the claim's improper inclusion in a *Finley* letter, Mr. Haskins remained unconstitutionally convicted for eight years after his *Finley* letter was filed.

151 *See Finley* Report, *supra* note 7, at 22; *see also, e.g.*, Letter from Todd M. Mosser to Ct. of Common Pleas 11–12 (July 28, 2016) (on file with the Harvard Law School Library) (relying on precedent approving prosecutor's use of words "homicidal predator" to argue trial counsel's failure to object to crying prosecutor's use of word "abortionist" was not ineffective). Given that "homicidal predator" and "abortionist" are discrete epithets, and the latter was said through the prosecutor's tears, counsel facially could have argued that the precedent was distinguishable.

152 *See Finley* Report, *supra* note 7, at 12.

153 Kinoll McCormick Letter, *supra* note 59, at 6.

154 *Id.* at 7.

155 *Finley* Report, *supra* note 7, at 21; *see also, e.g.*, Qadir Taylor Letter, *supra* note 139, at 3 ("[W]hatever information [this witness] could have provided about other suspects would constitute inadmissible hearsay. She did not witness the killing and whatever she could state about what she learned about the murder necessarily came from other persons here not identified.").

156 *See* Letter from Marc Antony Arrigo to Hon. Jeffrey P. Minehart 8 (Feb. 27, 2013) (on file with the Harvard Law School Library) ("The foundation for a sound expert opinion is further obscured by the fact that after being colloquied by the Court, petitioner declined to testify at the time of trial.").

157 Letter from Gina A. Amoriello to Hon. Glenn Bronson 5 (Mar. 19, 2020) (on file with the Harvard Law School Library).

was suppressed. Notably, this data may understate the problem: The viability of factual inferences was sometimes difficult to assess because *Finley*-filers altogether omitted a facts section roughly one-quarter of the time.[158]

About half the time, *Finley*-filers described the law in a manner that disadvantaged their clients, even though a more charitable description of the law was plainly available.[159] For example, one *Finley*-filer repeatedly prefaced her factual recitations with the standard of review applicable to direct appeals challenging the sufficiency of the evidence — a highly deferential standard of unclear relevance to postconviction proceedings.[160] Because *Finley* neutralizes the adversary, such excessively anti-petitioner standards of review stand unchallenged under the procedure.[161] And *Finley*-filers further biased the legal landscape by piling on petitioner-adverse authorities that lacked clear applicability to cases.[162]

Finally, *Finley*-filers in 40% of LWOP cases poisoned the well by casting their clients' claims in a legally disadvantageous manner.[163] One mode of poisoning the well involved *Finley*-filers neglecting to reframe poorly framed pro se claims, writing, for example: "*[B]ecause of the way the Petitioner frames his issue* I do not believe that it is cognizable . . . ."[164] By refusing to lift a finger for clients who fail to craft pro se claims with legal acumen,[165] *Finley*-filers essentially withheld legal expertise from their own clients.

Finley-filers did not neutrally weigh whether their clients' claims had arguable merit. Instead of excluding claims with arguable merit from *Finley* letters, *Finley*-filers *included* claims as long as they arguably *lacked* merit. The resulting over-inclusion of arguably meritorious

---

158 *See Finley* Report, *supra* note 7, at 23.

159 *Compare, e.g.*, Letter from George S. Yacoubian, Jr., to Hon. Genece E. Brinkley 4 (Mar. 18, 2019) [hereinafter Unique Kennedy Letter] (on file with the Harvard Law School Library) ("Failing to preserve for appellate review an objection to the admissibility of photographs of buildings surrounding the crime scene does not rise to the level of ineffectiveness. *Strickland*. . . . Failing to file post-sentence motions to preserve a 'weight of the evidence' claim does not rise to the level of ineffectiveness. *Strickland*."), *with* Strickland v. Washington, 466 U.S. 668, 684–98 (1984) (formulating no rules of law specific to photographs, buildings, or weight-of-the-evidence claims). Illustratively, see also *Finley* Report, *supra* note 7, at 21.

160 *See Finley* Report, *supra* note 7, at 21 & n.55.

161 *See, e.g.*, Wesley Carpenter Letter, *supra* note 93, at 4 (citing Commonwealth v. Rollins, 738 A.2d 435, 441 (Pa. 1999), which omits "reasonable probability" language from *Strickland* prejudice standard, thereby heightening petitioner's burden); *see also Finley* Report, *supra* note 7, at 21.

162 *See Finley* Report, *supra* note 7, at 14.

163 *See id.* at 22.

164 Letter from Gary S. Server to Hon. Barbara McDermott 9 (Sep. 4, 2016) [hereinafter Daniel Lewis Letter] (emphasis added) (on file with the Harvard Law School Library). Counsel went on to enumerate different ways Mr. Lewis could have framed his claim in order to make it cognizable. *See id.*

165 *See Finley* Report, *supra* note 7, at 23.

claims undermines the rule of law by sustaining an excessively anti-petitioner legal landscape.

* * *

The idea of arguing against my lawyer was really scary. Even though I had ventured into the law enough to write my postconviction petition out of necessity, I was still very inexperienced and intimidated by the law. Legal terms were foreign, and an attorney's use of them seemed the same as the law itself. My "no-merit" letter seemed like a formal document full of legal terms, case law, and precedent rulings that hammered away at the hard reality that my claims had no merit. To me at the time, it had the weight of an actual court opinion, a decision not in my favor. I understood then that my claims were wrong. After reading the letter I felt, at least momentarily, that my legal battle was over — not something I could argue against.

* * *

IV. A Culture of Deficient Analysis

Lawyers have a "special responsibility for the quality of justice"[166] because the rule of law depends on the quality of their professional actions. Ethical lawyering within an adversarial framework helps ensure that our judicial system can accurately ascertain facts, faithfully interpret law, and impartially apply law to facts. But when a client's court-appointed advocate becomes their disloyal adversary, the quality of factfinding will suffer, faithfulness to the law will wane, and bias will taint the application of law to facts. The culture of unethical lawyering outlined in Part III is mirrored by an impoverished engagement with facts, a shockingly high volume of legal error, and a bevy of anti-petitioner bias governing the application of law to facts. These shortcomings radically undermine the rule of law where lifelong liberty hangs in the balance.

A. Deficient Factual Analysis

> *Competent handling of a particular matter includes inquiry into and analysis of the factual . . . elements of the problem . . . .*
>
> — ABA Model Rules of Professional Conduct.[167]

1. Failures to Engage Facts of Record. — Lawyers must analyze the facts underlying their cases.[168] Matters of great "complexity and consequence" require a correspondingly high degree of "attention and

---

166 Model Rules of Pro. Conduct pmbl. ¶ 1 (A.B.A. 2025).
167 *Id.* r. 1.1 cmt. 5.
168 *See id.*

preparation" from the attorneys handling them.[169] However, despite the complexity and high stakes of LWOP cases, 98% of *Finley* letters contained evidence that the *Finley*-filer failed to engage with facts of record.[170]

The case-specific factual analysis of many letters was wanting. The majority of letters contained "such imprecise language as to leave the reader unsure what was being referenced."[171] For example, one "no-merit" letter reported that, "on January 10, 1998, Shawn and Charity Wilkins, thirteen years old, were shot."[172] This construction is ambiguous as to whether Shawn was thirteen years old. In fact, Shawn was twenty-two years old.[173] About one-quarter of letters contained no discussion of the underlying facts whatsoever, further muddying the factual waters.[174] And some letters invoked generalizations and assumed their applicability to the case at bar instead of discussing case specifics. For example, when Daniel Lewis complained that his trial judge had committed misconduct by conferring with counsel off the record,[175] his *Finley*-filer merely observed that "this is not an uncommon practice and . . . generally occurs so that the attorneys can be oriented to the real issue at hand."[176]

Almost all *Finley* letters in the Study (94%) omitted citations for at least one factual proposition.[177] Typically, more than one factual proposition was uncited, and often, multiple pages of factual propositions lacked a single citation.[178] While not every omission of record citations implicates counsel's competence, failures to cite essential, disputed factual propositions in complex homicide cases suggest that many *Finley*-filers failed to exercise the appropriate level of care. For example, one *Finley*-filer stated without citation: "One of the victims . . . resisted. Petitioner shot him in the back."[179] Additional examples include failures to cite a putative direct quotation[180] and an unusual plea agreement.[181]

---

169 *Id.*

170 *Finley* Report, *supra* note 7, at 14.

171 *See id.* at 23.

172 Letter from Barbara A. McDermott to Hon. Ricardo C. Jackson 1 (Apr. 28, 2005) (on file with the Harvard Law School Library).

173 Commonwealth v. Harvey, 812 A.2d 1190, 1194 (Pa. 2002).

174 *See Finley* Report, *supra* note 7, at 23.

175 Mr. Lewis's *Finley*-filer noted that the trial judge had previously been reversed for deleting part of the official record. *See* Daniel Lewis Letter, *supra* note 164, at 9 (citing Commonwealth v. Dougherty, 18 A.3d 1095 (Pa. 2011)).

176 *Id.* at 10.

177 *Finley* Report, *supra* note 7, at 24.

178 *Id.*

179 John Moore Letter, *supra* note 37, at 2; *see also* Wesley Carpenter Letter, *supra* note 93, at 7 (reporting witness testimony regarding "history of animosity" and "cycle of retribution" between petitioner and victim without citing notes of testimony).

180 *See* Kahhim Odom Letter, *supra* note 95, at 3.

181 *See* Jamal Ball Letter, *supra* note 83, at 3 ("Petitioner pled guilty in exchange for the Commonwealth's not proceeding with the murder charges against the other three defendants.").

In all, uncited factual propositions were identified more than 150 times in 100 LWOP *Finley* letters.[182]

A systematic failure to cite factual propositions is harmful for two reasons. First, because "[t]he central function of a legal citation is to allow the reader to efficiently locate the cited source,"[183] courts are left rudderless when evaluating factual propositions putatively based on some undisclosed aspect of a record. This undermines courts' ability to make reasoned, record-based findings of fact. Second, citations keep lawyers honest by forcing them to reckon with whether the facts they are submitting are, in fact, supported by the record. The routine lack of reckoning among *Finley*-filers may have contributed to the 25% of LWOP cases in which a cursory review uncovered factual misrepresentations.[184] Given both courts' reliance on attorneys as officers of the court[185] and the extremely high dismissal rate once *Finley* letters are filed,[186] one is left to wonder how many inaccuracies went uncorrected and contributed to these dismissals.

* * *

My *Finley*-filer wrote that I had "shot [the victim] in the back."[187] In addition to getting my arrest date wrong, this one bothered me. I distinctly remembered my codefendant testifying that he had shot the victim in the back. Throughout my long pro se efforts, I had to painstakingly grapple with the fact that my *Finley*-filer had referred to "facts" that weren't right.

Regarding what happened at my trial, I understand that my post-conviction petition might not have been crystal clear. This was my first attempt as a pro se litigant to write anything legal. And I had to develop my claims for that petition based on my memory alone. Despite many attempts to obtain them, I didn't have any trial transcripts or discovery documents at that point. So there I was in my cell, trying to recall the details of my trial two years prior: what was said by who and when, what objections were made, and what things went wrong.[188] But even during the trial itself, it had all been a blur and spoken in what felt like a foreign language.

---

182 *Finley* Report, *supra* note 7, at 24.

183 THE BLUEBOOK: A UNIFORM SYSTEM OF CITATION 1 (Columbia L. Rev. Ass'n et al. eds., 22d ed. 2025).

184 *See Finley* Report, *supra* note 7, at 24.

185 *See supra* section III.A.2, pp. 151–53.

186 *See Finley* Report, *supra* note 7, at 5.

187 John Moore Letter, *supra* note 37, at 2.

188 *Cf.* Commonwealth v. Shields, 383 A.2d 844, 846 (Pa. 1978) ("Recollections and notes of trial counsel and of others are apt to be faulty and incomplete. Frequently, issues simply cannot even be seen — let alone assessed — without reading an accurate transcript." (quoting Commonwealth v. Anderson, 272 A.2d 877, 879 (Pa. 1971))).

* * *

2. Failures to Investigate Extra-Record Facts. — In Pennsylvania, Sixth Amendment ineffective assistance of counsel claims normally cannot be raised until postconviction.[189] Because "ineffectiveness claims, by their very nature, often involve claims that are not apparent on the record," postconviction lawyers have the burden of investigating these claims "by interviewing the client, family members, and any other people who may shed light" on them.[190] The central reason for this procedural requirement is to provide counsel with the time and resources to complete this "Herculean task" of extra-record investigation.[191] In *Finley* cases, however, *Finley*-filers seldom investigate, instead resembling armchair judges content to reject postconviction claims on the papers.

All LWOP *Finley* cases contained evidence that counsel neglected to undertake a reasonable extra-record investigation.[192] Some *Finley*-filers appeared to have been altogether ignorant of their investigative responsibilities under *Grant*,[193] and, in 84% of cases, incomplete investigation could be inferred based on the absence of at least one fact ascertainable through investigation.[194] For example, Jamaar Richardson claimed his direct-appeal lawyer was ineffective for challenging the trial court's suppression denial without providing transcripts of the suppression hearing.[195] Mr. Richardson's *Finley*-filer faulted Mr. Richardson for failing to explain how he was prejudiced by the absence of transcripts.[196] However, though the *Finley*-filer submitted that trial counsel likely possessed the relevant transcripts,[197] his letter suggested he did not obtain those transcripts from trial counsel before rebuffing the claim.[198]

Additionally, in more than three-fifths of LWOP letters, *Finley*-filers relied on the direct-appeal record to refute claims that required extra-

---

189 Commonwealth v. Grant, 813 A.2d 726, 738 (Pa. 2002).

190 *Id.* at 737.

191 *Id.*

192 *See Finley* Report, *supra* note 7, at 14. Frequently, counsel appeared to expressly limit their review to the record and contact with the client. *See, e.g.*, Letter from James A. Lammendola to Hon. Sandy L.V. Byrd 1 (Apr. 25, 2017) [hereinafter Christopher Moore Letter] (on file with the Harvard Law School Library) ("Pursuant to my appointment, I reviewed the Quarter Sessions file, corresponded with the Petitioner, reviewed all relevant notes of testimony, and reviewed the applicable law.").

193 *See Finley* Report, *supra* note 7, at 24–25.

194 *See id.* at 24.

195 *See* Jamaar Richardson Letter, *supra* note 135, at 6.

196 *See id.*

197 *Id.* ("The record supports a finding the Trial Counsel . . . had . . . the notes of testimony from the Suppression Hearing." (footnote omitted)).

198 *See id.* at 6–7 (refuting Mr. Richardson's claim without citing the contents of the suppression hearing transcript).

record evidence to substantiate.[199] Six months after Derrick Thomas's trial, his trial lawyer was convicted of theft, evidence tampering, and fraud "ar[ising] from his filing of false fee petitions as court-appointed counsel for indigent criminal defendants."[200] In just over four lines of text containing no reference to any investigation, Mr. Thomas's *Finley*-filer dismissed as "unsubstantiated by the record" Mr. Thomas's claim that trial counsel's misconduct interfered with his performance at trial.[201]

Further, in 22% of substantively reviewed "no-merit" letter cases, *Finley*-filers concluded that investigation would be fruitless without performing the requisite investigation.[202] Such conclusory limitations on investigation were proscribed by *Strickland v. Washington*.[203] Anthony Pitts's *Finley*-filer rejected a claim of ineffectiveness based on trial counsel's failure to call several witnesses during the defense's case in chief.[204] Instead of interviewing the witnesses, counsel vaguely stated (without citation) that the "witnesses testified for the Commonwealth at trial, and their testimony was extremely damaging to the defense."[205] Based on this high-level characterization of uncited testimony, Mr. Pitts's *Finley*-filer concluded that, had the witnesses been re-called, their testimony necessarily "would have been harmful, not helpful, to the defense."[206] Without interviewing the witnesses, though, that conclusion was far from certain.

In 69% of LWOP cases, *Finley*-filers neglected to seek out information that could have provided support for a postconviction claim.[207] For example, Preston Kelly's *Finley*-filer neglected to interview witnesses whom Mr. Kelly specifically identified as relevant to timeliness before he rejected Mr. Kelly's claims as untimely. Forced to respond pro se (and to waive the attorney-client privilege), Mr. Kelly attached two letters he had sent to his *Finley*-filer containing contact information for three witnesses who could help "in presenting a persuasive timeliness

---

199 PHILLIPS BLACK, *FINLEY* REPORT, APPENDIX A: INDIVIDUAL SUBSTANTIVE *FINLEY* PATTERNS 4 (2026) [hereinafter *Finley* Report, Appendix A], https://static1.squarespace.com/static/55bd511ce4b0830374d25948/t/698a5e218112c974b9283267/1770675745252/Appendix+A_FINAL.pdf [https://perma.cc/7YKM-YFN7].

200 *In re* Perrone, 899 A.2d 1108, 1110 (Pa. 2006).

201 Letter from Patricia M. Hoban to Hon. David N. Savitt 4 (Jan. 30, 2001) [hereinafter Derrick Thomas Letter] (on file with the Harvard Law School Library).

202 *Finley* Report, Appendix A, *supra* note 199, at 4.

203 466 U.S. 668, 690–91 (1984) ("[S]trategic choices made after less than complete investigation are reasonable precisely to the extent that reasonable professional judgments support the limitations on investigation.").

204 *See* Anthony Pitts Letter, *supra* note 63, at 2.

205 *Id.*

206 *Id.*

207 *Finley* Report, Appendix A, *supra* note 199, at 3.

exception argument."[208] Despite Mr. Kelly's provision of timeliness witnesses to his attorney, Mr. Kelly's *Finley* letter contained no mention of these witnesses,[209] and the PCRA court dismissed Mr. Kelly's petition as untimely.[210]

Many *Finley*-filers appeared to function as armchair judges of their clients' pro se petitions — not as the active investigators contemplated by *Grant*. Apparently acting as factfinders, in 79% of LWOP letters, *Finley*-filers refuted a legal claim based on a subjective determination of the importance of facts.[211] For example, Terry Brown's *Finley*-filer reviewed "the trial record"[212] and concluded, "although Petitioner had used narcotics at the time of the incident, it was not of such a nature that he would have been overwhelmed with a loss of his faculties and sensibilities."[213] The filer therefore rejected Mr. Brown's trial-counsel-ineffectiveness claim for failure to obtain a voluntary-intoxication instruction.[214] As a practical matter, *Finley*-filers had extraordinary discretion to find facts, both by emphasizing facts of dubious significance[215] and ignoring facts of facial significance.[216]

Sinking deeper into their armchair, many *Finley*-filers parroted the language of federal courts granting motions to dismiss complaints,[217] reporting their clients' pro se petitions "fail[ed] to allege"[218] and "failed to plead"[219] enough information for counsel to litigate their claims. One *Finley*-filer, without citing authority, wrote: "In making assertions of ineffectiveness, a claimant must allege sufficient facts upon which a reviewing court can conclude that trial counsel may have been ineffective."[220] Such quasi-judicial invocations of (inapplicable) pleading standards underline how *Grant*'s prescription of investigative counsel

---

[208] Response to 907 Notice at 3 n.1, Kelly v. Klem, No. 06-cv-4082, 2007 WL 2011474 (E.D. Pa July 6, 2007) (No. 5-5); *see also id.* at 10 (letter from Mr. Kelly to *Finley*-filer pre-dating "no-merit" letter by over one month and providing contact information of witnesses).

[209] *See* Letter from James S. Bruno to Hon. George Overton (Jan. 7, 2005) (on file with the Harvard Law School Library).

[210] *See* Kelly v. Klem, No. 06-cv-4082, 2007 WL 2011474, at *1 (E.D. Pa. July 6, 2007).

[211] *See Finley* Report, *supra* note 7, at 25.

[212] Citing to "the record" as a whole is a common *Finley* tactic. *See, e.g.*, *id.*

[213] Letter from James A. Lammendola to Hon. Steven R. Geroff 5 (Apr. 30, 2009) (on file with the Harvard Law School Library).

[214] *Id.*

[215] *See, e.g.*, Kevin Mobley Letter, *supra* note 131, at 3 (concluding petitioner was competent to stand trial in part because petitioner's mother "made no mention that the defendant was incompetent after his head injury," and petitioner's father testified that he "behaved 'pretty good'").

[216] *See, e.g.*, Letter from Joseph Schultz to Hon. Barbara A. McDermott 7–8 (June 1, 2017) (on file with the Harvard Law School Library) (declining to consider "allegations from [a witness] claiming that the police had already circled the Defendant's photograph in the spread and signed her name to it" when discussing failure to cross-examine police officer concerning her identification).

[217] *See* Ashcroft v. Iqbal, 556 U.S. 662, 678 (2009) (quoting Bell Atl. Corp. v. Twombly, 550 U.S. 544, 570 (2007)).

[218] Letter from Janis Smarro 7 (June 26, 2015) (on file with the Harvard Law School Library).

[219] Ridley Shields Letter, *supra* note 108, at 8.

[220] Christopher Moore Letter, *supra* note 192, at 7.

has been supplanted by armchair *Finley*-filers, content to reject claims based on already-collected information. The systematic failure to abide by *Grant*, however, is a mere prelude to the high volume of dubious legal analysis that evades adversarial testing through inclusion in "no-merit" letters.

* * *

Based on the fact that I had a colloquy with the court about waiving a jury, my *Finley*-filer rejected my claim that my trial lawyer had coerced me to waive a jury.[221] The truth was I wanted to go in front of a jury and argue my innocence, but it felt like my trial lawyer had already accepted that I would be convicted. Instead of trying to fight my conviction, he just tried to convince me that a judge would lessen the blow. Without my permission, he reached out to my mom, whom I had not talked to for four years, and told her that she had to convince me to go with a judge, or her son was going to be executed. Needless to say, my mom was very convincing. I might have told my *Finley*-filer these things; we might have made a case of them. But she never even asked. Instead, she relied on the colloquy.

* * *

B. Deficient Legal Analysis

> *Competent handling of a particular matter includes inquiry into and analysis of the . . . legal elements of the problem . . . .*
>
> — ABA Model Rules of Professional Conduct.[222]

"Perhaps the most fundamental legal skill consists of determining what kind of legal problems a situation may involve . . . ."[223] Although disputes about which legal rules and standards apply are common, in the midst of those disputes, attorneys must apply a baseline level of "legal knowledge, skill, thoroughness and preparation."[224] Ordinarily, our adversarial system provides a check on attorneys who either fall below that baseline or reasonably advocate for an inaccurate legal proposition. However, the *Finley* procedure distorts lawyers' role and saps the adversarial system of its vigor, leading the judicial system to be inundated with unchecked, legally dubious analysis.

The overwhelming majority (98%) of LWOP letters contained evidence of deficient legal analysis.[225] Mirroring the lack of factual

---

221 John Moore Letter, *supra* note 37, at 4.

222 MODEL RULES OF PRO. CONDUCT r. 1.1 cmt. 5 (A.B.A. 1983).

223 *Id.* r. 1.1 cmt. 2.

224 *Id.* r. 1.1.

225 *Finley* Report, *supra* note 7, at 13.

citations,[226] 54% of LWOP letters neglected to cite authority for legal propositions.[227] One in seven letters contained flatly incorrect propositions of law,[228] and *Finley*-filers used the wrong legal standard in 43% of letters.[229] For example, Milique Wagner's *Finley*-filer purported to reject Mr. Wagner's claims because he "ha[d] been unable to rebut the bases for the guilty [v]erdict,"[230] an uncited legal standard of unknown origin. Many *Finley*-filers incorrectly invoked the "wholly frivolous" standard from *Anders v. California*[231] instead of the "arguably meritorious" standard applicable to the *Finley* procedure.[232] And other *Finley*-filers hedged about whether a proffered legal standard applied at all,[233] applied a nonexistent per se rule,[234] or cited "the reasons as cited by the Trial Judge in his Opinion" instead of independently applying the law to their client's case.[235] Moreover, in 40% of cases,[236] *Finley*-filers misrepresented the nature of the governing law by, for example, citing an intermediate appellate court precedent as though it were a Pennsylvania Supreme Court precedent,[237] two inaccurate reporter numbers paired

---

[226] *See supra* section IV.A.1, pp. 161–62.

[227] *See Finley* Report, *supra* note 7, at 25.

[228] *Finley* Report, *supra* note 7, at 26. *Compare, e.g.*, Wesley Carpenter Letter, *supra* note 93, at 4 (citing 1996 case, in 2012, for proposition that ineffectiveness "claims that could have been brought on appeal by second counsel are waived and may not be asserted for the first time in a PCRA petition"), *with* Commonwealth v. Grant, 813 A.2d 726, 738 (Pa. 2002) (overruling, in 2002, requirement "that trial counsel's ineffectiveness be raised at that time when a petitioner obtains new counsel or those claims will be deemed waived").

[229] *See Finley* Report, *supra* note 7, at 26.

[230] Letter from Stephen O'Hanlon to Hon. M. Teresa Sarmina 2 (Jan. 12, 2017) [hereinafter Milique Wagner Letter] (on file with the Harvard Law School Library).

[231] 386 U.S. 738, 744 (1967).

[232] *Finley II*, 479 A.2d 568, 569 (Pa. Super. Ct. 1984); *see Finley* Report, *supra* note 7, at 26.

[233] *See, e.g.*, Ridley Shields Letter, *supra* note 108, at 8 ("To be clear, counsel is not taking a position at this time as to whether the District Attorney could have in fact cross-examined potential character witnesses with regard to their knowledge of the Defendant's convictions; however, it was a possibility.").

[234] *See* Letter from Thomas L. McGill to Hon. D. Webster Keogh 4 (Jan. 5, 2005) [hereinafter Raheem Willis Letter] (on file with the Harvard Law School Library) (declaring that "counsel's stewardship was effective in that it spared the defendant the death penalty" where there is no per se rule that counsel is effective if client facing death penalty avoids it).

[235] *See* Letter from David Rudenstein to Hon. Steven Geroff 13 (June 17, 2005) (on file with the Harvard Law School Library).

[236] *Finley* Report, *supra* note 7, at 26.

[237] *See* Letter from Larry Feinstein to Hon. Jane Cutler Greenspan 7 (July 8, 2005) (on file with the Harvard Law School Library) (citing Commonwealth v. Coleman, 664 A.2d 1381 (Pa. Super. Ct. 1995)).

with the wrong year,[238] and a case for a legal proposition plainly not contained therein.[239]

This libertine approach to legal rules and standards led *Finley*-filers to personally weigh evidence without reference to any legal standard or case law in 56% of letters.[240] For example, in 10% of letters, *Finley*-filers invoked their positive opinion of allegedly ineffective lawyers when rejecting their clients' ineffectiveness claims.[241] One *Finley*-filer opined that trial counsel was "seasoned, experienced and well-respected"[242] — all irrelevant to the ineffectiveness standard.

When analyzing legal claims, 28% of letters failed to discuss facially apparent legal issues.[243] One perplexing example cropped up when Gregory Samuels claimed that his trial counsel inadequately prepared for trial.[244] Mr. Samuels' *Finley*-filer rejected this claim based on trial counsel's strategy "to concede that the Defendant had shot and killed his girlfriend but that he did so in a rage, hopefully reducing [the offense] to voluntary manslaughter."[245] But trial counsel "never introduced evidence supporting a voluntary or involuntary manslaughter charge"[246] and did not object when the trial court omitted manslaughter instructions from its proposed jury charge.[247] Mr. Samuels's *Finley*-filer never discussed the discrepancy between trial counsel's putative strategy and his apparent failure to pursue it.[248]

The legal discussions that did occur in *Finley* letters were often opaque. In almost two-thirds of Philadelphia LWOP letters, *Finley*-filers were unclear about what evidence they relied on to draw a legal

---

238 *See* Jarmaine Trice Letter, *supra* note 94, at 5 (presumably citing Commonwealth v. Korb, 617 A.2d 715, 421 Pa. Super. 44 (1992), as a 1989 case reported at both "123 A.2d 456" and "123 Pa.Super 456").

239 *Compare* Derrick Thomas Letter, *supra* note 201, at 3 (citing Commonwealth v. Smith, 650 A.2d 863 (Pa. 1994), without pincite for proposition that "the standard for PCRA review is whether counsel's action or inaction so prejudiced his client's case that it is likely that the result would have been different absent the error"), *with* Commonwealth v. Smith, 650 A.2d 863, 866 (Pa. 1994) (merely stating requirement that petitioner "demonstrate . . . that he was prejudiced by counsel's action or inaction" without further elaboration), *and* Strickland v. Washington, 466 U.S. 668, 694 (1984) (requiring showing of "reasonable probability," not likelihood, of different result to establish prejudice).

240 *Finley* Report, Appendix A, *supra* note 199, at 4.

241 *See id.* at 2.

242 Letter from James Edward Mugford, Sr., to Hon. Jane Cutler Greenspan 4 (May 30, 2002) (on file with the Harvard Law School Library).

243 *See Finley* Report, *supra* note 7, at 27.

244 Gregory Samuels Letter, *supra* note 112, at 6.

245 *Id.* at 8.

246 Commonwealth v. Samuels, No. 1230 EDA 2001, at 6 (Pa. Super. Ct. Nov. 14, 2002) (slip op.).

247 *Id.* at 4–5.

248 *Compare also* Anderson v. Wilson, No. 05-4536, 2008 WL 11519728, at *6–7 & n.5 (E.D. Pa. Mar. 19, 2008) (finding ineffectiveness claim based on facially erroneous jury instruction to be of "arguable merit" but procedurally defaulted because never raised in state court), *with* Letter from John M. Belli to Hon. Carolyn Engel Temin 5 (Oct. 9, 1997) (on file with the Harvard Law School Library) ("[T]here exist no other issues of arguable merit thereby rendering it impossible for present counsel to file an amended petition . . . .").

conclusion.[249] To take a few examples: Raheem Willis's *Finley*-filer reported, without providing a factual basis, that Mr. Willis's case "easily" could have resulted in a death sentence;[250] Rashan Mickens's *Finley*-filer reported that the police "[c]learly" had probable cause "as the case basically sp[oke] for itself";[251] and Gregory Samuels's *Finley*-filer reported that "[trial] counsel's questions were designed to elicit answers that would serve the Defendant's best legal interest" without discussing a single specific question or the legal interest it served.[252] Furthermore, baldly conclusory statements appeared in 39% of LWOP letters.[253] Examples included: stating without elaboration that "witnesses clearly recanted because they were afraid,"[254] reporting (misleadingly) without citation that "[i]njuries of the decedent and/or victim are admissible at trial,"[255] and slipping into the rejection of a *Brady*[256] claim the naked assertion that "[t]he prosecutor did not seek to suppress evidence."[257] Numerous *Finley*-filers also referred to the "overwhelming" nature of the evidence without actually discussing any case-specific facts.[258]

Finally, *Finley*-filers frequently engaged in "facially unscrupulous legal analysis."[259] In 18% of "no-merit" letter cases, *Finley*-filers' discussion of legal issues was terse, often dismissing multiple claims at once.[260] This is best illustrated by a snapshot[261] of one *Finley*-filer's simultaneous enumeration, analysis, and rejection of five claims:

---

[249] *See Finley* Report, *supra* note 7, at 27.

[250] Raheem Willis Letter, *supra* note 234, at 4.

[251] Rashan Mickens Letter, *supra* note 95, at 13.

[252] Gregory Samuels Letter, *supra* note 112, at 14.

[253] *See Finley* Report, Appendix A, *supra* note 199, at 3; *see, e.g.*, Qadir Taylor Letter, *supra* note 139, at 2 ("[C]ounsel cannot investigate a rumor.").

[254] Kahhim Odom Letter, *supra* note 95, at 12.

[255] Unique Kennedy Letter, *supra* note 159, at 3; *cf.* Tolbert v. Gillette, 260 A.2d 463, 465 (Pa. 1970) ("Photographs are properly excluded where they do not fairly and accurately represent the object or the place of the injury as it existed at the time of the accident.").

[256] Brady v. Maryland, 373 U.S. 83 (1963).

[257] Milique Wagner Letter, *supra* note 230, at 13.

[258] *See Finley* Report, *supra* note 7, at 23 (quoting Shawn Hill Letter, *supra* note 109, at 2 n.1, 22).

[259] *Finley* Report, *supra* note 7, at 14.

[260] *See Finley* Report, Appendix A, *supra* note 199, at 3.

[261] Letter from Dennis Turner to Hon. Rose DeFino-Nastasi 4 (Oct. 6, 2016) [hereinafter Aaron McCallum Letter] (on file with the Harvard Law School Library).

C) I was denied effective assistance of counsel-**(boiler plate, Ragan, supra.)**

D) Prosecutorial Misconduct-**(previously litigated, see page Superior Court Opinion)**

E) Insufficient Evidence **-(previously litigated, see page Superior Court Opinion)**

G) Due Process rights were violated-**(boiler plate, Ragan, supra.)**

(H)Judicial Misconduct**(boiler plate, Ragan, supra.)**

Counsel's facially deficient legal analysis is reflected both by the conspicuous lack of page numbers following the phrase "see page" in items (D) and (E), and by cursory scrutiny of his invocations of "Ragan." *Commonwealth v. Ragan*[262] was a twenty-page direct appeal opinion in which the Pennsylvania Supreme Court spent two sentences rejecting one claim as "boilerplate."[263] Earlier in this *Finley* letter, counsel inaccurately cited *Ragan* for the proposition that a "boilerplate allegation is no basis for PCRA relief."[264] However, *Ragan* could not possibly stand for this proposition because it was decided in July 1994,[265] eighteen months prior to the implementation of the PCRA.[266] In addition, 17% of "no-merit" letters referenced a high volume of legal authority but never applied it, perhaps to create the impression of analytical care without substance.[267] Finally, it appeared that two *Finley*-filers copied and pasted sections verbatim, including a typographical error, from each other's letters.[268]

The *Finley* procedure lowers the standard of professional care practiced by attorneys handling extremely high-stakes cases. When the analytic rigor of lawyers erodes, reason and the rule of law recede behind subjectivity and lawlessness.

* * *

It's hard to express how hard it was to find case law that matched my claims on top of trying to recall from memory what happened at my

---

262 645 A.2d 811 (Pa. 1994).

263 *See id.* at 828–29.

264 Aaron McCallum Letter, *supra* note 261, at 3.

265 *Ragan*, 642 A.2d at 811.

266 *See* Commonwealth v. Thomas, 718 A.2d 326, 328 (Pa. Super. Ct. 1998). By labeling his client's claims as "boilerplate," counsel further illustrated *Finley*-filers' inquisitorial function. A legal advocate would instead try to develop their client's undeveloped efforts to preserve their legal rights.

267 *See Finley* Report, Appendix A, *supra* note 199, at 3.

268 *Compare* Rashan Mickens Letter, *supra* note 95, at 11–12 (authored by *Finley*-filer one), *with* Ridley Shields Letter, *supra* note 108, at 3–5 (authored by *Finley*-filer two), *and* Letter from Lee Mandell to Ct. of Common Pleas of Phila. 2–4 (Aug. 16, 2017) (on file with the Harvard Law School Library) (authored by *Finley*-filer two).

trial. When I first started going to the law library, I really didn't know how to read a case. In the case reporters, every case starts with a key. I would literally read from one key to the other, jumping between cases with no idea I was doing it. This was really confusing. I was hesitant to ask anyone inside for help because I didn't know if they would actually help me. But at some point, I had to ask for help. Thankfully, there were some older guys with decades of experience, and they showed me how to start reading the law. It probably took me about five years of working in the law library five days a week for at least five hours a day before I felt confident in my ability to understand a case. This experience heightened my sense of desperation for an attorney. Going pro se was terrible. I felt like I needed my attorney's expert help in order to get the law right.

* * *

CONCLUSION

The longstanding and pervasive acceptance of *Finley* letters by Pennsylvania courts has eroded the legal and ethical standards for representing poor people in PCRA proceedings. By allowing *Finley*-filers to simultaneously play the incompatible roles of lawyer-for and advocate-against petitioners, the *Finley* procedure permits defense attorneys to betray their clients' trust and ruthlessly attack their clients' legal interests. Because these attorneys lack an adversary, their unscrupulous anti-petitioner advocacy radically undermines the rule of law. As a result, "no-merit" letters wrongfully add years of incarceration to poor, predominantly Black people's lives, reserving the rule of law for people "who can afford it"[269] and the vanishingly few who painstakingly learn the law to fight for their freedom. As Mr. Moore's experience demonstrates, this unfair access to legal process reasonably leads petitioners and their families to lose confidence in the criminal legal system.

Furthermore, the Study paints a picture of attorney-client relationships in the *Finley* context that appears incompatible with the standard principal-agent model. An agency relationship is formed when a principal "manifests assent" to an agent "that the agent shall act . . . subject to the principal's control."[270] However, *Finley*-filers are automatically appointed irrespective of petitioners' assent,[271] and petitioners formally object to *Finley* letters in a majority of cases.[272] This facial incompatibility is underscored by the Supreme Court's own formulation of the agency assumption: "[T]he attorney is the petitioner's agent when acting,

---

[269] Pennsylvania v. Finley, 481 U.S. 551, 569 (1987) (Brennan, J., dissenting).
[270] RESTATEMENT (THIRD) OF AGENCY § 1.01 (A.L.I. 2006).
[271] *See* PA. R. CRIM. P. 904(C).
[272] *Finley* Report, *supra* note 7, at 5.

or failing to act, in *furtherance* of the litigation."[273] As this Essay and the Study demonstrate, *Finley* letters actively *subvert* the litigation of postconviction claims by alienating lawyers from their clients and abandoning the adversarial system — a recipe for stifling the rule of law.

A comprehensive empirical study of "no-merit" letters is necessary to assess the extent of the damage wrought by *Finley* and how to repair it. Creative solutions based on empirical realities will be necessary to bring attorneys into compliance with the basic ethical rules and legal requirements to which they are already subject — namely the attorney-client privilege and the duties of confidentiality, communication, and competence. Until those requirements are upheld, petitioners would be wise to jealously protect their information and decline to waive privilege and confidentiality in writing. At the same time, individually reprimanding *Finley*-filers for ethical violations that have been systematically tolerated for two generations would likely embitter, divide, and fail to heal the broken subculture.

Abolishing *Finley* letters and requiring appointed postconviction counsel to file amended PCRA petitions may help to rehabilitate the adversarial process. However, if the subculture does not change, then many of the ills currently associated with *Finley* letters will come to be associated with amended PCRA petitions. And, in the rare instances when a case truly presents only "frivolous" issues (which all attorneys are proscribed from submitting to a court[274]), attorneys will need some procedure for signaling this position to a court without betraying client trust and subverting the attorney-client relationship. Ideally, the lawyer's conclusion would be submitted ex parte and subject to meaningful review by an adversarial, pro-petitioner advocate.

A legal subculture accustomed to overlooking violations of legal ethics when the rights of poor people are at stake will not be reformed overnight. However, to repurpose the words one filer used to censure his client's pro se litigation efforts, the profession's failure to reform when faced with this troubling empirical data would represent "a sad abuse of a system which has always tried to provide a voice and an opportunity to be heard as to those persons it incarcerates."[275]

---

[273] Shinn v. Ramirez, 142 S. Ct. 1718, 1733 (2022) (alteration in original) (emphasis added) (quoting Coleman v. Thompson, 501 U.S. 722, 753 (1991)).

[274] MODEL RULES OF PRO. CONDUCT r. 3.1 (A.B.A. 2025).

[275] Theodore Przybsewski Letter, *supra* note 105, at 4.