

**12th Annual Ohio Juvenile Defender Leadership Summit
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**“Through the Looking Glass; Investigation and Mitigation for
Youth Subject to Transfer.”**

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LIFE HISTORY INVESTIGATION

The ideal approach to develop a life history is by using a defense team which consists of two attorneys, a criminal investigator, a mitigation specialist, and a psychologist (someone qualified to assess the client psychologically). (As noted in the Trial Defense Guidelines Representing a Child Client Facing a Possible Life Sentence.)

Communication among team members is an essential element of the team approach.

The purpose of a life history investigation is to humanize your client and explain how your client's personality, environment, culture, life events, family history, etc. shaped him/her leading to their involvement in the crime or situation.

Opportunities for juveniles to be rehabilitated should be presented. **This youth is not a lost cause.**

Start the life history investigation early. You will need the time to obtain records and complete the investigation.

Of great importance is to develop a positive and productive relationship with the client and their family to facilitate honest communication. Defense Team members will need to regularly visit their client, share information and communicate honestly and very importantly follow through on promises to the client.

The client's family can be important to the case and key to gaining the client's cooperation, thus developing a positive relationship with the client's family is important to gain their trust and cooperation.

A life history investigation involves collecting and reviewing records regarding your client and their family as well as interviewing various witnesses who are members of the clients' family or who have interacted with the client and their family. The investigator should prepare witnesses for the interview process by providing an explanation of the process and the need for honesty.

The mitigation theory is constantly evolving as the investigation progresses, so keep an open mind and do not close off avenues of investigation. Discuss and brainstorm the theory as a team during team meetings.

The records which substantiate the mitigation themes and also the records the expert(s) base their opinion on determine what records will be placed into evidence.

Those witnesses selected to testify are the witnesses who substantiate the records and experts' opinion. These witnesses should be thoroughly prepared for testimony.

During testimony, the witnesses should tell stories regarding specific events in the defendant's life with the expert explaining how these events affected the defendant.

The psychological expert will interweave the social history collected by the mitigation specialist with psychological information the expert possesses. Ideally an expert will be able to discuss the client's ability and opportunities to be rehabilitated.

CHECKLIST FOR RECORDS TO OBTAIN AS PART OF A LIFE HISTORY INVESTIGATION FOR A JUVENILE TRANSFER

This is only a preliminary list of essential records to obtain on your client and their family (parents, siblings, grandparents, children, spouses). Each record and document received will have information that will lead to additional records and documents that you will need to obtain.

Have your client and his family members sign release forms, both the general form and the HIPAA form, at your first interview with them. You will need their dates of birth, social security numbers, and all names previously used. Also obtain signed release forms from your client's parents, siblings and possibly extended family members as needed. If your client is under eighteen, then a release from their parent or legal guardian must be obtained.

PUBLIC RECORDS

Birth Certificates Obtain birth certificates for client, siblings, parents, children, spouse, significant others. Available from Department of Vital Statistics in each state or in county of birth. (Ohio Vital Statistics has a specific form to complete when requesting a birth certificate. In Ohio birth certificates are public record. In some states birth certificates are not considered to be public record only the parents and child can obtain the certificate.) (www.odh.state.gov/VitStats) A \$15 fee is charged for a certified copy.

Client's Parents' marriage certificates Obtain marriage licenses for all marriages of client's parents. (County Clerk of Court) (Public record in Ohio)

Client's Parents' divorce records Obtain complete divorce records for all divorces of client's parents. Complete file should include financial statements, initial filing, final decree, child support orders, custody decrees, peace bonds and temporary restraining orders. (County Clerk of Court) (Public record in Ohio) Also suggest obtaining attorney files for these divorces. (Requires release from client's parent(s).)

Death certificates and death records. Obtain death certificate for any family member who died. (Death certificate is public record and can be obtained from county where individual died or State Vital Statistics Department in state where individual died. A \$15 fee is required to obtain a certified copy.) (Ohio Department of Health vital statistics. www.odh.state.gov/VitStats) In some instances you may want to obtain the autopsy and hospital records for family members who died. (The hospital records will require a HIPAA release of next of kin for hospital records and copy of death certificate.) Also obtain copy of Obituary for deceased family members and close friends of client who are deceased. If a will exists or probate court documents exist obtain those as well on estate of parents or grandparents.

MEDICAL RECORDS

Birth records Obtain client's birth records from hospital and physicians, including mother's prenatal care for client and siblings. Obtain your client's birth records by requesting your client's records and his/her mother's records of the birth as well. (Requires HIPAA release) Suggest obtaining birth records of client's siblings as well.

Early **childhood medical records**, including family physician records should be obtained on the client. If there is no family physician, check public clinics in communities where family lived for all family medical records. Check every hospital in areas where family lived; look especially for emergency room records for client, client's mother (battering incidents), and client's siblings. Look for head trauma plus signs of abuse and/or neglect. (Requires HIPAA release)

Medical records Obtain medical records for any in-patient or out-patient hospitalization or hospital emergency room treatment regarding the client. Always check emergency rooms, hospitals and medical clinics in every geographic area where client lived. Ask specifically for films of any x-rays, CT scans, MRI's, as well as narrative reports. Obtain records from family doctor, clinics and/or treatment by other medical specialists. (Important to look for head trauma, especially loss of consciousness.) (Requires HIPAA release) (In specific instances such as when the client's parent or sibling was seriously ill, chronically ill or handicapped then medical records regarding that individual should be collected.)

Health Department Obtain medical records for client, mother, father, siblings and other family members.

EDUCATION RECORDS

School records. Obtain records from each school (elementary, middle, high school) (private and public) attended and pre-schools/head start as well as records the school board may have. (Most of the time all of the records will be housed at the last school the client attended, but to be safe, request from all schools attended.) Ask school board or schools if outside private or public agencies conducted psychological evaluations or special testing. If so, contact those agencies and obtain their records also. Some schools maintain psychological, learning disability and testing information separate from the rest of the records, so ask if certain records are located elsewhere. Review school yearbooks and publications for information on the client and their siblings. Contact school advisors, coaches etc. for any extra-curricular activities your client was a participant.

LEGAL RECORDS

Police response calls and incident reports Obtain records of police calls and reports to residences where client and his/her family lived.

Family and Juvenile Court Records If possible obtain the criminal charges, dispositions, probation, pre-sentence investigations, programming referrals, counseling, placement and recommendations for the client and if available for client's siblings and parents. (Obtain from Juvenile/family clerk of court and probation department.) (Some counties like Franklin County maintain a "family file" containing family history information on your client and their family.) (Will require a judicial order from juvenile judge on old juvenile cases or court order from current judge.)

Department of Youth Services Obtain the Department of Youth Services records of institutional placement and parole/aftercare including documents such as education records, reports, evaluations, testing, counseling, intervention, placement and treatment for client and all siblings. (The Ohio Department of Youth Services maintains records for three years past the individual's last contact, and then the records are destroyed. Education records might still be available past the three years. If you are really lucky a counselor at the institution might still have their file.) (Contact the main records department at each individual institution and educational records.) (May need to obtain a court order to obtain these records on your client.)

Juvenile facilities. Obtain records from each juvenile facility as well as central agency for all medical, intake, evaluation, disciplinary, schooling records. (Probably will require court order) (Obtain records for county facilities as well as state facilities.)

Jail records. Obtain local jail records for each arrest and incarceration for client's adult siblings and parents. Include medical and psychological records as well as conduct records and visitation.

Prison records. Send request to each prison where client's parents were housed as well as central office of Department of Rehabilitation and Corrections. Ask for Master File, Unit File, medical, psychological, education, discipline, work, kites, visitation, Pre-sentence investigation, parole board reviews and a general statement of requesting all institutional records. (Court order is required to obtain these records in Ohio.)

Current jail/facility records. Periodically obtain from institutional facility currently housing client the institutional records on client including but not limited to medical records, psychological, counseling, medication charts, disciplinary reports, cell changes, visitors, etc. (Make final request for current facility records just prior to transfer/sentencing hearing.) If client is referred to outside health care facility, obtain those medical or psychological records as well. (Some facilities require court order; other facilities will accept release from client's parent or guardian.)

Prior criminal records, Obtain criminal history on client and their immediate family including arrest, charges, disposition, convictions. Obtain all records from prior counsel (including attorney work products), complete court file, prosecution file, and incarceration records for client, news clips about offense and client. Obtain court files and incarceration records for any co-defendants in priors. Also, obtain criminal history on client's family members and co-defendant. (Clerk of Court documents public record. Attorney files will require release and prosecutor files will require court order.)

Probation and parole. Try to obtain all probation and parole records on client by contacting local parole office as well as regional and central office. Try to obtain available pre-sentence reports. (These records are extremely difficult to obtain. These records will definitely require a court order to obtain.)

FBI. Obtain all FBI records, including rap sheets and previous investigations.

Civil Litigation Obtain court files for civil litigation involving client's family members.

Bankruptcy Court Obtain court files for bankruptcy filings for client's family members as well as any litigation related to finances.

Co-defendants. Obtain all prior criminal records including arrest records, court files, incarceration records, state law enforcement rap sheets and FBI rap sheets on any co-defendants.

Attorney Files Obtain attorney files for all criminal, civil, domestic and bankruptcy cases involving client and immediate family members.

MENTAL HEALTH/SOCIAL SERVICE RECORDS

Drug/alcohol treatment records. Obtain any records on the client and their family from local substance abuse programs, community based treatment centers and hospitals regarding substance abuse treatment. Review criminal record history for drug/alcohol related offenses and court ordered treatment. (A HIPAA release is required to obtain substance abuse treatment records.)

Mental health facilities. Obtain records from hospitals and mental health agencies for mental health treatment or psychiatric hospitalization on client and immediate family or any other family members who have had mental health treatment. Obtain all information including, diagnosis, medication, treatment plan, assessments, progress notes, and nursing notes. (Will require a HIPAA release)

Social service agencies Obtain records on AFDC payments from county Welfare Department and from Children Services Agency. Obtain information on home studies, referrals for testing and counseling, intervention, placement in foster homes and termination of parental rights. (Children Services files usually require a court order to obtain. Remember to include in court order your client's name, their parents' names, siblings and possibly grandparents if there has been a long family history of involvement with Children services.) (Welfare records can be obtained with a general release form of client and parent.)

Private social service agencies. Contact Catholic Social Services, Lutheran Social Services, private juvenile shelters, Big Brothers Big Sisters, Boys' Clubs, YMCA programs and other private agencies for any records on client or siblings. If they can be located, interview professionals in these agencies who had contact with your client and their family.

MISCELLANEOUS RECORDS

Employment records. For each place of employment (full-time and part-time) request information on employment dates, work position description, initial employment paperwork, salary, work accidents, attendance, performance evaluations, job training programs, name of supervisor/owner and reason for leaving/firing.

Social Security Records. Different types of records can be obtained from the Social Security Office. First you can obtain a record of social security payments (“Detailed Earnings”) from the various jobs your client has worked. (Remember often some employers in areas such as construction and seasonal work may not take out social security or taxes so there will not be a record of that employment with this office.) This record from social security will assist in tracking client’s work history. (A specific form must be completed and the cost depends upon the number of years to be searched.) (Forms available on Social Security website www.ssa.gov) Another type of record to obtain from this agency is if your client received social security benefits due to a handicap (SSI) (A specific form must be used to obtain these records.)

Religious institutions. Contact churches and church groups with whom your client and their family have had contact to obtain information about the client and their family. Obtain name of clergy, volunteer staff and/or youth group leader currently and at the time the family had contact. Interview church members, volunteers and clergy who had contact with your client and their family.

Military. Obtain military records of family members including parents, siblings, aunts and uncles or any family member who served in armed forces. Obtain information on Branch of military, date and place of enlistment, rank achieved, places stationed, commanding officer names, honors, medals, discipline, counseling, psychological, hospitalization and medical. (The signature of person whose record you are requesting on a specific form is required to request records.) Also, medical records on family members of military personnel can be obtained as well. (A separate release form is required for this request.) (Forms can be obtain at U.S. National Archives and Records Administration website. www.archives.gov)

Guardianship, Adoption and Foster Care Try to obtain any of these records if they pertain to your client. Foster care records, adoption and guardianship information should all be in the Children Services File unless the adoption was private. (Reminder Children Service Records require a court order to obtain.) Guardianship information may be in the County Family and Juvenile Court files. (A court order is required to obtain Family and Juvenile Court records.) The procedure to obtain adoption records varies depending upon the date of the adoption. (See Ohio Department of Health materials or website: www.odh.ohio.gov for details.

Worker’s Compensation Obtain records from the local worker’s compensation board regarding your client and/or family members if applicable.

Financial Obtain financial records for client and family members such as Back Tax forms, banking records, mortgage records, credit/debit card records.

Miscellaneous Groups Obtain information about your client's involvement in any organized activity such as fraternal organizations, charity organizations, sports teams, political organizations, volunteer groups, AA and NA. Contact these groups directly to obtain records and names of people who had contact with your client for interviews. To obtain any information about your client's involvement with AA and/or NA a release from your client may be necessary, since NA and AA often maintain confidentiality

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RECORD COLLECTION TIPS

How to Request Records

- A. Obtain Signed Release of Information Forms (have client (parent/guardian if under 18) sign a number of both forms listed below, have family sign some releases for themselves as well)

HIPAA (Use to obtain all medical and psychological or counseling records. Be careful some hospitals say they will not accept any HIPAA form except their own form. If you typically work in a certain area, collect copies of the HIPAA forms used at local hospitals and clinics to use when needed. If obtaining a different signed release form is problematic, then push the issue if your form has all of the required components. (Sample provided)

Standard Form (Use for requests that do not require HIPAA form or court order)
(Sample Provided)

Special Release Forms (Some record keepers want their own release form used, such as military, many hospitals and social security administration. Keep copies of these special release forms for use.)

- B. Mail or Fax Standard Request Letter (Have a specific letter for each type of record you may request, listing specific types of information you want provided. Also include a phrase requesting any and all information not listed to ensure you obtain the **ENTIRE FILE** if your list of specific items is not all inclusive.)

- C. Remember to Request Certification of Records/Name of Custodian of Records
(This request can be imbedded in your request letter or court order.)

- D. Obtain Court Order for Records when Necessary (Some records cannot be obtained with a release, such as Ohio Rehabilitation and Corrections, Adult Parole Authority, Ohio Department of Mental Health, Children Services Boards, and Juvenile legal records) The attorney will need to request a court order to obtain these records.

- E. Persistence, Tenacity, Document (Be persistent and tenacious in your record collection. At times the record keepers may not want to bother retrieving records that is older because they are not as easily accessible. Assure that individual that those records are necessary to your cases and must be obtained in a timely manner. Document the following; date record request sent, date and content of follow-up phone calls, lack of records, record destruction policy and date records collected. Records from closed schools, agencies or hospitals may need to be located as well. Search for organizations who may have information on location of records from those closed entities.)

Follow-up

First Follow-up: should be initiated 2-3 weeks after the initial request was sent and records were not received. Call source of records to speak to a person. Confirm with contact the correct address, fax and contact person to whom record request should be submitted. The response will dictate whether an additional record request letter should be submitted. Obtain names, title and phone numbers of those you spoke with and those involved in record keeping. Keep copy of written request.

Second Follow-up: Contact the record source within 2-3 weeks of first follow up and speak to a person. Stress the importance of the records you are requesting and the time frame in which the records are needed. Submit a third written request this time with “Third Notice” in large bold print at the top of the letter. Once again get names, title and phone numbers of those you spoke with and those involved in record keeping. Keep copy of written request.

Third Follow-up: If you still have not received any formal response from this record source, when you call request to speak to a supervisor or someone in a position of authority. Explain the attempts you have made to obtain the records, offer to fax copies of all the prior letters sent. If you cannot reach someone on your first attempt, continue calling on a daily basis until you speak to someone. Another option is to go in person to the record source to request the records and remain until records are received.

Final Option: If all else fails to gain a response, a subpoena may have to be utilized to obtain the records. Beware, any record obtained by subpoena has to be shared with the prosecution and the court.

- F. If records are not available or have been destroyed, then request the record source provide you with a certified written response stating records are not available and why. If the records were destroyed request a copy of the Record Retention Policy from the agency entity or a certified written response..

Organize Record Collection

Documentation/Catalogue

***Keep a copy of all record request letters.

In some format maintain documentation of the following;

Who was request sent to.

When was request sent.

Follow up calls made, who record request was sent to; name of contact person, address, fax, phone and e-mail address, when calls were made and the response to the call or if another request was sent and date received records.

Which records were received and date received. (Was record file complete?)

Which records were unavailable and why, (Obtain written certified response explaining why records were unavailable.)

Which records were copied and who were the records provided too on defense team.

Bate Stamping-Stamp with one consecutive numbering sequence all records before they are copied and dispersed, so that everyone on the team can easily refer to the same exact page.

Maintain one copy without Bate Stamping, then Bate Stamp all other copies provided to defense team and keep one, so everyone can easily reference pages in the records.

What to Do with Records You Receive

Review the records for;

New information and information to corroborate client and lay witness stories and comments

Locations for additional records to collect

Names of additional witnesses to interview (lay/professional lay)

Such as teachers, principals, jail and prison guards, other jail personnel, agency workers, counselors, doctors and attorneys on prior cases or civil

litigation.

Emerging patterns and themes revealed in the records. The story of the client's life history and family history should emerge as the records are reviewed. Family patterns can be seen, significant events are illuminated and connections become apparent.

Share & Discuss the material with defense team. Each team member should review the records for the above.

Timeline Pull information from the records to include in a detailed timeline on the client and their family. A timeline clearly shows patterns and pulls all of the information together to form a complete detailed account of the client's life.

Use in Court Determine which, if any, records will be placed into evidence. Also determine if any records will be presented to the judge in a slide/power point presentation or whether an expert or family member will refer to an incident mentioned in the records. A thorough review of records must be completed before determining whether the records will be admitted into evidence or mentioned at the sentencing hearing

SAMPLE RELEASE

AUTHORIZATION TO RELEASE INFORMATION

TO: _____

RE: _____

DATE: _____

You are hereby authorized to release to the Office of the Ohio Public Defender all records or other documents currently in your possession. Their representative may examine and make copies of all of my medical, psychological, hospital, police, and employment records, or any other records he/she may deem necessary in his/her work on my behalf. You are authorized to discuss these records and any other matters concerning me with said representative and are asked to assist him/her on the current investigation.

This authorization includes release of information concerning background, testing, and treatment of drug and alcohol abuse, drug-related conditions, alcoholism, psychiatric/psychological conditions, Acquired Immune Deficiency Syndrome (AIDS), AIDS-Related Complex (ARC), and/or tests for antibodies to the AIDS virus (HIV).

WITNESS:

Client's Signature

SAMPLE HIPAA RELEASE
AUTHORIZATION TO RELEASE MEDICAL INFORMATION

To: _____ Re: _____

_____ DOB: _____
_____ SSN: _____
_____ Date: _____

I authorize the use or disclosure of my health information as described below. The above-listed individual or organization is authorized to make the disclosure.

The type and amount of information to be used or disclosed is as follows:

- | | |
|-------------------------------------|---|
| ___ Problem list | ___ laboratory results from _____ to _____ |
| ___ Medication list | ___ X-ray and imaging reports from _____ to _____ |
| ___ List of allergies | ___ Consultation reports from _____ to _____ |
| ___ Emergency room records | ___ Drug and alcohol treatment |
| ___ Immunization record | ___ Psychotherapy records/mental health records |
| ___ Mental Health Assessment (MHA) | ___ All discharge summaries and admission records |
| ___ Outpatient Notes (OPN) | ___ All history & physical information |
| ___ Medication Progress Notes (MPN) | ___ Entire Record |
| | ___ Other _____ |

I understand that the information in my health record may include information relating to sexually transmitted disease, acquired immunodeficiency syndrome (AIDS), or human immunodeficiency virus (HIV). It may also include information about behavioral or mental health services, and treatment for alcohol or drug abuse.

This information may be disclosed to and used by the following individual or organization:

Name: _____
Address: _____
For the purpose of: _____

I understand that I have the right to revoke this authorization at any time. I understand that if I revoke this authorization, I must do so in writing and present my written revocation to the health information management department. I understand the revocation will not apply to information that has already been released in response to this authorization. I understand the revocation will not apply to my insurance company when the law provided my insurer with the right to contest a claim under my policy. Unless otherwise revoked, this authorization will expire on the following date, event, or condition: _____. If I fail to specify an expiration date, event, or condition, this authorization will expire in six months.

I understand that the entity or person releasing records will not condition treatment, payment, enrollment, or eligibility for benefits on the execution of this Authorization. I understand that the information used or disclosed as a result of this Authorization may be subject to re-disclosure by the person or entity receiving such information, and thus no longer protected by the federal privacy regulations.

I understand that authorizing the disclosure of this health information is voluntary. I can refuse to sign this authorization. I need not sign this form in order to assure treatment. I understand I may inspect or copy the information to be used or disclosed, as provided in CFR 164-524. I understand any disclosure of information carries with it the potential for an unauthorized re-disclosure and the information may not be protected by federal confidentiality rules. If I have questions about disclosure of my health information, I can contact my HIM director or privacy officer.

Signature of Patient or Legal Representative Date

If Signed by Legal Representative, Relationship to Patient Signature of Witness

INTERVIEWING FOR LIFE HISTORY INFORMATION

Who to Interview

Interview witnesses individually.

- Client
- Parents
- Brothers/Sisters
- Aunts/Uncles
- Cousins
- Grandparents
- Spouse (Current/Past)
- Girlfriends
- Family friends
- Client's friends (Throughout client's life)
- Neighbors
- Teachers/School Counselors/Principals/Coaches
- Clergy
- Social Service Agency Personnel
- Mental Health Workers
- Probation/Parole Officers
- Employers/Co-Workers
- Military Personnel
- Juvenile/Adult Institution Personnel

* These categories may not be relevant for every client. The family members are the primary people to interview. You will probably need to re-interview some witnesses once additional information is obtained to clarify information previously provided.

Tips for Interviewing

- Be honest.
- Be considerate and respectful.
- Allow adequate time for interviews. Don't rush the interview.
- Actively listen.
- Ask open ended questions, then move to closed ended questions.

- Develop additional questions from responses the interviewee gives to questions
- Don't make promises you can't keep.
- Explain everything.
- Be non-judgmental.
- Make sure the interviewee is comfortable in the interview setting and with the interviewer.
- The time spent with your client and their family during interviews aids in developing trust and rapport with them, which fosters sharing of information.

If speaking to your client;

- Ask your client about their status/wellbeing (how are they feeling psychologically and physically).
- Ask your client who visits them, how frequently and status of relationship with family and friends.
- Tell them not to discuss or write about their case with anyone including family, friends, others in the institution/facility
- Tell them to behave in jail/institution and explain why

Initial Contact

Explain who you are and what you do.

YOU ARE PART OF THE DEFENSE TO HELP CLIENT

Explain the legal process of the case.

Explain confidentiality.

Explain that your questions have a purpose even though they may not make sense

Begin with simple, less intrusive questions

First impressions are important. Treat your client and other interviewees with respect. Be pleasant, but firm.

Observe your client/interviewee within their environment

General Areas to Explore

**Do not limit investigation/interview to pre-determined topics.

- Family Background (examine several generations to find family patterns)
- Family Patterns (substance abuse, criminal behavior, young parent, etc.)
- Pre-natal
- Developmental
- Childhood
- Adolescence
- Number and location of residences
- Who resided in the home
- Discipline/Supervision
- Environment
- Loss/abandonment
- Abuse (physical, sexual, verbal, neglect)
- Family and Social Relationships
- Family finances/poverty
- Medical/Health
- Education
- Military
- Employment
- Psychological
- Criminal (Juvenile/Adult)
- Religious Background
- Drug/Alcohol History
- Areas of Impairment
- Stressors
- Facts of the Homicide
- Positive/Productive Aspects of Client
- Opportunities for rehabilitation

Additional Interview Tips

Triangulate Information

Confirm information from one source with two independent sources such as records and another witness.

The investigation is cyclical

Information obtained from records or interviews often leads to another path to investigate and then typically circles back to the earlier interviews.

Anecdotal Stories

Ask those you interview to provide examples and specific anecdotal stories that enable you to provide a narrative of your client's life. Obtain as much detail as you can and talk to others who witnessed that particular event for any additional details.

The use of anecdotal stories by lay witnesses and expert witnesses help convey the reality of events in the client's social history.

Detailed stories provide the imagery essential for a compelling narrative. Detailed stories have more impact than a general statement.

Consider,

A. Joe's sister states that their step-father physically abused Joe.

B. Joe's sister states that age eight, Joe, who was small and skinny for his age, was beaten by their step-father with the buckle end of a belt leaving welts and marks all over Joe's body and legs. Joe was then shoved into a duffle bag and the end was tied by the step-father. Then the duffle bag (with Joe inside) was hung on a hook in the attic where Joe was left alone and hanging for hours as punishment for not washing the dishes one evening.

Which story is more compelling?

Which story provides more graphic imagery?

Potential Social History Themes

- Adolescent brain
 - Slower maturation of frontal lobe area of brain
 - Adolescent reliance on instinctual area of brain
 - Adolescent hormones activate the emotional center of brain
 - Malleability of adolescent brain
- Brain impairment
- Traumatic Brain Injury
- Intellectual Disability
- Developmental Disability
- Mental Illness
- Fetal Alcohol Syndrome
- Post-Traumatic Stress Syndrome (witness violence, emotional trauma)
- Attention Deficit Disorder
- Hyperactivity Disorder
- Learning Disabilities / Educational Deficits
- Chemical Dependency
- Effects of alcohol/drug use on brain
- Abuse (physical, sexual, emotional, neglect)
- Discipline (lack of, abusive, inconsistent, and bizarre)
- Health (illness, injury)
- Culture
- Environmental Factors
- Exposure to Toxins
- Loss / Grief Issues
- Abandonment by Parent (s) / Rejecting Parents
- Dysfunctional Multigenerational Family Patterns (substance abuse, abuse, poor work habits, anti-social behaviors, criminal behaviors, mental illness, etc.)
- Family Instability / Chaotic, Disorganized Family Life
- No Parent-Child Bonding
- Poverty
- Poor Parenting Skills / Parental Ineffectiveness
- Poor Boundaries in the Family
- Physically or Mentally Disabled Family Member
- System Breakdown (school, legal, protective services, etc.)

- Environmental Stressors (job loss, financial problems, failure in school, work, relationships, etc.)
- Mitigation in Offense Facts (intent, motive, state of mind, easily led)
- Remorse
- Co-operation with Police
- Potential to Rehabilitate
- Lesser Sentences of Co-defendants
- Good conduct in jail/juvenile institution since arrest, good adjustment, good deeds in jail, good conduct during prior incarcerations)
- Adjusts Well in a Structured / Controlled Environment
- Good Guy (lack criminal history, merit, heroism, stable family life, good employment history, supportive family, religious affiliation, community activities)
- Systems failure
- Client can be rehabilitated
- Client can be productive/has value to society
- Client has family and community support
- Beneficial for client to remain in juvenile system versus adult system

PRESENTATION OF CLIENT'S LIFE HISTORY

Preparation

Develop life history themes in your client's life history

Retain defense psychologist expert and other experts as needed

Identify records to be used that support life history themes and were relied upon by experts to form an opinion.

Select Witnesses who can provide information on the life history themes and who support the expert(s)' opinions.

Prepare witness sheets identifying and highlighting the key information to be obtained from each witness during their testimony.

Prepare experts and lay witnesses for testimony

Witnesses and records must support psychological testimony

Information presented should be coordinated and consistent.

Foster good relationship with witnesses and client's family.

Prepare client and their family for presentation of life history information. Discuss the information to be presented, who will testify and the themes developed. This may upset some people, but you cannot surprise your client about what information is to be presented.

Presentation- Aids

1. Records

Introduce and place into evidence records supporting themes and expert testimony.

2. **Witnesses**

The defense team develops a witness list.

The defense team determines the order of testifying witnesses. (begin and end strong)

Use lay witnesses to recount stories about the client and their life

Use lay professionals who had contact with family (PO, teachers, etc.) to discuss specific contact with client and their family as a professional.

Use professionals as witnesses to testify about life history themes in general, but not specific to case.

Use a defense psychological expert to weave the social history with psychological information. A clinical psychologist will be able to explain the impact of a “bad childhood” (I.E. abuse, violence, poverty, ineffective parenting and dysfunctions within the family) on your client, which in turn will lead to why the client engages in dysfunctional, violent, criminal behavior, including involvement in the instant offense.

The defense psychologist’s testimony should be consistent with any additional mitigation experts utilized. The expert should also provide information about the client’s strengths and ability for rehabilitation as well as how deficits can be addressed.

Have specialized defense experts testify such as substance abuse expert, neuropsychologist, cultural expert etc.

Include in the presentation how supports and available programs will assist your client in achieving a positive outcome.

3. **Visual Aids**

Today’s society is so visually oriented due to television, computers, movies, games etc. that people easily receive and recall information given to them in a visual manner, rather than only verbally. Reinforce concepts that your experts and lay witnesses testify to as well as any physical evidence in the record such as records by utilizing visual methods of communication. Show

art work, certificates, awards, photographs or records on client and their family or create visual aids such as timelines, genograms, power point, and charts to show to jury.

For instance,

Abbreviated Timelines (poster size)

Utilize an abbreviated timeline to chronologically highlight specific topics such as head injuries, substance abuse, moves, schools attended, different people client lived with or any other topic relevant to the life history presentation. A shortened timeline can really focus the attention of the jury and emphasize the point being made by the defense. If the client was shuffled back and forth among various people, then list those moves to show visually the number of moves.

Family Pictures/Certificates/Awards

Use these mementos to humanize your client. Pictures can show what your client's home and neighborhood looked like as well as what the client looked like as a child or show the client with people who care. Awards and certificates earned by the client can show a positive side to the client.

Power Point Presentations/Slide Presentation

This method of visual presentation can be used to show family photographs plus artwork, poetry and writing created by your client.

This presentation can be used to highlight important pages of certain records or comments included in records. Including these documents in a visual presentation can be an effective manner to focus on the relevant mitigation issues. Highlighting relevant material by a visual presentation reinforces and corroborates the oral testimony presented in the court room. (A very effective method of presentation is to coordinate the viewing of information with the testimony of the defense expert or other witnesses.)

Genograms (Diagram of Family Tree)

A visual display of your client's family members, the inter-relationships among the family members and the complexity of the family tree provides an understandable portrait of the client's immediate and extended family. A visual display of your client's family tree shows connections between your client, witnesses and family members mentioned during testimony in relation to each other and your client. A family tree diagram can also be used to show family patterns such as substance abuse, physical or sexual abuse, mental health problems, mental retardation, criminal behavior, medical problems, etc. For example, each of the family members on the family tree having a substance abuse problem can be outlined in a particular color while another color is used for other issues. A very dramatic portrayal of problems within the family is pulled together when all of the relevant issues have been color coded on the family tree diagram. The family tree diagram or genogram is a great method of showing how chaotic and problematic your client's family is and was.

Video Tape

A video recording can be used to portray some aspect of the client's life such as a poor rundown neighborhood, filthy home and horrible conditions of the home, rural Appalachia, inner city poverty, run down schools or any other visual sights that a video could clearly portray. A video recording may include clips of interviews with family members and those in the community.

*****Note when presenting information that places your client in a negative light, remember to provide information about available resources/treatment/options that will address your client's issues and enable them to be productive and rehabilitated.**

RESOURCES

References on Brain Development

What Makes Teens Tick; A flood of hormones, sure. But also a host of structural changes in the brain. Can those explain the behaviors that make adolescence so exciting—and so exasperating? Time Magazine, May 10, 2004

Adolescence, Brain Development and Legal Culpability, American Bar Association Juvenile Justice Center, January 2004

Deciphering the Adolescent Brain, News from Harvard Medical, Dental, & Public Health Schools. April 21, 2000

Teenage Brain: A work in progress, National Institute of Mental Health, 2001 (www.nimh.nih.gov/publicat/teenbrain.cfm)

Crime, Culpability and the Adolescent Brain, Mary Beckman, Science Magazine, Friday, July 30, 2004. (www.sciencemag.org)

References on Juvenile Life Without Parole

Trial Defense Guidelines: Representing a Child Client Facing a Possible Life Sentence, Campaign for the Fair Sentencing of Youth (March 2013)

<http://fairsentencingofyouth.org/wp-content/uploads/2015/03/Trial-Defense-Guidelines-Representing-a-Child-Client-Facing-a-Possible-Life-Sentence.pdf>

ABA Guidelines for the Appointment and Performance of Defense Counsel in Death Penalty Cases, American Bar Association (2003)

http://www.americanbar.org/content/dam/aba/migrated/2011_build/death_penalty_representation/2003guidelines.authcheckdam.pdf

Accepting *Miller's* Invitation: Conducting a Capital-Style Mitigation Investigation in Juvenile-Life-Without-Parole Cases, Betsy Wilson and Amanda Myers, The Champion, April 2014, pgs. 18-25.

<https://www.nacdl.org/champion.aspx?id=37153>

Symbolic Struggles in Advocating for Juveniles Sentenced to Life Without Parole, Katie Berringer, University of Chicago School of Social Service Administration, Advocates' Forum, 2015.

<http://ssa.uchicago.edu/symbolic-struggles-advocating-juveniles-sentenced-life-without-parole>

The Mitigation Specialist, An Indispensable Part of the Defense Team for Juveniles Who Are Facing a Life Sentence, Roseanne Eckert, Florida Defender, Summer 2016, pgs. 27-30, 48.

What Hath *Miller* Wrought: Effective Representation of Juveniles in Capital-Equivalent Proceedings, David Siegel, Criminal and Civil Confinement, Vol. 39:363-383.

http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2589641