Mini-Mitigation:

Steps To a Quick Take On Your Client's Mental Health Status

Richard McGough
Office of the Capital Defender
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(Some of following materials result from a collaborative effort between myself and Ann Doherty, MSW, for presentation in September of 2013)

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Instead of “Tell me what happened”, first try “Tell me about you”.

We have a tendency to consider an inquiry into our client's personal and family history as something separate from our inquiry into the facts of the crime for which the client stands accused. Often, though, we find that we can come to a better understanding of our client's particular actions or role in the crime through a close look at his or her history. One obvious example is the client that is mildly ID/MR. Was he easily duped into participating in that robbery that went bad? In an effort to please, did he offer up information to the police that they eagerly accepted but is not completely accurate?

Our goal in this presentation is to offer a set of tools that will enable the investigator to begin a psychosocial history of the client as part of the initial interview. The goal is not to give everyone a crash course in becoming mitigation specialists or mental health evaluators. The idea is that the information you gather in your first or second interview can help you determine early on if you need the assistance of a mental health expert in your case. Though you might not have any particular training in recognizing or naming your client's condition or set of problems, the completed forms we have provided here will give an expert the information that he or she needs to come to some determination.

“What does all this junk have to do with the jam I'm in?”

In a capital case, it is maybe somewhat easier to explain to the client the importance of gathering life history information as part of preparing for trial. We use some variation on the following: *the capital trial may have a separate sentencing phase and, worse case scenario, your attorneys will need to be prepared to ask a jury to consider a life sentence rather than a death sentence; in that hearing, the jury is going to want to know all they can about you.*

In the non-capital scenario, you might try saying: *We want to obtain the best possible outcome and the best possible sentence if this case goes to trial and you're found guilty. I'm not saying that is what's going to happen but we always have to act like a case could go all the way to trial and that way we don't get caught short.*

Some of the points you might want to emphasize in this first meeting are:

- Assure the client that there will be several meetings, that this is just the first meeting.
• To best represent him, you may need to call on other experts for additional help. In the past, for example, you have asked for help from experts in DNA, or ballistics or fingerprints.

• Aspects of the client's history may come into play here as you investigate the crime and the accusations. Let the client know that he is the best expert on himself but that you may need to talk to others about him such as parents, aunts and uncles, school teachers and the like.

**A Genogram: Identify one or two good family historians**

Even after you explain the importance of focusing some on his life story, the client may be resistant. For this reason, we suggest that your first task is to identify key family members that might help you better understand your client's history. Constructing a genogram, a pictorial display or diagram of family relations, is maybe the best way to accomplish this. The genogram will give you an easy visual reference to family members and will possibly help your expert to, for example, identify familial traits or patterns of mental illness. We have provided a completed sample genogram here as well as a blank that can be copied for use in future cases. The following are some questions you might ask the client about family members:

- Did this person have a hand in raising you?
- How far in school did this family member go?
- What does he/she do for a living?
- Does he/she have a criminal history?
- Does he/she have medical, mental health or substance abuse issues?
- Did this person mistreat or abuse you in any way?

Note that in the sample genogram, we have assigned each family member a number. The chart below the diagram allows you to enter in key information about each person. Other family members can help add information that the client may not have at hand. There is an area where you can enter some notes based on answers to the questions above. The completed genogram can be passed on directly to your mental health expert.

**The psychosocial history**

The form we have put together here will hopefully help you focus on key issues in the client's life rather than putting together the detailed life history and time line that is more appropriate to the capital setting. The focus should be on significant events, any history of trauma, injuries or
abuse, honors and achievements. After filling in the form, you should be in a position to provide one or two sentences to describe the client's life for these periods:

- Age birth to 5
- Age 6-10
- Age 11-15
- Age 16-20
- Age 21-30
- Age 30 to present

Requesting and Interpreting Records

The following provides you with a list of key records that can be obtained with some ease. You may or may not have a need for all of these once you come to some understanding of your client's history. Probably the most important records are those that document your client's educational history. Many counties and school districts have separate offices for regular transcripts of grades and records dealing with the special education student. These often require separate release forms as well. A call to the county or city school administration board will tell you what is required for that area. Any records dealing with a prior history of mental illness or disorders will also be key and necessary for your expert to review.

1. **Birth certificate:** usually can be found in school records or hospital records.

2. **Hospital Records (including birth):** These records may be helpful for possible MR, substance abuse or other birth trauma. A Hippa compliant consent (see attached) is often sufficient and should be faxed to the Medical Records Department of a hospital or Health Information Management office. Some hospitals require their own consent. You can find a hospital’s consent on the hospital website under Health Information Management or Release of Information. Sometimes if you send a generic consent they will fax back their own consent for signature. It may be helpful to also obtain the mother’s medical record at the time of birth as it may help explain substance abuse or trauma. The mother would have to sign consent for these records.

3. **Education Records:** These are important for MR cases. They may also provide "good guy" documentation. The records are usually maintained at the last school a person attended. Exceptional Education (special Ed) should follow the student and may also be found at the school where the disorder was identified. It may be helpful to get parent’s or sibling’s school records for an MR case.
4. **Military records:** These may provide positive character information or information about why a person was not accepted or did not stay in the military that may be helpful for MR or substance abuse. You can get these records from the National Archives by going to the website: www.archives.gov/veterans/military-service-records/ The link for Veteran Services Records will give instructions about requesting records including the appropriate consent.

5. **Employment records:** These may be helpful as good character information and/or contributing member of society or they could substantiate possible MR by inability to learn a job. You can use a standard consent form to request records from a recent employer. Or you can submit a standard consent to [http://www.ssa.gov/online/ssa-7050.pdf](http://www.ssa.gov/online/ssa-7050.pdf) to get a complete list of how much a client earned at each job.

6. **Mental health records:** For inpatient Hospital records follow the same procedure for other hospital records. The outpatient records are more challenging if the client/family or other records do no indicate where care was received. Call the Managed Care Organization (MCO) for help. For example the MCO for Forsyth, Surry, Stokes, and Rockingham Counties is Centerpoint Human Services. 336-914-9100

7. **Prison records:** For North Carolina, education, work and medical records can be obtained from NC Department of Corrections with a standard consent. Other prison records must be court ordered. For NC DOC Medical records fax the consent to Pat Tinsley 919-838-3885 fax 919-838-3871. For education and work records: to Sandra Satterwhite Fax 919-838-4764 phone 919-838-4000

8. **Department of Social Service Records:** These records are helpful to document child abuse or foster care or even poverty. These records must be court ordered.

9. **Juvenile delinquent records:** These records can be valuable as they may contain education and mental health records that have been hard to get. These records must be court ordered.

10. **Social security disability records:** This website will provide information about how the access disability records: [http://www.socialsecurity.gov/online/ssa-3288.pdf](http://www.socialsecurity.gov/online/ssa-3288.pdf)

We generally organize our records chronologically. That is, as we review records, we enter a date in one column and note the key event, such as standardized testing and results at the client's school, in the next column. A third column gives the source of the information. The final product will be a chronology that references a number of records at once. You may find that later you can arrange the information columns into various important issues and sort your information in that fashion. The attached sample was generated using CaseMap software, but creating your own 4 column chart works just as well.
Is this client ID/MR?

From my own experiences, I can tell you it is not easy to spot this even after a number of interviews. This is why it is essential to identify family members or other key historians other than your client in your first interviews with him or her. Again, based on my own filed interview experiences, it is rare that you will hear a family member use the term “mentally retarded” to describe your client. They may describe the client as “slow” or “younger than his years”. If you can refer to school records you might say “I see that your son had a hard time with his grades in school; what can you tell me about that?” In the attached documents, we have included a set of questions dealing with the main areas of adaptive deficits. This can be a guide for formulating questions for family members or others that you interview.

Conclusions

A great deal of what we have provided you with here today is probably best described as the ideal way to come to some determination of your client's mental status. We aren't really sure that you can put these plans into action every time due to budget considerations, your client's response to this type of inquiry, the availability of family members and a host of other conditions we can't imagine or name. Our main point is that by shifting your initial focus to the client's history, you may be in a better position to quickly determine if you need a mental health expert in your case and, if so, what kind of expert. Finally, in many cases you may find that by focusing on the client's history from the beginning, you will quickly establish a rapport such that he or she will more easily share information necessary for their defense.

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