

PREPARING AND USING MITIGATION AT TRIAL

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WHAT IS MITIGATION?

Telling the story of our client and the case

That will keep our client from being sentenced to death

IF the case has to go to trial

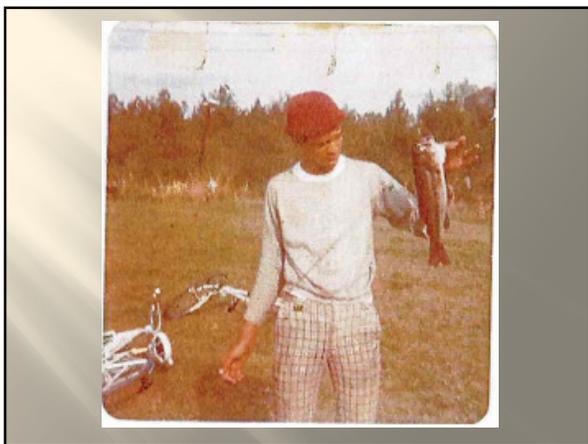
NOT THE PROSECUTION'S STORY

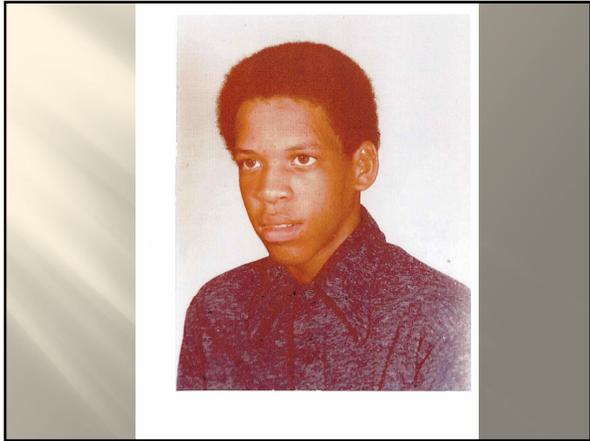


IS THE STORY OF WHO YOUR CLIENT IS WHEN HE WASN'T DOING THE WORST THING HE EVER DID















We, the Jury, find that the Defendant should be sentenced to life imprisonment without parole.

Javier Rosh
Foreman of the Jury

FILED
JAN 21 2008
STONING COUNTY MISS
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DISCOVERING THE STORY

CLIENT CENTERED REPRESENTATION

Relationships with the client and those close to him are everything

Relationships are very, very hard to create

It is our job to find a way to communicate meaningfully with the client and his family, not vice versa

DISCOVERING THE STORY

MEETING THE CLIENT FOR THE FIRST TIME:
When and Where

You go to the client where he is. You are there for his convenience, not he for yours

Make sure the space you are in is a place where the CLIENT feels as safe, as private and as dignified as he can

Do this BEFORE the first time you stand up for him in court

DISCOVERING THE STORY

MEETING WITH THE CLIENT & HIS FAMILY
Create a space for the story to emerge

Begin by listening and answering, not talking and asking

Find ways to address the client's immediate needs and wants

When you finally get to ask the questions, don't start with the hard stuff

RECEIVING THE STORY:
Theory and Theme - First Impressions

<p>From the Client: At the very first meeting: "Asked why he was anxious to have his trial, Client replied after a pause 'to be honest I'm ready to get back to my family.'" A few months in: "Asked what his pastor would say about him. "Rev. Chandler, he knew that I had the spirit of God in me. He can't say nothing but that I was a child of God . . . He would say Ron attended church and came from a Christian family." Ronald asked me to tell his pastor "I pray for him every day that he get bold and strong."</p>	<p>From Others: From the client's wife: "The boys miss Ronald a lot." "Our oldest son took it the hardest. They always say I wish he was here, they don't miss a day saying it. They spent a lot of time with their dad. Their daddy took them hunting and fishing. Ronald played ball with the boys." From the client's mother: "We brought them up in the church. . . . Ronnie was a janitor in the church a while when he was about 13 or 14-years-old. Rev Enright Chandler. It looked like he could tell things. . . . Ronnie told Teresa he had cried and said he wanted to go up and talk to him . . ."</p>
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PROCESSING THE STORY

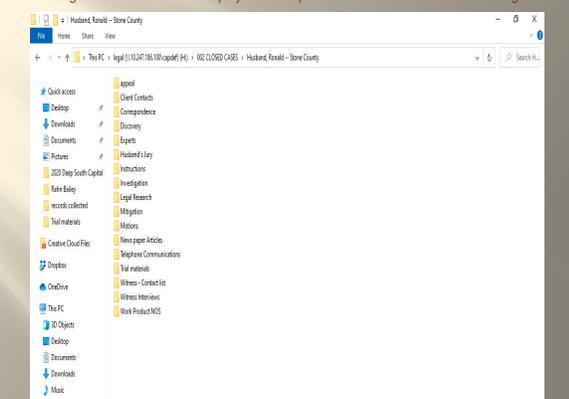
Create a space to develop the story

Organize a case file that helps you develop the themes and theories that emerge

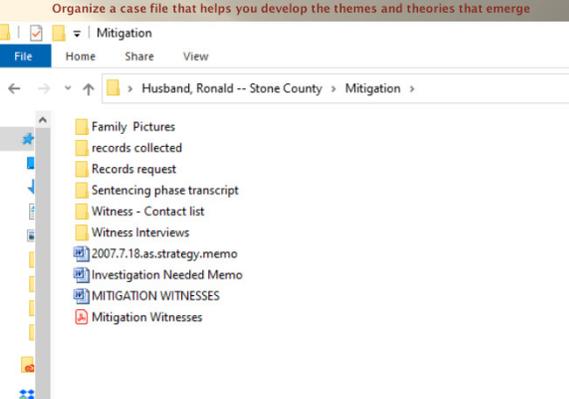
Collect every document you can, and search every document you collect for more documents to send for

Write up every single client, family or other witness contact ASAP and put it in the file

Organize a case file that helps you develop the themes and theories that emerge



Organize a case file that helps you develop the themes and theories that emerge



COLLECTING THE STORY:
Pretrial Litigation

Excerpt from pretrial suppression hearing testimony of arresting officer who was both a colleague of the two dead officers and our client's first cousin.

CROSS-EXAMINATION BY MS. STEINER.
 Q. Deputy [Husband] used to arrest you. Do you know whether Trooper [husband] is kin to either you or Mr. [Husband]?
 A. Yes, ma'am. He's directly related.
 Q. Okay. He's from the same area?
 A. Yes, ma'am.
 Q. And second cousin or something?
 A. Something along in that line.
 Q. And you all had been selected to actually make the arrest after preparations had been made with your cousin that he would be outside of his house and cooperative with you?
 A. Yes, ma'am.
 Q. And he did in fact do so?
 A. Yes, ma'am.

Excerpt from this reluctant but effective penalty phase witness's penalty phase testimony
 Q. And do you -- are you related by blood or marriage to Mr. Husband who stands here convicted today of capital murder?
 A. Yes, ma'am, I am.
 Q. And what is the nature of that relationship?
 A. First cousin.
 Q. Now, did you have any participation in any of the events relating to Mr. Husband's being charged with the killing of the Officers Brandon Beland and Odell Eite?
 A. Yes, ma'am, I did.
 Q. And what was your role in that?
 A. I went to his home and arrested him for the alleged -- the offense.
 Q. All right. And did he, in the course of that arrest, offer any resistance or attempt to interfere with your executing your lawful power to arrest him?
 A. No, ma'am, he didn't.
 Q. Do you know approximately how long of a cooling down period he'd had between when the events happened and when you reached him?
 A. I'm not sure. I don't know.
 Q. Would you think it would have been less than an hour?
 A. I would say somewhere around an hour. I'm not sure.
 Q. And where was he when you made that arrest?
 A. He was at his residence.
 Q. And who was standing with him when you made that arrest?
 A. His wife and children.

TELLING THE STORY:
Turning this into the narrative the jury will hear
Finalizing theory, theme and presentation

Theory and theme:
Is the penalty phase going to be about the client, or about something else?

Decide how it should be told
Experts, family members, teachers, preachers?

TELLING THE STORY
Is the mitigation going to be about the client, or about something else or both?

<i>About the client?</i>	<i>About something else?</i>
<i>What made him react as he did at that moment?</i>	<i>Who other than the client will a death sentence hurt?</i>
<i>How the women who called the police was acting?</i>	<i>His mother, his father, his wife, his children!</i>
<i>His psychological make up?</i>	<i>The juror's individual morality and principles!</i>

TELLING THE STORY:
How it was actually told by his Pastor



Q. So why did you come here today, Brother Chandler?

A. I came because I had the passion and desire to let the families know that in spite of the tragedy that has taken place in our community, we're one body with many members. We love the Breland family. We love the Fite family. We love the Husband family. My desire is that though we came separately, we'll leave together, and I pray that through this whole tragedy that we will begin to work as families and then work as a community and then work as a city and work as a county and work as a state and work as a nation. That's my desire, that the families understand that nobody here -- we're all going through. We're all grieving and that we don't want anybody ever in our community, in the state, no where to ever have to deal with what these families have had to deal with. I'm just a young pastor just starting out. I asked my own self how did I get where I'm at. But we're put here in positions to help each other, to reach out for one another. I'm a firm believer that the Brelands and the Fites families are broken as well as the Husbands. . . .

Q. Can God use the life of this man even if he spends the rest of his life in prison?

A. Yes, he can. There's hope for him.

TELLING THE STORY:
How it was actually told in closing

It's been a long day. It's been a day when the rest of the world, the state, the rest of the country has been honoring a man, Martin Luther King who stood for justice. He did not stand for vengeance. Like Reverend Chandler, he stood for justice to punish wrongdoing but save and hope for the redemption of the wrongdoers. And you remember, he's a man who fought against great wrongdoing, hundreds of years of wrongdoing existing till now. He never once preached vengeance against the racists he was fighting. He never once preached vengeance against the people who had kept -- who had been unfair to others. He preached that all people in the next generation would equally be redeemed. And that's what we need here. . . .

I heard Ms. Arnold's testimony, and I listened to Sergeant Louis Husband, the experienced 20-year police officer, and he said, these domestic disputes are always emotional. You heard the 911 tape. It was high emotions, and I think whatever else caused the emotionalism, I think we can believe Ms. Arnold when she says he was not like he had ever been. He was acting crazy. He was highly emotional. He went out with those officers in a highly emotional state, and whatever happened out there was the product not of deliberately deciding to kill. He may have intended to kill at the moment he did it. But it was not something he planned to do. It was not something he would otherwise do.

TELLING THE STORY:
How it was actually told in closing

You have a choice here. Ronald Husband will die in prison. He will die alone. If he becomes ill, he will be in a prison hospital. His family will not come sit next to him, take shifts overnight as Ms. Arnold was allowed to do when her husband was ill. He will be in a prison hospital. He will die alone in prison. Your choice is, does that come when God wants it to or will you tell the State of Mississippi that they can decide when to do it. Will you tell the State of Mississippi kill him before God would take him? That's an awesome responsibility, and it's an awesome choice. And as Mr. Fisher has pointed out to you, that is a choice you may make, the law permits you to make. There would be no punishment or trial of you for making that choice here. But it is not the choice you must make or that you should make. . . .

Your sentence in this instance where we have an explanation that the state itself and the court itself has said is reason enough as a matter of law to punish by life in prison without parole, ultimately the sentence comes down to you. Are you, each of you, you and each of you can understand mercy, can understand sympathy, can understand compassion, can understand hope of redemption in this world. And you and each of you know that to kill Ronald Husband instead of just making his life in prison alone, you know that that is not the appropriate thing to do. Don't take two more boys' father to the graveyard by your act. Return each of you individually and all of you together, if you can, a verdict that he should spend the rest of his life in prison without parole and die alone there in prison but when God takes him not when the State of Mississippi chooses to do it.

We, the Jury, find that the Defendant
should be sentenced to life
imprisonment without parole.

Javie Rank
Foreman of the Jury

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JAN 21 2008
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KENTON W. CLARK, CLERK
BY: [Signature] D.C.
