DEVELOPING AND PRESENTING TRAUMA EVIDENCE

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Larry Miller, Ph.D. and Sara Cohbra, Attorney
PROCESS

- Historical and community research
- Family-specific record gathering
- Interviewing (witnesses and client)
- Writing lay witness declarations
- Consultation and collaboration with mental health experts
- Writing mental health expert declarations
- Drafting claims for the habeas petition
Historical and Community Research

- **Historical events (e.g., slavery, racism)**
- **Traumatic events (acute and historical)**
  - Natural disasters
  - Border crossings/migrations
- **Environmental factors (e.g., poverty, gang violence, exposure to toxins)**
- **Culturally significant events (Watts Riots, King protests)**
# Family-Specific Record Gathering

- Vital records
- Court files
- Military
- Medical/mental health
- School records
- Social service records
- Juvenile
- Probation
- Employment
- INS/immigration
Interviewing

- Preparing for interviews
- Preparing the witness
- Eliciting sensitive information
- Listening
- Looping
- Closing the interview
Preparing for interviews

- Review:
  - Testimony
  - Reports of interviews in trial file and from discovery
  - Background records

- Prepare interview topics
  - Think about order of topics

- Consider time and place of interview
Preparing the witness

- Prepare your witnesses for the length of the meeting, multiple meetings, etc.
- Individual vs group meeting and gate keepers
- Acknowledging difficult topics
- Focusing on effects on the witness and how we can help contain
Eliciting sensitive information

- Rapport, rapport, rapport
- Take the witness there and follow him or her
- Listening for “alarm bells”: following up and circling back gracefully and respectfully
- Sincerity
Listening (effectively)

- Open, non-judgmental listening (data gathering, and funneling)
- The witnesses’ words
- Consideration of witnesses’ culture
- The witnesses’ exposure and client’s exposure
Listening: What are we listening for?

- **Mitigating evidence of traumatic experiences comes from:**
  - Generational stories
  - Historical events
  - Developmental milestones, markers & illnesses (e.g. in utero, infancy, early childhood, school adjustment, social relationships, family life, work life)
  - Mental illness & substance abuse in family
  - Child abuse & neglect (and how they are handled within the client’s family and community)
  - Violence: causes, frequency, who is the perpetrator?
  - Attachment issues
Listening: Using our own responses

- The listener’s reactions (your reactions!) can inform queries
  - Certain types can indicate particular psychological/psychiatric conditions.
    - Trauma and dissociation
    - Paranoia
    - Fears of disclosure
Looping

- Framing the witness’s language
- Developing details
  - Stories, not diagnoses
  - Descriptions, not conclusions
  - Witnesses, not experts
- Clarifying and repeating back for inclusion in declaration
Closing the interview

- Discuss possible responses witness may have following interview
- End interview on lighter subject
Writing Lay Witness Declarations

- Drafting
- Follow up
- Fact checking
- Honing
- Signing
Drafting and follow up

- Using witness’s language
- Noting areas for follow up
  - Use historical and family-specific records to guide follow up, keeping in mind fact-checking
  - Mental health research and consultation with expert
  - Keep in mind what witness can tolerate
  - Focus on most important areas for follow up
Fact checking

- Protect the reliability/credibility of the witness

- Fact check against:
  - Trial record
  - Discovery materials
  - Records gathered
  - Other witness declarations
  - Historical data

- Fact check before follow up and before finalization of declaration
Honing

- Use witness’s language to persuade readers and describe symptoms & behavior in as much detail as possible
- Organizational structure (chronological, thematic, witness-specific)
- Clarity
Signs

- Review process with witness
- Allow sufficient time
- Explain, process difficult material with witness
- Be sensitive to witness’s experience during review of his or her story
Consultation/Collaboration With Mental Health Experts

- Themes dictate choice of mental health experts
- Factual development pre-consultation
- Consultation to hone factual development
Selecting mental health experts

- Educate yourself on themes of case and client’s experiences
- Select mental health professionals with expertise in relevant themes
- Consult with experts prior to completing social history/mitigation investigation
Factual Development Pre-Consultation

- Review trial record
- Conduct historical/community research
- Collect client- and family-specific records
- Begin interviewing client and family members
Consultation with mental health experts

- Provide experts relevant background materials
- Discuss themes with expert
  - Discuss initial impressions of risk factors, mental health symptoms
  - Solicit ideas for further development of themes, (e.g., questions for witnesses & approaches to interviewing)
- Evaluation of client by expert
- Consider pros and cons of expert interviewing important witnesses
Writing Mental Health Expert

Declarations

- Determine themes to be covered in declarations
- Tell a persuasive story
- Protect your experts and your client
Themes for mental health declarations

- Determine purpose(s) of declaration (social history, description of symptom spectrum, diagnoses) IE what are the questions you want the expert to answer?
- Determine most important themes and emphasize those
- The picture the declaration paints can be (probably will be!) complicated/complex, but it must be consistent
Mental health symptoms/themes deriving from trauma evidence

- Trauma/Grief
- Mood disturbance (depression, anxiety, bipolar)
- Psychosis
- Substance abuse
- Developmental delays (emotional, interpersonal and cognitive)
Protect your experts & your client

- Provide your experts with background materials to support their statements and conclusions

- Ensure your experts have adequate exposure to your client and/or witnesses to reach the conclusions in the declaration

- Ensure your experts have the qualifications necessary to reach the conclusions in the declaration

- Use language in contemporaneous documents and witness declarations to support expert’s conclusions about events, behavior, symptoms
Putting It All Together:
Petition/Claim Writing

- Using trauma evidence to support multiple claims
- Using both lay witness and expert declarations
- Using documentary materials
Trauma evidence can support multiple claims for relief

- IAC Penalty
- IAC Guilt
- Competence
- Sanity (lack of mens rea required for conviction of crimes)
- False confession
- Miranda
- Conflict of interest
Using documentary evidence and declarations to support allegations

- Expert declarations critical but so are lay witness declarations
- Contemporaneous records documenting traumatic events can be the most persuasive evidence of all