

DEVELOPING AND PRESENTING TRAUMA EVIDENCE

CACJ/CPDA CAPITAL DEFENSE
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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

Signing



- 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