

Procedure for Preparing Mitigating Materials for Criminalized Survivors

Student Manual



Procedure for Preparing Mitigating Materials

Prepared by the UNC School of Law Criminalized Survivor, Detention, and Justice Clinic (CSDJC)
Madeline Bauer, Mariah Harrelson, and Kaytki Joshi

The purpose of this manual is to guide UNC Law Clinic students through the process of preparing a mitigation report for survivors of abuse who have been charged with a crime resulting from their abuse. Since 1994, North Carolina has followed a structured sentencing scheme for criminal convictions. Often, there is little opportunity for judges to depart from sentencing guidelines to account for the full circumstances of a defendant's life. Presenting the client's mitigating circumstances through a mitigation report or social biography will help judges understand the full scope of a defendant's history, including their history of abuse, before sentencing.

N C. Gen. Stat. 15A-1340.16(e) sets forth mitigating factors that judges may use in their discretion to reduce sentences beyond sentencing guidelines. Some of these factors include duress, coercion, whether the defendant supports their family, and provocation, which may apply to circumstances where survivors of abuse commit crimes. However, evidence of the existence of these factors must be brought to the judge's attention prior to sentencing in order for them to be taken into account.

The goal of a mitigation report is to present evidence to judges so that they might exercise their discretion to sentence a defendant according to the factors that best address their history and circumstances as survivors of abuse. The reports aim to share more context about defendants' lives and to present a narrative that accurately portrays them as a complete person and to assist judges to better understand the totality of a survivor's circumstances.

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Procedure

Step 1: Training. At the start of every semester, Criminalized Survivor, Detention, and Justice Clinic (CSDJC) students who may be participating in this project will review training materials.

Step 2: Referral. The Public Defender (PD) will notify the CSDJC when there is a case that their office would like assistance with. PD and CSDJC will schedule a time to discuss the case. PD will specify its needs for the case, narrowing CSDJC's involvement as they may deem necessary. CSDJC, to the fullest extent possible, will learn about the case and the client and their circumstances. PD will share any documents and information they deem relevant to mitigation reports. PD and CSDJC will discuss a deadline. PD will identify a point person from PD's office who CSDJC students can contact throughout the process, including the social worker at the PD's office and the specific attorney assigned to the case. The PD will determine the full scope of the work and will have decision-making authority throughout the process.

Step 3: Client Interview. The CSDJC students, either with PD, social worker, or alone, will interview the client, either on Zoom, at the CSDJC in Chapel Hill, at the PD's office, or other location as may be deemed most suitable. CSDJC students will follow a checklist of questions to explore possible mitigation themes. During interviews, CSDJC students will identify sources of mitigating evidence. If possible, multiple interviews may be preferred as there may be significant amounts of material to cover.

Step 4: Information Gathering. CSJDC students will make a list of relevant information that is needed and begin to collect it after reviewing with the PD. This may include talking to people that the client identified in the interview. CSJDC will notify the PD if clinic students need help obtaining certain records.

Step 5: Analysis and Product Development. CSJDC students will determine how to best compile the information and form a cohesive narrative. CSJDC students shall consult with the PD's office to share the main themes and theories of mitigation, and to decide if a formal written report, a social biography packet, video, or other form for presentation would be best. CSJDC students will work on the final deliverable. After CSJDC students have completed the product, PD will offer feedback or request changes.

Training

- Prior to starting this project, CSDJC students shall:
 - Read all materials on the course site (“Canvas”) in the Interviewing and Mitigation Reports modules
 - Attend at least one District Court or Superior Court session
 - Become familiar with all documents and resources contained and linked in this manual
- Prior to starting this project, it is suggested that CSDJC students:
 - Consult with the clinical program’s social work intern for guidance on trauma-informed interviewing

Client Interview

The purpose of the client interview is to uncover adversity and trauma in addition to the client's strengths, opportunities for rehabilitation, and value to their community.

Preparing for the Interview

- Read the "[Some Interviewing Tips](#)" document
- Review all documents provided by the PD
- Speak to the attorney and social worker on the case to learn about the client and brainstorm how best to approach the client and issues related to the mitigation report
- Create an interview plan and determine what questions to ask
- Be mindful of time
 - Make sure you have adequate time allotted
 - Be flexible with extending the interview if the client has a lot to say and wants to continue talking
 - Remember this may be exhausting and emotionally draining. It's okay to schedule an additional interview to cover the rest
- Dress nice, but not too formal
- Don't bring a crowd
- Minimize distractions
- Be in a comfortable location, if possible, that is private, accessible, and has multiple seating options
- If possible, have the attorney or social worker introduce you

Preface

- Introduce yourself, restating your name can be helpful
- State the purpose of the interview, who you are, your role in the process, and what to expect
- Explain confidentiality and that you are working with the PD's help and at their direction. You are part of the team and on their side.

Sample Introductory Statement

Before we get started, there are a few things I wanted to mention. As I said, my name is [name], and I am a student attorney in UNC's Criminalized Survivor Clinic. One of the things we do is help the public defender's office on some of their cases. Primarily, our role is to help present your story to the judge so that the judge will consider it when it comes time for sentencing.

[Attorney's name] is still your lawyer. I am here to provide extra support. I am part of the team and on your side. The rules of confidentiality with your lawyer apply to me as well, so anything you tell me will not be shared with anyone outside of our clinic or the PD's office.

For today, I am hoping to get to know you better. I will ask questions about you, your life, the crime you were charged with, and your hopes for the future. We want to show the judge the circumstances that surround the crime you were charged with, as well as who you are as a person.

After today, I am going to work on putting together your narrative so we can show the judge all the reasons why you deserve a lesser sentence. There is a lot to cover, but we want to be thorough, so it is important to go through it all. If you would like to take a break at any point, just let me know.

Do you have any questions about anything before we begin?

Structuring the Interview

- Speak in plain language and avoid using legalese
- Constructing a timeline can be helpful. It may be easier for the client to go in reverse chronological order.
- Ask broad and open questions first, then ask more specific follow-up questions
- While interviewing, think about what evidence would be helpful to support the client's narrative and ask if they would be able to provide it
 - Ex: Client states that they were unable to go to work due to physical injuries, their mom drove them to the hospital, and then they lost their job. Based on this story, we may then ask:
 - Do you have any photos of the injuries?
 - What hospital did you go to? Do you have any records from that visit? Discharge papers?
 - How did those injuries impact your ability to do other things? How long did it take you to recover?
 - Do you think your mom would be open to speaking with us? If yes, how can I contact her?
 - What did your employer say to you? Do you have a paper or notice of your termination?

Topics to Cover

- Review the “[Things to Look for in Interviews](#)” document
- Review the “[Sample Interview Topics](#)” document
- Remember that the above documents are used for death penalty cases, so you will likely need to narrow down your topics to the ones that are most relevant

Sample Interview Questions (not in any specific order and not meant to be a complete list)

- Personal and Social History
 - Tell us about yourself
 - Who are the people closest to you? Who do you turn to for support?
 - Can you tell me about your relationships with them?
 - What would they say about you?
 - Do you think [person’s name] would be willing to talk to us?
 - What is your relationship with [person/family member] like?
 - Are you in a relationship?
 - If yes, how long?
 - Are you married? Have you ever been married?
 - Can you tell me about your relationship / marriage?
 - Do you have children?
 - What are their names / ages?
 - Do they live with you? Have you always lived together?
 - Do you have any pets?
- Childhood
 - What was it like growing up? Who did you grow up with? Where did you grow up?
 - Do you have any notable memories from your childhood or adolescence? Good or bad?
 - What was your physical and mental health like while growing up?
 - What were your favorite things to do as a kid?
- Incident that Led to Crime Charged
 - Can you tell me what happened that led to you being arrested and charged with [charge]?
 - Who else was involved?
 - Would you do anything differently today?
- Intimate Partner Violence
 - What was your relationship like in the beginning?
 - When did things first make you uncomfortable?
 - What types of things did your partner do that you didn’t like?
 - Were you ever physically injured?
 - Were the police ever involved?
 - Do you have any [photos, messages, evidence]?
 - Did your family or friends know about the abuse? How did your relationship with your partner affect your relationships with other people?

- Coercive Control – Read “[Interviewing and Screening a Survivor of Coercive Control](#)” for information on screening for coercive control
 - Did you feel isolated in your relationship? How so?
 - Did your partner ever use offensive or hurtful language towards you? What kinds of things would your partner say? How did it make you feel?
 - Did your partner make you do things you didn’t want to do? Do you have any examples? (Look for both sexual coercion and also micro-regulation of day-to-day activities).
 - Did your partner tell you who you could or could not see?
- Criminal History
 - Have you ever been charged with any other crime before? What happened?
 - Are you currently on probation or parole?
 - Has anyone close to you ever been charged with a crime before? Can you tell me about that?
- Housing / Home Life
 - Where do you live? How long have you lived there? Do you like it there?
 - Do you feel safe where you live?
 - Who lives with you?
- Finances / Public Benefits
 - Who are you financially responsible for?
 - Do you ever worry about being able to pay your bills?
 - Do you receive any public benefits? Like social security disability? Food stamps? WIC?
 - Do you receive child support payments?
 - What are your economic goals?
- Physical and Behavioral Health, Substance Use
 - Do you have health insurance?
 - Do you have any health issues? Do you take any medications?
 - When was the last time you saw a doctor? What was it for?
 - Do you [or have you ever] see a therapist?
 - How often do you worry about things? What things do you worry about?
 - What do you do to cope when you are feeling [stressed, anxious, sad, etc.]?
 - How do you take care of yourself when things get tough?
 - Do you smoke? Do you drink? Do you use substances?
 - How long have you [used substance]? Have you ever tried to stop?
 - Do you feel like it interferes with your life?
 - Have you ever received treatment for it? Do you want to receive treatment?
- Safety
 - Do you have any safety concerns for yourself or your family?
 - What social media sites do you use?
- Education
 - Where did you go to school?

- Did you graduate? If not, why not? Would you like to? What are your educational goals?
- Have you ever been in the military?
- Employment
 - Do you have a job? Do you like it?
 - Do you like your coworkers?
 - What is your past work experience like?
 - What types of jobs do you like or think you would be good at?
 - What is your dream job?
- Recreation / Community Involvement
 - What do you like to do for fun? What are your hobbies?
 - Do you play on a sports team? Are you in any clubs?
 - Are you a member of a church?
 - Do you like to volunteer?
- Personal
 - Tell me some things you like about yourself
 - What strengths do you have that helped you survive tough times in the past?
 - What are you good at?
 - Can you share some words that best describe who you are or who you want to be?
 - What do you want to do after this is all over?
 - What do you want a judge or jury to know about you? [What are five things?]
 - What are your concerns about sentencing? How will being sentenced to prison impact you, your family, your children?
 - Is there anything else you think I should know or would like to share?

Information Gathering

- Who else do you need to talk with in order to support the client’s narrative?
 - Who are the people closest to the client?
 - Potential people to talk with include: spouses, partners, parents, grandparents, children, grandchildren, siblings, aunts/uncles, nieces/nephews, cousins, friends, roommates, neighbors, employers, coworkers, mentors, teachers, classmates, coaches, teammates, church
- Write interview plans for anyone else that you will speak to
 - Consider asking them if they would be willing to write a letter in support of the client, or if they would want to speak in a video
 - See “[Outline of a Good Character Letter of Support](#)” document
- What evidence or records do you need to support the client’s narrative?
 - See tables below for ideas. There are a lot and only some may be relevant. Have a plan for how you want to use it before asking for it.
 - See “[Checklist of Mitigation Records](#)” document
 - See “[Records to Obtain](#)” document

Records CSDJC students can retrieve

- Public records (Lexis+ Public Records Search)
 - Real estate
 - Criminal charges
- North Carolina Department of Adult Correction Offender Search (if previously incarcerated)
- News articles
- Google search client’s name

Records to obtain in collaboration with PD

- Court records
 - Criminal
 - Civil
 - Family
 - Parental Rights Proceedings
 - Domestic Violence Protective Orders
 - Bankruptcy
- Probation records
- Police reports
- 911 Calls
- Division of Social Services
 - Child Protective Service investigations
 - Foster care

Records to ask client or client's family for

- Medical
 - Prenatal or birth
 - Pediatric
 - Emergency room
 - Illness/injury
- Mental Health
 - Evaluations
 - Treatment history
- Education
 - Report cards or transcripts
 - Attendance records
 - Diplomas
 - Disciplinary records
 - Individualized Education Program (IEPs)
 - Psychosocial Evaluations
- Employment
 - Pay stubs
 - Training certificates
 - Raise or promotion
 - Letter from employer
 - Unemployment
- Recreation / Sports / Community Involvement
 - Awards
 - Certificates
 - Rosters
 - Lesson history
- Public Benefits
 - Social Security Disability Insurance (SSDI) and Supplemental Security Income (SSI)
 - Supplemental Nutrition Assistance Program (SNAP)
- Photos, text messages, emails

Analysis and Product Development

“At the heart of all mitigation is effective storytelling and the presentation of a counternarrative.”

- The goal is to come up with a narrative that paints a holistic portrait of the client, rather than simply cataloging seemingly unrelated mitigating factors.
- Review the “[Checklist of Possible Mitigation Themes](#)” document for ideas
- Review the list of North Carolina’s statutorily enumerated mitigating factors in “[Mitigating Factors N.C.G.S. 15A-1340.16](#)” document
- Decide on a medium for presentation of the narrative
 - If writing a mitigation report:
 - Review sample mitigation reports (“[Sample Mitigation Report 1](#),” “[Sample Mitigation Report 2](#),” and “[Sample Mitigation Report 3](#)”)
 - One possible format may be: 1. Client’s psycho-social history; 2. Client’s story of the crime charged; 3. Client’s eligibility for mitigation; 4. Rationale for mitigation; 5. A sentence recommendation and the rationale; 6. Other recommendations.
 - Ask attorney at PD’s office for their guidance
 - Seek guidance from Alan Rosenthal
 - If writing a social biography:
 - Read “[What is a Social Biography Packet](#)” document
 - Watch [this video](#) on How to Create a Social Biography Packet
 - Seek guidance from Raj Jayadev and his team at Silicon Valley De-Bug
 - If making a social biography video:
 - Watch a sample social biography video [here](#)
 - Determine who is available and willing to be in the video
 - Determine logistics of filming (when, where)
 - Determine if filming and editing can be done by you or whether another party (maybe the art department) will need to be involved
 - Seek guidance from Raj Jayadev and his team at Silicon Valley De-Bug

Resources

Documents Referenced

- [Some Interviewing Tips](#) – Written by Jim Tibensky
- [Things to Look for in Interviews](#) – Provided by Zach Rowles at The Center for Death Penalty Litigation
- [Sample Interview Topics](#) – Provided by Zach Rowles at The Center for Death Penalty Litigation
- [Interviewing and Screening a Survivor of Coercive Control](#) – From *An Introductory Guide to Coercive Control for the DVSJA Attorney: Coercive Control is Domestic Violence* by Alan Rosenthal and Christiana Wierschem
- [Outline of a Good Character Letter of Support](#) – Provided by Raj Jayadev at Silicon Valley De-Bug
- [Checklist of Mitigation Records](#) – From *A Defense Attorney's Guide: Representing Adolescents* by Alan Rosenthal
- [Records to Obtain](#) – Provided by Zach Rowles at The Center for Death Penalty Litigation
- [Checklist of Possible Mitigation Themes](#) – From *A Defense Attorney's Guide: Representing Adolescents* by Alan Rosenthal
- [Mitigating Factors N.C.G.S. 15A-1340.16](#)
- [Sample Mitigation Report 1](#)
- [Sample Mitigation Report 2](#)
- [Sample Mitigation Report 3](#)
- [What is a Social Biography Packet](#) – Provided by Raj Jayadev at Silicon Valley De-Bug
- [How to Create a Social Biography Packet](#) – Provided by Raj Jayadev at Silicon Valley De-Bug
- [Sample Social Biography Video](#) – Provided by Raj Jayadev at Silicon Valley De-Bug

Some Interviewing Tips

James Tibensky

SOME INTERVIEWING TIPS

James Tibensky
Secretary of the Executive Committee, National Alliance of Sentencing Advocates and
Mitigation Specialists

INTRODUCTION

This compilation of interviewing “tricks of the trade,” with some sample approaches and questions, is being provided to help improve your interviewing abilities. Everything contained in this collection has been submitted by members of the National Alliance of Sentencing Advocates and Mitigation Specialists, a section of the National Legal Aid and Defender Association. The focus, therefore, is on gathering information to assist the defense team through contact with defendants, their families and other important people in the defendants’ lives.

Where a sentencing advocate working on a simple misdemeanor case might spend five or ten hours interviewing people, a mitigation specialist in a death penalty case might spend a thousand hours or more. Gaining trust, uncovering the vital information, earning credibility and then fashioning a coherent and persuasive plan to present to the court or the jury are just a few of the important tasks for the interviewer who works as a sentencing advocate.

Examples given by sentencing advocates are in **bold**. They are not the author’s.

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INTERVIEWING PRACTICES

Curiosity is what drives a good interviewer. He or she wants to learn *everything* in the hope of finding *anything* that might help the case. It is important that all the interviewer’s actions promote good communication.

It is unlikely that clients will trust the interviewer merely because they are told to or because the interviewer has said “You can trust me” or “I respect you.” Trust and respect are earned by building a relationship.

The interviewer must be “in the moment.” Thinking ahead to the next question will hamper the ability to hear the answer being given.

A good listener allows silences.

Pretend that you have a very sore throat and can interrupt only when absolutely necessary.

Attempt to empathize, to see the world through the client's eyes, to understand the client's feelings and ambitions, and to learn the client's means of dealing with the world. A nice definition of empathy is: "participating in the inner world of another while remaining yourself" (The Helping Interview by Alfred Benjamin, Houghton Mifflin Company, Boston, 1981, page 49).

Open questions work better than closed. "Were you abused as a child?" is closed, it allows a simple, unrevealing answer. Even worse would be "You weren't abused as a child, were you?" which begs for a negative answer. "What was it like growing up in your family?" is an open question that can produce a lot of information.

It is good to use indirect questions as well as direct ones. "What was it like growing up in your family?" is a direct question. "Tell me about your childhood" is a less direct approach. It does not even have a question mark at the end. It allows the client to feel more like someone who is having a conversation with someone who is interested in them as a person. Indirect questions begin with words and phrases such as "What" or "Tell me" or "I'd like to hear about . . ." or "It must have been hard when . . ."

Few things make a person more defensive than the word "why."

CLIENT INTERVIEWS

Setting up an interview

When scheduling interviews, whether in person, by phone or video conferencing, make sure you have time to accomplish the purpose of the interview.

Before you meet for the first time

It is important to remember that the client does not have a docket of cases. While waiting for the interview they may have focused on certain concerns that will need to be addressed in order to ease their anxiety and provide a meaningful forum for what needs to be accomplished later.

Consider wearing clothing that is dressy casual. Look professional but not intimidating.

I once had to interview a woman for a sentencing report. She had been battered, was a sex abuse survivor and had many other issues. At the end of the interview, she thanked me for taking time with her and not being in a hurry. She explained that she felt comfortable making all of these disclosures to me because I was dressed in average clothes and didn't carry a brief case like her lawyers (who she didn't want to burden and make late for court). That day I was dressed in a nice pair of jeans, a pullover and running

shoes. Her comments made a lasting impression on me. I guess the more casual garb tends to reduce any economic or educational differences that the client might perceive as barriers.

If you know in advance that your client is from another country, another culture, or has characteristics (gender, disability, etc.) that might require a different approach, research of the issue before the first meeting is important. For instance, men in many Middle Eastern countries are not comfortable having women in positions of authority or power. They may resist being represented by women in any capacity. People from countries that have oppressive criminal justice systems may have trouble trusting anyone associated with our criminal justice system.

I once worked with a client from Nigeria who never trusted his public defender or me. One reason he gave was that no one would be allowed to visit him in prison without the permission of the “authorities.” Anyone whom the “authorities” let into the prison must, therefore, be doing the “authorities” bidding.

Clients with active emotional or psychiatric problems present a number of communication challenges. If a diagnosis is known or suspected, consider consulting with a mental health professional for advice about the best approach to use. Even in the absence of such background information, there are a large number of defendants in the criminal justice system who suffer from emotional problems. It is beyond the scope of this project to coach anyone through the process of identifying, and then dealing with the effects of psychiatric problems. Yet it becomes a critical skill for a sentencing advocate to have, both for self-protection and for effectiveness in the work. Take every opportunity to learn more about it.

Physical Setting

When interviewing clients, especially at a correctional facility or county jail, it may be useful to select a conference area where the client can be positioned with his or her back facing open areas. In the course of the interview, you may touch on highly sensitive issues, such as loss or abuse. When the emotional dam bursts, the client may be more inclined to talk out the incident in detail if the emotions are shielded in some way from the correctional staff, inmate trustees, law enforcement personnel, probation or parole agents and any other individuals who happen to be passing in or around that area. Privacy is a very precious commodity in jail.

First Meeting

Attempt to understand the client’s state of mind at *each* interview. Very early in the process, ask the client what is on his or her mind, whether it concerns the case, jail conditions or family matters. Take the time to deal with whatever is revealed. It will make the necessity of having to work together go more smoothly and productively.

State the purpose of the interview, who you are, your role in the entire process, how you go about doing what you do, what to expect, etc. Tell the client it will be your job to compile their complete life story. This will require learning anything and everything about them whether or not they think it might be significant. You may not use everything, but you need to know everything. A lot of clients are folks who have never been important to anyone in the world before. Spending a lot of time getting to know them may make them feel important.

The tone of the interactions at the first meeting might be much more important than the questions. The client finally has some quiet time with someone who is willing to pay close attention to them. They are with someone who is inclined to believe them, to ask follow-up questions, to keep the spotlight on them, and to be compassionate.

Model the behavior that is desired from the client, using descriptive words and talking about your own feelings. Tell the client that you will be there throughout the case. Let the client know if your office accepts collect calls, has video conferencing, and the possibility for discussions on evenings and weekends. Determine if the client has access to writing utensils and paper, and go over other aspects of procedures and tools necessary for effective communications.

The first interview is the beginning of what may be a long relationship. Start by asking for less threatening information first, such as date of birth and other identifiers, easing gradually into the more difficult areas. Topics that are either sensitive (e.g., medical or mental health), or need in-depth coverage (e.g., substance abuse problems and history), might be best covered at later interviews.

This is a description of one sentencing advocate's first contact:

I SLOW DOWN.

I shake their hand.

I ask them how they are doing, if they have been well, if the food agrees with them, if they have a cellmate they like.

I slow down a lot. I make a lot of eye contact. I respond to any questions they ask. Then I tell them I will be working on the sentencing part of the trial - with all the usual things that have been said already, about how we hope my work will be in vain, be for naught - that they will be found innocent, and not get sentenced. But that it shows their attorney is a good one, to have gotten someone like me to do this work. A bigger, stronger team etc.

Then I say that I am looking for three kinds of things, within the larger frame of their whole life story:

1. All the wonderful, good, kind, sweet, things the client may have done in their life - from childhood on - and I tell them I will be following up, tracking down the players in these stories, talking to their friends and family out there, coming back to the client to check facts, etc. I always give examples in the form of tiny little stories.

2. Hard Things: all the bad, tough, mean, sad, painful things that have happened to the client in their life - starting before they are born! (I give the example that someone's Mama may have been abusing substances while she was pregnant with that person. This lets them know that I know such stuff exists.) I tell them things that have been said here already about only using what will help, but that we can't know what will help until we know the stories - and that I will honor confidentiality among all his people, but that eventually to save his life, some parts may come out in court.

3. Diagnosable things like head injuries, etc. Here I talk about how lots of things run in families, and give examples, including alcoholism, etc.

Then I try to get a beginning list of important family members, with phone numbers, addresses if possible. Places to start - this always leads to the client telling me stories about these people. I ask if he/she can call anyone to let them know I am coming, and if so, when that call is likely to happen. (They often call on Sundays, if anyone will accept their charges.) Depending on the connection, level of trust, I either do release signing that day or the next - usually the next. (It is too business-like for that first day. The first day is almost sacred to me, like a slow dance, getting to see one another carefully, warily on their part, but with hope, and with honor, trust, truthfulness.) I usually read the release out loud, slowly, tracing along the words, explaining the reasons for the various clauses, so they know for sure what they are signing, and don't feel tricked. Unless, of course, the client is very proficient with such things, and can read it easily himself.

I tell the client that I will be seeing him/her a lot, I ask about the pattern of his/her days, when is a good time to visit, set a firm date for the next visit.

This all takes about three hours.

Another advocate takes a different approach:

At initial interviews, I begin by spending a half hour taking a detailed family/social history. I've tried the open-ended question approach, but find I'd rather do this after I've done my 30-40 minutes of history taking. If I begin with an open-ended question then I may have to interrupt later to find

such relevant data as 1) are parents still alive? 2) what sort of work history have you had? 3) when did you get divorced?

Stylistically, I see this as akin to beginning a painting by sketching in the lines in pencil before adding the color, beginning with the objective reality before adding the subjective.

Yet another:

When I begin my interview, I tell the client that my purpose is to give the judge an opportunity to get to know them as an individual, even though they will never share a conversation. I also tell them that I want the judge to look at them as not just another court file number, or the sum total of whatever crime for which they stand accused, but as a unique human being.

I then continue to explain that in order to accomplish that objective, I must be able to make the judge hear, see, touch, taste, feel and smell all of the key events that they are about to share with me. Thus, my questions, although prying and personal at first blush, are actually designed to tell the client's story and highlight any mitigating factors that may be present. The questions are not because I am snooping for the sake of curiosity or embarrassment.

Ending the First Interview

It will probably be necessary to obtain certain relevant documents, such as medical, psychiatric or educational records. The client will need to sign waivers. Explain what materials may be sought. Go over the waivers with the client and have clients sign them.

Let the client know what you will probably want to learn in the next meeting, especially if there is "homework" the client can do to help. This could include calling family members to let them know that it is safe to talk to you, or having them begin to write a time line of important events in their life.

My favorite question (usually at the end of an interview) is this (or some variation on this): What question(s) should I have asked you? or What did I forget to ask you? Sometimes very important stuff just pops out.

Good Things to Remember for Any Interview

Pay attention to the physical setting and amount of, or lack of, privacy available.

At each interview, tell the client what topics will be covered.

Remember: understanding the client's state of mind at *each* interview will make working together go more smoothly and productively.

Ask the client early in the interview what is on his or her mind.

Continually assess the client's mood and level of interest.

Find out what makes the client tick. Discover what is important to the client. Learn how the client feels about himself or herself.

When exploring an event, program, treatment, relationship, etc., with a client, ask them to tell you about what they liked or disliked about it, or what they wished would continue in the next program, event, relationship, treatment. Ask them what they wish they had revealed, or not revealed during the experience.

Sometimes I'll use role play to help the client remember more. Also, when appropriate, I'll ask the client to talk directly about our relationship as well as about the style of how we communicate. This oftentimes brings up their memories of the people in the client's life whom I might remind her or him about.

Don't be afraid to let your personality and humanity show. Clients will often be put more at ease if they are approached in a natural, compassionate, personable manner. Do practice your poker face, though.

I once had a client who disclosed pervasive incest in the home and was completely unaware that this wasn't the norm for every family across America. I think that the client could have suffered an emotional breakdown to suddenly learn from my reactions that this was not the case.

Time Lines

Constructing a time line often helps clients who are having difficulties with dates and sequences. Working on it with the client becomes a collaborative exercise. Time lines can be amazingly clarifying for the client as they fit the pieces in together with the interviewer.

Starting with recent events and working backwards can work out better than starting with childhood and moving forward. Clients are sometimes not good historians of their own lives. Remembering a more recent event can help them more easily recall the events that lead up to it.

Another technique would be to have them describe where they were, what was going on in their lives, at each birthday or at some favorite holiday. Having a specific marker may help with recall. Ask about such things as: Who was there? What did you eat? What presents did you

get? How did you feel? Who wasn't there that should have been? These questions are likely to generate other areas to explore. If there is not an event to remember, explore the reasons for not celebrating events and the feelings of the client knowing that other people *did* have such holidays.

Genograms (Family Trees)

Making a family tree often gives the client a very non-threatening opportunity to reflect on his or her family history without the interviewer having to ask anything directly.

A “participatory genogram” is good particularly with kids and teenagers. I ask them to help me draw a picture of their family. As we draw, we talk about the relationships among family members and I either note this on the diagram with appropriate lines, arrows, slashes and other symbols or else make a mental note. Genograms are not things most people are familiar with and they often find the idea of memorializing their family and the relationships therein on paper to be interesting and illuminating.

There are some useful computer programs for making genograms. An Internet search on the word “genogram” will reveal some commercial ones as well as many helpful ideas about constructing genograms.

Developmental History, History in General

Other areas of the assessment process are those associated with a comprehensive developmental history, i.e., the nature of the pregnancy, perinatal history, developmental milestones, family relationships, early attachments to other people, capacity for relationships, peer relationships, and social skills. The family assessment provides an opportunity to understand the early developmental and environmental context within which the client grew up. Information is obtained regarding the parents' personal and psychological history, their use of authority and discipline.

Here are some examples:

- How are/was affection, tenderness, competition, aggression, love, sexuality, and lust expressed in your family/household?
- What do you remember most about growing up?
- What was your best, and (separately) what was your worst memory of any of your life experiences?
- When you were a child and really scared, where did you go to be safe? What was it that made you really scared? What else did you do to be safe?

- What stories did you hear from your mom about her pregnancy with you?
- What was your earliest memory as a child? What is your earliest memory of your father/mother?
- Who were your friends when growing up? How many friends did you have? How many did you consider a “best friend?” What did you do together, where did you 'hang out'? What did your family think about your friends? What did your friend's family think about you? Are you still in touch?
- When you were a kid, what were your dreams and hopes?
- What was an average day like for you? Let's start first thing in the morning. You are about twelve years old or so. Tell me everything that happened. (Client says “I got up, went to school, came home, ate dinner and went to bed.” You ask for details: “what time did you usually get up?” “Which way did you go to school?”)
- What is the worst thing that has ever happened to you? The best?
- Tell me about your neighbors.
- What made your neighborhood safe/dangerous?
- What is your first memory of seeing the police?
- What were some of the reasons police picked up people in your neighborhood?
- What was the best thing about school? Worst?
- Where did you sit at lunch? What did you have for lunch?
- Tell me about times when you were teased by other kids.
- What are some of the reasons you missed school?
- Where have you lived? Begin with birth, note all the reasons for the moves.

I like to ask my client, who is obviously in a very stressful situation being detained awaiting trial, who he or she would most like to speak to for comfort right now (whether dead or alive). This will open up dialogue about relationships and, if the person is already dead, then you can talk about how that loss affected him or her. It also shows you what kind of person he or she looks up to. For example, it might have been his father who was in and out of

prison. What does that tell you?

To explore possible sexual abuse, it is helpful to ask "What were your first sexual experiences?" rather than directly, "Were you abused?" Sometimes, the responses are about clear sexual abuse that the client doesn't recognize as such - it's a much less threatening question when the word "abuse" is left out.

Client's Self Image

Ask clients to list ten things about themselves that they want the jury to know, things that will demonstrate who they are, their heart, rather than just looking like another defendant in an orange jumpsuit. Consider using their responses verbatim in the sentencing report.

Instead of asking a person to report directly on their behavior, ask her or him what others might say. For example, rather than asking "Do you have a bad temper," ask "Do other people think you have a bad temper?"

Goals, Future Plans

- What are your goals? What do you want to be?
- What do you need so you don't come back here? Are you getting that here? Are you getting that at home? In your community?

Have them describe what they would like their future to be, what they will be doing five, ten years from now. What needs to be done in the present to create that future? What help do they need to accomplish those things?

Health

- How are you feeling?
- How are you sleeping? What time do you go to sleep? Wake up? When you wake up during the night, what gets you back to sleep? What wakes you in the night? What do you do to help yourself sleep? Ask these questions at each visit, it's a good way to keep track of possible deterioration and mental health issues.
- Describe the last headache you had. Where did it hurt? Is it dull, sharp, pounding? How long to headaches last? What causes them? How old were you the first time you had a headache? How often do you have them? What medicine(s) have you taken, which works best?
- Do you use any home remedies rather than going to the doctor? Did your family or your mom or dad use home remedies? Who taught your mom/dad/etc., to make home remedies?

- Tell me about your last cold or flu. How did it make you feel? Where did you ache? What was your fever? How did you get better? How often do you get sick?
- Who in your family has or had asthma?
- How is your appetite? How long is the longest you have gone without eating? What was your favorite food as a child? What kind of food did you hate? What happened to you if you didn't eat food you hated?
- Tell me about a time when your mom/dad was not feeling well. What was wrong? How did they get better, if they did?
- Every family has a few kids or adults who need looking after by others. They might have trouble understanding things or being forgetful, for instance. Tell me about people in your family who were like that.

Ask about scars. This can bring up events, even traumas, that have been forgotten.

Always ask about head injuries, if a client has ever been hospitalized or lost consciousness for any reason.

Drugs and Alcohol

- Tell me about the first time you ever heard about alcohol. Drugs.
- Tell me about the first time you ever used alcohol. Drugs.
- How did you feel when you were high/using drugs?
- What do you think is the reason you use/used drugs?
- What makes people do drugs?
- What are hard drugs?
- What is an addict? Alcoholic?
- What did you do to keep from overdosing?
- Did you prefer to use alone or with other people?
- When you were not using drugs, what kept you from using?

Mental Health

- Tell me about different doctors you have seen.
- What medications have you taken?
- Do you think that you think normally? Are you like other people?

Mental Status Examination

A brief mental status exam can indicate problems in cognitive function. Symptoms which might cause the interviewer to suspect cognitive problems could include: an unsteady gait, slurred speech or unusual difficulty in finding words, drowsiness or varying degrees of alertness, inability to focus or a very short attention span, irrational answers, and so on. There are a number of mental status exams available on the Internet (just search “mental status exam”). Some are scored to assist in interpretation of the results. Even without using a numerical score, answers to exam questions that suggest impairment should lead to an evaluation by a professional.

Examples of mental status exam tasks:

- What is the date (month, date, day and year?)
- What time of day is it?
- Can you tell me where you are right now? Be specific.
- Who brought you to this appointment?
- Who is the president of the United States?
- Name five large cities.

Name three objects slowly and clearly, then ask the person to name them (e. g., chair, apple, penny).

Ask the person to begin with the number 100 and subtract seven, then subtract seven again and again. Stop after five answers.

Ask them again to recall the three items above (chair, apple, penny). Most normal adults can do this.

Present a drawing of a cross and a cube. Ask the person to copy the designs onto a blank,

unlined piece of paper.

Note the presence of incoherent or irrelevant speech.

Miscellaneous Good Questions

- What do you think I'd be surprised to know about you?
- What would you be doing at home, if you were home now?
- What are your favorite television shows?
- What do you do for fun?
- What are you best at, what are you *really* good at?
- When it becomes clear that there is a pattern of behavior that leads to predictable negative consequences, ask "How did you come to believe that . . . ?" It can shed light on the client's thought processes but the question itself is therapeutic in that it implies that beliefs shape choices.
- What would you tell the judge if he or she was sitting in the room with you right now?

FAMILY INTERVIEWS

First Meeting

At the first meeting, explain to the family what your purpose is, what your role in presenting their relative's case is. Give a little history of yourself and ask them if they have any questions about you. Let them know that they should always feel free to ask why a question is being asked. Assure them it is not to pry or be nosy. Let them know right up front that you are asking them to share personal information that they might not have shared with their best friend or family.

To answer the question, especially common in capital cases, "Why are we starting the sentencing investigation prior to a finding of guilt?", explain that it is imperative that the process begins as soon as the case is received. An individual's life is complex. The abundance of information that must be ready to be presented to the trial court represents this individual's life and we must be prepared to have a complete time line. Explain to the client and the family members, friends, work associates, etc., that even though the case has just started, we have to put together a history for the judge and/or the jury. Explain to them that this process is never a waste of time and that you must be as thorough as possible and project the "human" side of the client whether it is at trial or at sentencing.

I begin the first meeting by stating what I know so far, e.g., "We spoke briefly on the phone and you told me that . . ." Then I say: "That is all the information I have, so a good place for us to begin would be with you giving me more details."

I begin with background information, easing gradually into the more difficult questions. I usually add that I can be their link to the attorneys so the family will be more informed about the case. I always indicate that the victim's family will usually have an advocate, whereas they typically have no one, so I want to work with them.

STRUCTURED INTERVIEWS

Many of the sentencing advocates who contributed to this project strongly feel that structured interviews are not productive. A checklist to be reviewed before an interview is conducted may be useful as a reminder of what to cover. It may help after an interview to discover areas that were missed. Subjecting the client to a "fill in the blanks" interview, however, will rarely allow a relationship to build and will rarely bring out as much information as a more "conversational" interview would.

This is a checklist that contains some areas to be investigated:

- Race and National Origin
- Marital Status
- Education
- Employment
- Income
- Recreational activities
- Religion, level of involvement
- Family history [Genogram]
- Developmental history
- Childhood activities
- Childhood problems
- Legal history
- Sexual Orientation
- Sexual relationships
- Health history
- History of injuries, assaults, neurological problems
- Psychiatric counseling history
- Current mental status in jail (by report from the client, observation, and jail records)
- Substance use history
- Feelings about self

Understanding of alleged crime
Mental state during the time of the alleged crime
Demeanor during interview
Clinical impressions
Collateral information

CONCLUSION

If you are an experienced interviewer, you probably have your own style. The contributors and I hope that we have been able to give you a little more to work with. If you are new to the social interviewing world, you may learn a lot if you work with a more experienced practitioner while using the material presented here. We wish you all the best.

The following NASAMS members have contributed to this project:

Toni Bovee-Elliott, Cheryl D. Cornell, Dale Davis, Ingrid Christiansen, Lisa Christianson, Christine Fiechter, Maryanne Gackle, Tina Gale, Deborah Gardner Conta, Selena Garr, Stacey Gurian-Sherman, Cheri Hodson-Guevara, Sharlotte Holdman, Miles C. Jackson, Joel Kanter, Noreen Keenan, Denise King-Velazquez, Eric Kunz, Albie LaFave, Mary Larson, Ron Marlett, Julie Norman, Vera Ockenfels, Nancy Pagani, Carol C. Peters, Linda Sobotka, Jacky Watson-Jolly, Juliet Yackel, and Manette S. Zeitler.

Things to Look for in Interviews
 Provided by Zach Rowles at The Center for Death Penalty Litigation

Checklist of Things to Look For in Interviews and Records

<p style="text-align: center;"><u>Defendant is a Victim of Abuse/Traumatized/Institutionalized</u></p> <p>Accepted discipline in the home</p> <p>Child Maltreatment</p> <p><input type="checkbox"/> Physical</p> <p><input type="checkbox"/> Sexual</p> <p><input type="checkbox"/> Psychological</p> <p><input type="checkbox"/> Witness violence</p> <p><input type="checkbox"/> Parental violence</p> <p>Neglect</p> <p><input type="checkbox"/> Childhood malnutrition/anemia/poor hygiene</p> <p><input type="checkbox"/> No medical help for serious illness</p> <p><input type="checkbox"/> Neighbor dependence for food or clothing</p> <p><input type="checkbox"/> No child caretaker for long periods</p> <p><input type="checkbox"/> Early sexuality</p> <p><input type="checkbox"/> Permitted chronic truancy</p> <p><input type="checkbox"/> Failure to enroll child in school</p>	<p style="text-align: center;"><u>Defendant is Loved</u></p> <p>Client is in contact with family despite incarceration</p> <p>Influence on life of children</p> <p><input type="checkbox"/> Own children</p> <p><input type="checkbox"/> Children in extended family</p> <p><input type="checkbox"/> Pen Pal Programs</p> <p>Client has steady correspondence</p> <p>Client has many visitors</p> <p style="text-align: center;"><u>Defendant's Life Has Value</u></p> <p>Behavior While Incarcerated</p> <p><input type="checkbox"/> No disciplinary reports</p> <p><input type="checkbox"/> Positive work record</p> <p><input type="checkbox"/> Honors</p> <p><input type="checkbox"/> Program participation (chaplaincy, nurse, program leader)</p>
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<p><input type="checkbox"/> Inattention to special educational needs</p> <p><input type="checkbox"/> Expulsion of child from home, refusal of custody</p> <p><input type="checkbox"/> Abandonment</p> <p><input type="checkbox"/> Exposing child to extreme abuse of parent's partner</p> <p><input type="checkbox"/> Allowing child to use alcohol or drugs</p> <p>Tragedy</p> <p><input type="checkbox"/> Natural disaster</p> <p><input type="checkbox"/> Parent death</p> <p><input type="checkbox"/> Sibling death</p> <p><input type="checkbox"/> Child death</p> <p><input type="checkbox"/> Separation from parents</p> <p><input type="checkbox"/> Separation from siblings</p> <p><input type="checkbox"/> Significant other death</p> <p><input type="checkbox"/> Witnessing death of someone</p> <p>Institutionalization</p> <p><input type="checkbox"/> Orphanage</p> <p><input type="checkbox"/> Juvenile institution</p>	<p><input type="checkbox"/> No Escape Attempts</p> <p><input type="checkbox"/> Guard/counselor/warden support</p> <p><input type="checkbox"/> Helps other inmates</p> <p><input type="checkbox"/> Serves valuable function</p> <p><input type="checkbox"/> Heroic event</p> <p><input type="checkbox"/> Snitches</p> <p>Military Service & Decoration</p> <p>Employment</p> <p><input type="checkbox"/> Pay schedules</p> <p><input type="checkbox"/> Job changes</p> <p><input type="checkbox"/> Accidents & Injuries</p> <p><input type="checkbox"/> Workman's compensation/unemployment benefits</p> <p><input type="checkbox"/> Sick leave</p> <p><input type="checkbox"/> Progress/evaluation notes</p> <p><input type="checkbox"/> Names of supervisors and co-workers</p> <p><input type="checkbox"/> Referrals for counseling</p> <p><input type="checkbox"/> Description of employer's product or services</p>
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<p><input type="checkbox"/> Mental hospital</p> <p><input type="checkbox"/> Prison</p> <p style="text-align: center;"><u>Defendant is Mentally Ill/Cognitively Disabled/Disordered</u></p> <p>Prenatal Complications</p> <p><input type="checkbox"/> Mother exposed to disease during pregnancy</p> <p><input type="checkbox"/> Mother exposed to toxins during pregnancy</p> <p><input type="checkbox"/> Client's mother's consumption of alcohol during pregnancy</p> <p><input type="checkbox"/> Fetal trauma from maternal injury</p> <p>Birth Complications</p> <p><input type="checkbox"/> Long/difficult labor</p> <p><input type="checkbox"/> Rapid Delivery</p> <p><input type="checkbox"/> Emergency Caesarian</p> <p><input type="checkbox"/> Premature Birth</p> <p><input type="checkbox"/> Low Birth Weight</p> <p><input type="checkbox"/> Oxygen Deprivation</p> <p><input type="checkbox"/> Use of Drugs During Labor</p>	<p>Rehabilitation while incarcerated</p> <p><input type="checkbox"/> Educational Progress</p> <p><input type="checkbox"/> Vocational Progress</p> <p>Previous Incarceration</p> <p><input type="checkbox"/> Positive release</p> <p><input type="checkbox"/> No escape attempts</p> <p><input type="checkbox"/> Federal records</p> <p>Confession/Cooperation</p> <p><input type="checkbox"/> Willingly confessed</p> <p><input type="checkbox"/> Cooperated in prosecution of co-defendants</p> <p><input type="checkbox"/> Assisted police beyond the call of duty</p> <p><input type="checkbox"/> Timing of confession</p> <p style="text-align: center;"><u>Defendant is Religious/Was Raised Religious</u></p> <p>Client's Belief, Traditions/Tenets Unique to that Belief</p> <p>Childhood religious involvement</p> <p><input type="checkbox"/> Religious Family</p>
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<p><input type="checkbox"/> Use of Forceps During Labor</p> <p><input type="checkbox"/> Placental Abruptions</p> <p><input type="checkbox"/> Breech Presentation</p> <p><input type="checkbox"/> Low Apgar Scores</p> <p><input type="checkbox"/> Failure to Properly Resuscitate Baby with Low Apgar Scores</p> <p>Childhood Illness/Accident</p> <p><input type="checkbox"/> Incidents of asphyxia</p> <p><input type="checkbox"/> High fever (scarlet fever, roseola)</p> <p><input type="checkbox"/> Other diseases i.e. encephalitis, dyptheria, meningitis, influence, epilepsy</p> <p><input type="checkbox"/> Ingestion of toxic substances</p> <p><input type="checkbox"/> Bicycle/auto/motorcycle accidents</p> <p><input type="checkbox"/> Head trauma/loss of consciousness</p> <p><input type="checkbox"/> Obvious head scars or indentations</p> <p><input type="checkbox"/> Delay in development: walking, talking, sitting up straight</p> <p>School Performance</p> <p><input type="checkbox"/> Flunked grades</p> <p><input type="checkbox"/> Special education classes</p>	<p>Pre-offense religious involvement</p> <p><input type="checkbox"/> Was religion acceptable in community?</p> <p><input type="checkbox"/> Cult</p> <p><input type="checkbox"/> Active in congregation</p> <p><input type="checkbox"/> Baptized</p> <p><input type="checkbox"/> Confirmed</p> <p><input type="checkbox"/> Devout</p> <p>Post-offense religious involvement</p> <p><input type="checkbox"/> Involvement in prison services</p> <p style="text-align: center;"><u>Defendant is Remorseful</u></p> <p>Expressed by words</p> <p>Expressed by actions</p> <p>Denial in the face of overwhelming evidence</p> <p>Sincere overtures to victim's family</p> <p>Suicide attempts</p>
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<p><input type="checkbox"/> Disciplinary History</p> <p><input type="checkbox"/> Out of school suspension</p> <p><input type="checkbox"/> In-school suspension</p> <p><input type="checkbox"/> Psychologist/school counselor evaluations</p> <p><input type="checkbox"/> Poor attendance record</p> <p><input type="checkbox"/> Hyperactivity/impulsivity</p> <p><input type="checkbox"/> School records for client</p> <p><input type="checkbox"/> School records for client's parents</p> <p><input type="checkbox"/> School records for client's siblings.</p> <p><input type="checkbox"/> Special ed. records</p> <p>Self-Destructive Practices</p> <p><input type="checkbox"/> Suicidal episodes</p> <p><input type="checkbox"/> Running away for no apparent purpose</p> <p><input type="checkbox"/> Recklessness (accidents/injuries)</p> <p>Periods of depression</p> <p>Exposure to Drugs/Toxins</p> <p><input type="checkbox"/> Substance abuse</p>	<p style="text-align: center;"><u>Victim's Family</u></p> <p>Opposed to the death penalty</p> <p>Developed/sustained relations</p> <p>Defendant willing to provide restoration or restitution</p> <p style="text-align: center;"><u>Social & Cultural Forces Beyond the Client's Control</u></p> <p>Race/Sex of Defendant</p> <p><input type="checkbox"/> Black</p> <p><input type="checkbox"/> White (race motivated killing)</p> <p><input type="checkbox"/> Asian</p> <p><input type="checkbox"/> Hispanic</p> <p><input type="checkbox"/> Native American</p> <p><input type="checkbox"/> Female</p> <p><input type="checkbox"/> Homosexual</p> <ul style="list-style-type: none"> • Age <p><input type="checkbox"/> 18-20</p> <p><input type="checkbox"/> 55+</p>
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<p><input type="checkbox"/> Industrial worker (chemical exposure)</p> <p><input type="checkbox"/> Farmworker (pesticides, herbicides)</p> <p><input type="checkbox"/> Pollution near client's home (factories, superfund sites, toxic groundwater)</p> <p><input type="checkbox"/> Exposure to other toxins: lead, mercury, arsenic, carbon disulfide, manganese</p> <p>Physical Features (as indicators of FASD)</p> <p><input type="checkbox"/> Low birth weight</p> <p><input type="checkbox"/> Small head</p> <p><input type="checkbox"/> Wide area between eyes</p> <p><input type="checkbox"/> Short nose</p> <p><input type="checkbox"/> Epicanthal folds on eyes</p> <p><input type="checkbox"/> Malaligned teeth</p> <p>Medications, current and in the past</p> <p>Chronic Illnesses/Conditions</p> <p><input type="checkbox"/> Diabetes</p> <p><input type="checkbox"/> Asthma</p> <p><input type="checkbox"/> Hypoglycemia</p> <p><input type="checkbox"/> Childhood heart problems</p>	<p style="text-align: center;"><u>Defendant Was Not Himself at the Time of the Crime</u></p> <p>Recent trauma</p> <p>Recent change in medications</p> <p>Recent stressors</p> <p>Altered state</p> <p>Recent significant life change.</p> <p>Recent medical diagnoses</p> <p>Crime of passion</p> <p style="text-align: center;"><u>Defendant is Less Culpable Than Others</u></p> <p>Domination/Duress by Co-Defendant</p> <p><input type="checkbox"/> Co-defendant older</p> <p><input type="checkbox"/> Co-defendant larger</p> <p><input type="checkbox"/> Co-defendant has significant criminal history</p> <p><input type="checkbox"/> Co-defendant armed</p>
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<input type="checkbox"/> Advanced age (sixty or over) <input type="checkbox"/> History of surgery <input type="checkbox"/> History of headaches Sleep <input type="checkbox"/> Insomnia <input type="checkbox"/> Uncontrolled daytime sleep <input type="checkbox"/> Inappropriate sleep/wake cycle <input type="checkbox"/> Consistent nightmare <input type="checkbox"/> Sleep terror (wakes screaming, disoriented) <input type="checkbox"/> Sleepwalking <input type="checkbox"/> Needs little sleep (3-4 hours) Personality and Behavior <input type="checkbox"/> Grandiosity/delusions <input type="checkbox"/> Two or more distinct personalities <input type="checkbox"/> Obsession with death <input type="checkbox"/> Obsessively clean/organized <input type="checkbox"/> Compulsive behaviors (i.e. gambling, stealing, fires)	<input type="checkbox"/> Co-defendant was lover <input type="checkbox"/> Co-defendant was parent <input type="checkbox"/> Defendant dependent personality <input type="checkbox"/> Defendant with mental retardation Co-Defendant Culpability <input type="checkbox"/> Triggerperson <input type="checkbox"/> Planned crime <input type="checkbox"/> Committed HAC acts <input type="checkbox"/> Reaped gain Victim Responsibility <input type="checkbox"/> Participated in illegal activity <input type="checkbox"/> Was not vulnerable/possibly threatening <input type="checkbox"/> Victim history of violence <input type="checkbox"/> Previous assault by victim <input type="checkbox"/> Cultural factors <input type="checkbox"/> Prison setting <input type="checkbox"/> Drug culture
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<input type="checkbox"/> Exaggerated health concerns/hypochondria <input type="checkbox"/> Self-conscious about particular body part <input type="checkbox"/> Manic demeanor <input type="checkbox"/> Depressed demeanor <input type="checkbox"/> Inordinate guilt Interpersonal <input type="checkbox"/> Aggressive: constant <input type="checkbox"/> Aggressive: sporadic <input type="checkbox"/> Anxious/withdrawn <input type="checkbox"/> Detached/distant <input type="checkbox"/> Exaggerated need for approval <input type="checkbox"/> Fears abandonment <input type="checkbox"/> Shallow emotional attachment Mental Health Records <input type="checkbox"/> Emergency room visits <input type="checkbox"/> Hospital visits <input type="checkbox"/> Out-patient clinics	<input type="checkbox"/> Oppressor victim Intention <input type="checkbox"/> Did not bring a weapon to the crime <input type="checkbox"/> Did not flee scene <input type="checkbox"/> Did not endanger/threaten others <input type="checkbox"/> Possible accident <input type="checkbox"/> Weapon normally non-lethal <p style="text-align: center;"><u>No History of Crime/Violent Crime</u></p> Aging out Priors <input type="checkbox"/> No violent offenses <input type="checkbox"/> Low level offenses <input type="checkbox"/> Property crimes No prior arrests/convictions <input type="checkbox"/> History of stability/good works <input type="checkbox"/> History of steady employment
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<input type="checkbox"/> Testing protocols <input type="checkbox"/> Medication lists <p style="text-align: center;"><u>Family History of Illness/Disability/Disease</u></p> <p>Alcoholism</p> <input type="checkbox"/> Parents <input type="checkbox"/> Siblings <input type="checkbox"/> Aunts/Uncles <input type="checkbox"/> Grandparents <input type="checkbox"/> Cousins <p>Accident causing injury, disability, or death</p> <input type="checkbox"/> Parents <input type="checkbox"/> Siblings <input type="checkbox"/> Aunts/Uncles <input type="checkbox"/> Grandparents <input type="checkbox"/> Cousins <p>Illness</p>	<input type="checkbox"/> Traumatic event just before offense <input type="checkbox"/> Re-establishment of productive life while incarcerated <p style="text-align: center;"><u>Defendant's Familial Stability/Instability</u></p> <p>Poverty</p> <input type="checkbox"/> Urban resident <input type="checkbox"/> Raised in the "projects" <input type="checkbox"/> Homelessness <input type="checkbox"/> Prostitution <input type="checkbox"/> Rural background <input type="checkbox"/> Sharecropper/migrant worker <p>Cultural</p> <input type="checkbox"/> Immigrant <input type="checkbox"/> English as a second language <input type="checkbox"/> Rituals <input type="checkbox"/> Religion <p>Marriage and Divorce Records</p>
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<input type="checkbox"/> Parents <input type="checkbox"/> Siblings <input type="checkbox"/> Aunts/Uncles <input type="checkbox"/> Grandparents <input type="checkbox"/> Cousins <input type="checkbox"/> Chronic illness <input type="checkbox"/> Terminal illness <input type="checkbox"/> Mental illness <input type="checkbox"/> Genetic illness <input type="checkbox"/> Suicide <input type="checkbox"/> Heart problems <input type="checkbox"/> Surgeries <input type="checkbox"/> When illness/disease manifested <p>Cost of disability/Illness/Disease</p> <input type="checkbox"/> Insurance <input type="checkbox"/> Government assistance <input type="checkbox"/> Community assistance (churches, neighbors, family)	<input type="checkbox"/> Marriage application <input type="checkbox"/> Divorce hearings <input type="checkbox"/> Child custody reports <input type="checkbox"/> Child support payments <p>Civil action records</p> <input type="checkbox"/> Bankruptcy hearings <input type="checkbox"/> Law suits <input type="checkbox"/> Buying and selling property <p>Family members incarcerated</p> <input type="checkbox"/> Parents incarcerated <input type="checkbox"/> Siblings incarcerated <input type="checkbox"/> Other family members incarcerated <input type="checkbox"/> Intermittent parent <input type="checkbox"/> Multiple parents <input type="checkbox"/> Adoptive parents <input type="checkbox"/> Institutional (foster homes, orphanage) <input type="checkbox"/> Constant moving/instability
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<p>___ Ability to work</p> <p>___ Caretaker</p> <p>Drug addiction</p> <p>___ Parents</p> <p>___ Siblings</p> <p>___ Aunts/Uncles</p> <p>___ Grandparents</p> <p>___ Cousins</p> <p>___ Availability of drug</p> <p>___ Availability of counseling</p> <p>___ Incarceration</p> <p style="text-align: center;"><u>Lingering Doubt</u></p> <p>Innocence</p> <p>Case based on shaky circumstantial evidence</p> <p>Viable alibi witnesses</p> <p>Long jury deliberation</p>	<p>Housing</p> <p>___ Social worker notes</p> <p>___ Maintenance notes</p> <p>___ Eviction proceedings</p> <p>___ Termination of utilities</p> <p>___ Changes in apartments</p> <p>___ Citations for violations of housing rules</p> <p>Social service records</p> <p>___ Aid to Families with Dependent Children (AFDC)</p> <p>___ Social Security</p> <p>___ Food stamps</p> <p>___ Protective services</p> <p>___ Foster homes</p> <p>___ Guardian proceedings/guardian ad litem</p> <p style="text-align: center;"><u>Impropriety by the State in Investigating the Case</u></p> <p>Lack of evidence</p>
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	<p>Incompetence of state investigation</p> <p>Failure to follow proper procedures</p> <p>Officer and prosecutorial misconduct</p>
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WHO TO INTERVIEW AND COLLECT RECORDS FOR?

ABA Supplemental Guideline 10.11(c): Team members must conduct in-person, face-to-face, one-on-one interviews with the client, the client's family, and other witnesses who are familiar with the client's life, history, or family history or who would support a sentence less than death. Multiple interviews will be necessary to establish trust, elicit sensitive information and conduct a thorough and reliable life-history investigation. Team members must endeavor to establish the rapport with the client and witnesses that will be necessary to provide the client with a defense in accordance with constitutional guarantees relevant to a capital sentencing proceeding.

There are three loose categories of people to investigate:

I. Client's Family (in the broadest sense)

- A. Anyone to whom the client is biologically related - 3 generations forward and back.
- B. Anyone with whom the client has ever lived.
- C. Spouses and partners

For client's family (in the broadest sense) we need to do a scorched earth investigation, literally collecting every possible document for every person and interviewing them if they're alive. This is hard to wrap your mind around if you're new to capital work. But we literally mean you should track down everything from the elementary school grades to the minor medical records for a second cousin once removed.

II. Anyone With Whom the Client Has Crossed Paths

Whether it's a middle school friend, an elementary school teacher or the doctor that handled a minor surgical procedure, we want:

- an in-person interview
- a full courthouse check

To get you thinking of the possible witnesses that may exist, the ABA guidelines provides examples under 10.11:

<p>Friends Teachers Classmates Coworkers Employers Those who served in the military with client - Anyone familiar with client's: early and current development and functioning medical history environmental history mental health history educational history employment and training history military experience religious / racial / cultural experiences upon client or client's family</p>	<ul style="list-style-type: none"> - Social service & treatment providers to client and client's family including: doctors nurses Other medical staff social workers housing / welfare officials - Anyone familiar with client's prior juvenile / criminal justice / correctional experiences Former / current neighbors of client and client's family Community members <ul style="list-style-type: none"> - Others familiar with neighborhoods and can describe: types of housing economic status of community availability of employment prevalence of violence - Anyone who can testify about the adverse impact of client's execution on client's loved ones.
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III. Experts Involved in the Current Case

Whether the expert is working for the defense or prosecution, we want to look at the following for each expert:

- full courthouse check
- prior testimony
- employment history
- post-high school education information
- publications and research

Sample Interview Topics
Provided by Zach Rowles at The Center for Death Penalty Litigation

SAMPLE TOPICS/QUESTIONS/PEOPLE TO INTERVIEW
Social History Investigation

A. Topics to Cover:

family (including their mental, criminal, substance abuse histories)
geography/residences
clubs, activities, unions, hobbies
medical (include childhood injuries and illnesses, especially head injuries, high fevers, dizziness, medications) if the town(s) is(are) small enough, send releases to all hospitals and clinics listed in the phone book.
school
military
work
psychological/mental health
criminal
present offense
institutional
significant others/spouses
sexual history
religion
drug/alcohol
financial history
skills, talents

B. Specific Questions:

(by no means a complete list)

Questions for Client:

Family -
when, where born
aliases
list all family members, ages, occupations, circumstances of deaths if applicable, relationships with them, their marriages, divorces, etc.
medical, criminal, mental health, drug/alcohol history of family members
age left home, reason for leaving
memories of early childhood (first memory also), adolescence, teenage years, early adulthood
best memory
worst memory
most embarrassing memory
happiest time in life
worst time in life

deaths, losses, changes, disappointments
stressful situations, events
pressures growing up, now
where you have lived, what neighborhoods and houses were like, why moved
any pets
racial/religious/sex/class discrimination
most important, influential person(s) in your life (and why)
person you dislike the most (and why)
discipline in your home, how you discipline your children
were you physically, sexually, psychologically abused (give specifics)
can you help me create a family tree

Medical -
childhood illnesses, injuries
adolescence, teenage years, early adulthood, adulthood illnesses, injuries
ever unconscious
surgery
treatments (where, when)
list doctors, places

School -
names of schools
teachers
activities (sports, clubs)
grades
any special education
learning disabilities
did you get in fights
resources available
class sizes

Employment -
list all jobs
employers
position, salary
length of time
relationships with employers and co-workers
reason for leaving

Mental Health -
any testing
therapy
list doctors, places
ever contemplate, attempt suicide
ever have any contact with social services (what programs, when)

Criminal -

prior criminal record and present offense
prior criminal acts
reasons, circumstances, anyone else involved
how feel about crimes now
what would you do with a life in prison

Relationships -

list significant others
length of relationships
describe relationships (any violence, division of labor, faithfulness)
why ended
any children
relationship with children
when first started dating
first sexual experience
list friends
types of relationships had with them
list all others I should talk to

Religion -

preference (past, present)
church, synagogue, etc. attendance (past, present)
study of religion (past, present)
family's religious history
any unusual religious experiences
religion in jail/prison

Drug/Alcohol -

substances used
frequency
amount
dates
how substances affect you
any blackouts
DTs
hospitalizations

Financial -

growing up
after left home
now
family now

Adjustment to Incarceration -
religious studies
school
work
disciplinaries
visitors
hobbies, crafts
sports
see therapist, attend AA
relationships with other inmates, correctional officers

Questions for Mother/Father/Guardian/Siblings:

detail pregnancy (alcohol/drug use, nutrition, smoking, ever injured, abused
while pregnant, premature, complications, hospital or at home, C Section, born
head or feet first, breathing problems, what did doctors say after birth)
breast feed (why or why not), health during breast feeding
client as an infant, child, teenager, young adult, adult
ever violent, angry, aggressive
sad, lonely
outgoing, popular
ever see any changes in client's behavior, personality (circumstances
surrounding)
how got along with you, siblings, family members, friends
was client ever abused
detail client's school, medical, drug/alcohol, criminal histories
any discrimination in community
detail your life (family, work, school, medical, mental health, criminal, etc.)
describe your family life (parents, siblings, grandparents, etc.)
religion (past and present)
deaths and losses in your life
relationship with client now, contact
can you help me create a family tree
others to talk to (ministers, teachers, friends, etc.)

Questions for Friends:

brief biography of self
how first met client
how long have known client
kind of relationship you had/have
frequency of contact
last contact with client

what kinds of things did together
what was client like (temperament, behavior, generosity, etc.)
ever see any change in behavior, personality
what did you talk about
anecdotes
did client talk about family, other friends, significant others, etc. (what did s/he say)
client's drug/alcohol use
client's violence, fighting
was client teased, picked on
discrimination, how affected client
poverty/affluence
what do you know about client's criminal life
do you know client's family (what are they like)
were you surprised when you heard about charges against client
others I should talk to

Questions for Employers:

brief biography of self
how client came to work for you
dates of employment
bring skills or learn on job
job duties
promotions, demotions
warnings, discipline
punctual, reliable
miss work much
good worker (motivated, cooperative)
get along well with you and co-workers
salary
ever borrow money
talkative, quiet
what talk about
ever talk about personal life, family (what said)
ever hear about trouble outside of job
know anything about drug/alcohol use
ever act strange, aggressive, violent
ever see any changes in behavior, anything ever seem odd
ever spend time with him/her outside of work
why left job
any contact after s/he left, any now
race/class/gender/religion ever an issue
were you surprised when you heard about charges against him/her
others I should talk to

Questions for Teachers:

brief biography of you
when/what taught client
how long knew client/family
any learning problems, disabilities, special education
behavioral problems, fighting, ever picked on, teased
anything ever seem odd, any changes in behavior
behavior
grades
attendance
as compared to other children
any anecdotes
relationships with children, teachers
was client poor, malnourished, unwashed
ever see any bruises, cuts, broken bones
ever talk about family (what said) or personal life
school: resources, segregation, class sizes, discrimination
any contact after client left your class
were you surprised when you heard about charges against client
others I should talk to

C. Whom to interview:

client
all available family, including parents or guardians, siblings, aunts, uncles,
grandparents, cousins, etc.
client's children
friends
spouses, significant others, including all former
neighbors
landlords/ladies
teachers, principals
coaches
ministers, rabbis, etc.
role models (e.g. boyscout leader)
employers
co-workers
fellow inmates
anyone who had contact with him/her in mental health, drug/alcohol, medical,
correctional, foster home, etc. settings
community leaders, etc. - make sure they get to know the client and/or family if
do not already (these people make good witnesses)

Interviewing and Screening a Survivor of Coercive Control
From An Introductory Guide to Coercive Control for the DVSJA Attorney: Coercive Control is Domestic Violence by Alan Rosenthal and Christiana Wierschem pp. 33–39

Educating the judge during the course of the hearing about coercive control and its pernicious effects is key to convincing the judge that the abuse that victimized your client was a “significant contributing factor” to her criminal behavior.

Interviewing and Screening a Survivor of Coercive Control

Approach your DVSJA client as you would any survivor of trauma. Whether you are interviewing and screening for physical abuse, sexual abuse, psychological abuse or coercive control, keep in mind that they all are likely to have the same effect on your client – trauma. Assume that your client is still suffering from the effects of trauma. Thoughtful preparation, communication, and attention to a trauma-informed approach will help you provide your client with the representation needed to successfully have her story told and appreciated and have her sentence ameliorated.

A trauma-informed representation

The emergence of trauma theory has created a significant shift in the way we understand the role of domestic abuse and trauma’s effects on the behavior of survivors. Over the last decade this concept has been developed for use in many different programs, organizations, and systems by the U.S. Department of Health and Human Services (SAMHSA). The 4 R’s represent the four key assumptions in trauma-informed representation.¹⁷³ Using a trauma-informed approach you should:

- **Realize** the impact of trauma on your client.
- **Recognize** the signs and symptoms of trauma.
- **Respond** by integrating knowledge about trauma into all facets of representation, to your client, to your approach to the case, to your advocacy, and to the court.
- **Resist** retraumatization of your client in every interaction, every question you ask, and every decision you make.

The central goals of trauma-informed representation are to reduce retraumatization, recognize the role that trauma plays in the lawyer-client relationship, and to improve your legal advocacy by recognizing the effects of trauma.

Your first interview with your client is crucial. If she develops an initial impression that you are untrustworthy, judgmental, or do not understand her experiences, your client may shut down and refuse to provide you the information about her abuse that you need to represent her effectively. Developing a relationship based upon trust is critical. This trust will be built upon how you communicate, your ability to be transparent, and your recognition and empathy for your client’s traumatic experiences and the risk of retraumatization, during your interviews and at a hearing. If you are able to understand and identify the characteristics of abusers and their strategies of coercive control this will help build trust with your client.

Many survivors have had negative experiences with the legal system and may not understand the process. By explaining your role and the role of others involved in the DVSJA

¹⁷³ SAMHSA, SAMHSA’S CONCEPT OF TRAUMA AND GUIDANCE FOR A TRAUMA-INFORMED APPROACH 9 (2014), https://ncsacw.acf.hhs.gov/userfiles/files/SAMHSA_Trauma.pdf.

process, and what can happen during the course of representation, you can alleviate the stress and anxiety your client is feeling and build the trust that is necessary. When your client feels comfortable, she is more likely to share the intimate details of her abuse that are so important to the case.

Some helpful strategies and techniques to aid you in your trauma-informed approach include:

- Take the time to develop a rapport with your client before you have them discuss or recount traumatic experiences.
- Talk to your client about what helps them when they are triggered or reminded of traumatic experiences.
- Learn grounding techniques to help client reorient to the present when they are triggered.
- Explain to your client what to expect and how the process works.
- Explain how the DVSJA works and what will be required at a hearing.
- Talk your client through the process step by step.
- Be patient if your client is struggling to recount (and may be reliving) some of the worst moments of her life.
- Involve the client in decision-making and solutions.
- Involve peers and other survivors if possible.

An essential component of being trauma-informed is to understand these behaviors not as character flaws or symptoms of mental illness, but as strategies or behavioral adaptations developed to cope with the physical and emotional impact of past trauma.¹⁷⁴

Interviewing and screening

There are three types of interview techniques and it may be necessary, over time, to employ all three in order to get all the information that you need. The three basic techniques are:

- open-ended questions
- structured interview
- questionnaire

In most instances you will want to start interviewing with open-ended questions. Essentially you are giving your client the opportunity to tell her story in her own words, uninterrupted. Give her the opportunity to speak as expansively as she can. This will make the client feel comfortable and serve to build trust in you by telling you her story. Once you feel that your client is comfortable with her relationship with you, you can move to a structured technique.

The purpose of the structured interview is to focus the questions on concrete details of her circumstances and abuse. When the client is speaking you can focus your questions on

¹⁷⁴ SAMSHA, DRAFT FOR REVIEW AND COMMENT: ESSENTIAL COMPONENTS OF TRAUMA-INFORMED JUDICIAL PRACTICES: WHAT EVERY JUDGE NEEDS TO KNOW ABOUT TRAUMA 3 (2013), https://www.nasmhpd.org/sites/default/files/DRAFT_Essential_Components_of_Trauma_Informed_Judicial_Practice.pdf.

specific details. When your client's descriptions are vague or lack details, ask questions about specifics to help her remember concretely what was going on. This will help get to the details.

A questionnaire is as much a tool to help you as it is to help the client. The questionnaire will help remind you of details and questions that you want to ask about. Sometimes it is useful to go over the questionnaire together. The questionnaire helps you recall conduct and behavior that needs to be developed. Similar to a questionnaire, the power and control wheel can be used to help you review the different facets of domestic abuse with your client.

Telltale signs of Coercive Control

From the literature some telltale signs of coercive control are identified that may help you recognize coercive control in your case. Listed below are some of the tactics of coercive control, but it is not an exclusive list.

1. Isolation and restriction of freedom
2. Emotional abuse
3. Power imbalance – establish and maintain
4. Pattern of coercive and abusive behaviors
5. Threats and intimidation creating fear and anxiety
6. Engendering fear through physical violence, direct or indirect, or other intimidation
7. Monitoring and surveillance
8. Gaslighting
9. Control of finances
10. Control of decision-making
11. Degrading/ humiliating/ dehumanizing/ blackmail
12. Destruction of property
13. Control of sex life/sexual coercion/intimidation
14. Punishment and rewards used for manipulation
15. Micro-regulation – food – drinks – clothes – rules for everyday living – activities – friends
16. Non-constructive criticism
17. Constantly changing expectations for victim's behavior
18. Shifting blame to victim
19. Change in relationship – initially intimate partner loving, attentive, and caring but changes to demanding, entitled and abusive
20. Unreasonable demands followed by threats and pressure
21. Manipulating use of the children
22. Reinforcement of gender roles
23. Making jealous accusations
24. Demands to engage in criminal conduct
25. Tactics tailored to fit victim specific vulnerabilities
26. Jealousy and possessiveness
27. Display of weapons
28. Causing injury or threats to others

Abuse looks different for everyone. Not every abusive partner uses all these tactics or uses them in the same way. Abuse may happen slowly and get worse over time. If one partner

uses a pattern of behaviors to maintain power and control, that is abuse, even if it is not on this list.

Looking for patterns

Coercive control extends across a continuum. It is not just a few isolated incidents. While there may be a few incidents of physical violence or more “obvious” moments of abuse, those incidents do not reveal the extensive framework of coercive control. Does the perpetrator threaten to use physical violence again if his victim does not do as he pleases? Did the few, isolated, “major” incidents increase the fear a victim felt? Did her obedience become more regular? Is there a pattern of a “major” incident happening after a victim does not appease her abuser? Are the “major” incidents really isolated, or do they fit within a greater scheme of demands and compliance? Context matters. Looking to understand the context in which events occurred can help uncover coercive control in a relationship. Coercive control is a pattern of tactics employed to systematically deprive the victim of her independence. Not every abusive relationship is coercively controlling, but some are. Focusing on single incidents as opposed to looking for potential patterns will keep the reality of coercive control hidden. Seemingly unrelated details of your client’s experience may begin to emerge as part of a pattern of abuse, if you are aware that a pattern is what you are looking for and you are skillful in your interviewing.

Focusing on single incidents as opposed to looking for potential patterns will keep the reality of coercive control hidden.

Careful language

Not every victim believes she is a victim. Some survivors of coercive control do not recognize the extent to which they have been abused and controlled. Others simply may not prefer the term victim. Immediately referring to her experience as one of a victim/abuser may not be effective because the survivor may not see her experiences that way. As a survivor shares her experience and starts to come to terms with her own narrative, she may start to come to terms with the domestic abuse that occurred. When screening a client for DVSJA cases, insisting on labels to characterize the person or their experiences may have the opposite of the intended effect. The survivor may be adamant that she never was a victim and may refrain from sharing more details of her experience. Helping a client talk through her experiences and frame her narrative can help her come to terms with her own experiences in a way she has not previously done.

Cultural competency

Culture matters. It is impossible to fully understand the impact of coercive control on a survivor without understanding her intersecting identities; racial, ethnic, cultural, socioeconomic, and other influential factors. Broad screening questions designed to fit the full needs of *every*

client will do little for *any* client.¹⁷⁵ Of course, a “toolkit” of screening questions can be helpful, but any screening questions should be a guide, and not a script. Cultural competency is not about pinpointing differences in cultural expectations that create a cultural “other” full of shortcomings; it is about recognizing the cultural framework a client is immersed in to allow for opportunities to better engage survivors of domestic violence and coercive control.¹⁷⁶

In *Towards a Culturally Competent System of Care*, Cross et al. define cultural competency as “a set of congruent behaviors, attitudes, and policies that come together in a system, agency, or among professionals and enable that system, agency, or those professionals to work effectively in cross-cultural situations.”¹⁷⁷ The use of the word “culture” includes the “thoughts, communications, actions, customs, beliefs, values, and institutions of a racial, ethnic, religious, or social group.”¹⁷⁸ Cultural competency requires understanding the importance culture plays in all aspects of life, the role of cross-cultural influences, expanding one’s own cultural knowledge, and tailoring services as possible to meet a person’s unique needs.¹⁷⁹

Cultural competency is not a skill that can be learned and mastered, because cultures are diverse and ever-changing.¹⁸⁰ Cultural competency is an ongoing process and commitment to understanding the role culture plays in shaping a client’s perspective. The journey to be a more culturally competent lawyer starts with understanding one’s own culture and then developing a willingness to research, learn, and respect a client’s cultural perspective.¹⁸¹ Clients with different cultural backgrounds may have varying perspectives towards domestic violence, gender roles, and the legal system. It would be difficult, if not impossible, to give adequate support to a client without exploring her cultural background. Cultural blindness, or the belief that different racial and cultural backgrounds make no difference to a person, is especially harmful in a legal setting.¹⁸² For example, some expectations and policies that appear to support survivors may have a different impact amongst people of color, who face different challenges within the American legal system.¹⁸³ A culturally blind lawyer would not be able to connect this reality with a client’s experiences, and some of the client’s experiences would inevitably be left out of the narrative.

Cultural competency improves relationships with clients because each client will feel more included and better represented in the legal process. Although clients seeking relief under

¹⁷⁵ Bent-Goodley, *supra* note 134, at 98.

¹⁷⁶ *Id.* at 93-94.

¹⁷⁷ Terry L. Cross et al., *A Culturally Competent System of Care* (March 1989) (on file with CASSP Technical Assistance Center, Georgetown University Child Development Center). <https://spu.edu/-/media/academics/school-of-education/Cultural-Diversity/Towards-a-Culturally-Competent-System-of-Care-Abridged.ashx> (last accessed Nov. 11, 2022).

¹⁷⁸ *Id.*

¹⁷⁹ *Id.*

¹⁸⁰ SAMSHA, *A TREATMENT IMPROVEMENT PROTOCOL: IMPROVING CULTURAL COMPETENCE*, xvi (2014), <https://store.samhsa.gov/sites/default/files/d7/priv/sma14-4849.pdf>.

¹⁸¹ *Id.*

¹⁸² Cross et al., *supra* note 177.

¹⁸³ Bent-Goodley, *supra* note 134 at 98.

the DVSJA have necessarily interacted with the legal system prior to seeking a DVSJA hearing, a culturally competent mindset can improve a client's experiences with the legal system.

Developing and respecting narratives

Narratives are foundational to the legal system. Specifically for coercive control, the experiences of a survivor and the system of control they lived under are initially shaped by retelling of their own experiences. A narrative can help a survivor regain and maintain a sense of self by showing her that she is not at fault for the domestic violence inflicted against her.¹⁸⁴

The role of a lawyer in shaping a narrative is challenging; a survivor may not initially identify herself as a survivor of coercive control, and a lawyer can help her realize the true abuse she has experienced. However, a lawyer can also accidentally erase a survivor's story to mold it to a courtroom setting. A client is very dependent on her lawyer to effectively convey to a judge the context for coercive control. Without the help of a lawyer shaping a client's narrative to meet the needs of the court, a judge may view this narrative as not compelling and unworthy of his/her empathy. Yet, it is disempowering to a client if their narrative is reshaped in a way that is inconsistent with their choices and feelings.¹⁸⁵ There is a tricky balance to be struck; shaping a narrative in a way that includes all of the facts that created a coercively controlling scheme, but not shaping the narrative so as to minimize the true experience of the survivor.

Preparation with Your DV Expert

Although some DVSJA cases can be, and have been, successfully litigated without the use of a domestic violence expert, lack of judicial familiarity with coercive control increases the need for an expert in cases involving this type of domestic abuse.

The lack of familiarity and awareness of coercive control is identified by Cindy Kanusher, the Executive Director of the Pace Women's Justice Center: "Too often, a course of behavior in domestic violence which involves coercive control or psychological or emotional abuse is not taken seriously and is downplayed despite the fact that this type of abuse is exceedingly common in domestic violence cases, is one of the major forms of power and control, and, causes severe harm to victims."¹⁸⁶

Coercive control is a core principle of domestic violence and affects the decision-making and behavior of its victims. The effects of this type of domestic violence are psychologically damaging and can have a far longer negative impact on the victim than any broken bone resulting from physical violence.¹⁸⁷ As Dollinger and Feigenbaum have recognized, New York has made inroads into making coercive control a factor in the state's jurisprudence by the enactment of the 2019 DVSJA which permits survivors of coercive control to apply for ameliorated sentencing or resentencing if there is evidence of psychological abuse.¹⁸⁸ But this

¹⁸⁴ Goodmark, *supra* note 3, at 79.

¹⁸⁵ *Id.* at 121.

¹⁸⁶ Dollinger & Feigenbaum, *supra* note 57.

¹⁸⁷ *Id.*

¹⁸⁸ *Id.*

advance should not leave us to assume that the judiciary has been prepared to recognize and understand coercive control.

Although coercive control is well established as a core principle of domestic violence, recognized by the research and literature in the field of domestic violence, it has, for the most part, been absent from the educational foundation of domestic violence for many judges. The education of judges about coercive control falls to defense counsel and domestic violence experts during the course of the DVSJA hearing.

A narrow and antiquated view of domestic violence can lead an uninformed judge to limit DVSJA sentencing relief to those cases where physical abuse such as a black eye or a broken bone is demonstrated. Such a limited definition of domestic violence is obsolete and ignores the corrosive psychological abuse of coercive control in its many forms. Without the assistance of an expert, the judge might misconstrue abusive acts to be benign, myths to be reality, patterns to be unrecognized, and victims' decision-making and actions to be unreasonable.

Listed below are some of the ways that a domestic violence expert can help you and your client with a DVSJA case:

1. Educate you about coercive control. If we are educated about coercive control it will allow us to understand the truth about our client's life and enable us to help the judge know how to interpret the survivor's narrative correctly.
2. Educate the judge about coercive control by:
 - Defining and explaining coercive control.
 - Explaining that coercive control is domestic violence.
 - Helping the judge know how to interpret the survivor's narrative correctly.
 - Identifying the tactics of coercive control in the case.
 - Identifying the pattern of coercive control.
 - Identifying the tactics of coercive control.
 - Explaining the effects of coercive control on the survivor's decision-making and behavior.
 - Identifying telltale signs of coercive control.
 - Explaining counterintuitive behavior of the survivor.
 - Explaining how coercive control can result in trauma.
 - Explaining the cumulative and compounding effects of coercive control and trauma.
 - Explaining how trauma and coercive control can have long-term effects.
 - Explaining the social context in which domestic violence occurs which will provide an accurate understanding of apparently inexplicable and illogical behavior of both the abusive partner and the survivor.
 - Explaining the context of the relationship.
 - Helping the judge understand the effects of trauma.
 - Deconstructing stereotypes and dispelling myths and misunderstandings so that misconceptions don't cloud the understanding of the judge.

Outline of a Good Character Letter of Support
Provided by Raj Jayadev at Silicon Valley De-Bug

OUTLINE OF A GOOD CHARACTER LETTER OF SUPPORT

DATE IT August 5, 2015

ADDRESS IT "Honorable Judge" or "Dear District Attorney" or "To Whom It May Concern",

INTRODUCE YOURSELF *Introduce yourself and who you are. Establish yourself. Who's in your family? What do you do for a living? How long have you lived in the community? Do you own a business and how long? Introduce how you know the person facing charges and your relationship to them. Say how long you've known that person.*

My name is Cecilia Sanchez, and I am writing in support of my younger brother Luis who is currently facing charges in your court. Including Luis, there are three children in our family, and I am the eldest. I am also a mother to 4 children and have been married for 12 years to my husband Ramon. I am a schoolteacher at Happy Days Elementary School where I have been teaching first grade for 10 years. I am a lifelong San Jose resident, and we have lived in the same neighborhood since we were children.

DESCRIBE THE PERSON *Name 2-3 words that come to mind when you think about the person. Think about specific examples that help support that. Write a paragraph each on that.*

Luis is a person who always puts others first. Every month, he sets aside a portion of his salary so that he can pay our mom's electricity bill. Sometimes, even when he is short on money and has to choose between gas for his car or paying her utility bill, he'll walk to work so that his mom can keep the lights on at her home.

IF APPROPRIATE, RECOGNIZE THE INCIDENT. *Do not talk about the details of the case, but if it's appropriate, recognize the seriousness of the incident. This has to be done in conjunction with the defense attorney.*

I understand that the charges in this case are extremely serious. I know Luis has expressed extreme sorrow for the incident, and he has shared with me that he understands the impact this has had on everyone involved.

EXPRESS SUPPORT FOR THE PERSON. *This is where you can get detailed on the kind of support you can provide for the person.*

As his sister, I am more than happy to provide a roof over his head as Luis tries to get back on his feet. I will help drive him to appointments, make sure we keep a home that is alcohol and drug free, and ensure that he will be a productive member to our home, our society, and community. I will help him find a job, help him open a savings account, and also ensure that he meets all his conditions of probation so he can succeed.

THANK THEM. *Thank them for reading the letter and give basic contact information so they can reach you.*

Thank you so much for reading this letter. You can reach me at (xxx)-xxx-xxxx if you need more information.

Checklist of Mitigation Records

From A Defense Attorney's Guide: Representing Adolescents by Alan Rosenthal, p. 184

Below is a checklist of records that you may want to obtain to help you identify and document mitigation.

Checklist of Mitigation Records	
<input type="checkbox"/>	Medical Records <ul style="list-style-type: none">o Pre-natalo Birtho Pediatric Check-upso Emergency Roomo Illness/injury
<input type="checkbox"/>	School Records <ul style="list-style-type: none">o IEPo Report Cardso Attendance Recordso Psychosocial Evaluationso Disciplinary Records
<input type="checkbox"/>	Office of Children and Family Services (or local equivalent) <ul style="list-style-type: none">o Child Protective Services (investigations)o Foster Careo Preventative Serviceso Out-of-Home Placements (delinquency)
<input type="checkbox"/>	Mental Health <ul style="list-style-type: none">o Psychiatric Evaluation & Treatmento Individual/family Therapy
<input type="checkbox"/>	Public Benefits <ul style="list-style-type: none">o SSDI & SSIo SNAP
<input type="checkbox"/>	Sports/Recreation <ul style="list-style-type: none">o Certificateso Rosterso Lesson Historyo Pictures
<input type="checkbox"/>	Employment <ul style="list-style-type: none">o Pay Stubso Letter from Employer
<input type="checkbox"/>	Probation/Community-based Supervision <ul style="list-style-type: none">o Probation Records & Referralso Updates from Community-based Programming

RECORDS TO OBTAIN FOR THREE GENERATIONS

Adoption	Jail
AFDC	Job Corps
Autopsy	Juvenile: Court, Detention, Prison
Banking	Law Enforcement: FBI, DEA, INS, Border Patrol, Sheriff, Police, Highway Patrol
Birth Med Records of Mother, Child, Siblings	Mental Health (Reports & Raw Data)
Birth Certificate	Marriage Certificate
Court: Civil, Family, Criminal, Probate, Federal, Bankruptcy, State, County, Juvie	Medical (Clinic, Physician, Film, Hospital)
Death Certificate	Military, Selective Service
Divorce	Prior Counsel, Public Defender
Dental	Prison
Driver's License	Probation & Parole
Employ, Soc Sec, Wkman Comp, Unemp	Prosecution
Food Stamps	Real Estate, Rental
Foster Care	School, Voc Ed, Com Col, Col
Immigration	Unemployment
IRS	Utilities, Telephone

CHECKLIST OF POSSIBLE MITIGATION THEMES

Negative	Positive
<ul style="list-style-type: none"> <input type="checkbox"/> Client as Victim: <ul style="list-style-type: none"> • Child Abuse/Maltreatment • Childhood Neglect • Parental chaos (i.e., substance use, mental illness) • Witness to violence/abuse • Familial loss/death • Victim of Intimate Partner Violence • Victim of bullying/violence • Experiences of institutionalization • Experiences of bias, discrimination, oppression <input type="checkbox"/> Client Struggles with Substance Use Disorder: <ul style="list-style-type: none"> • Age of first use • History of use • Most recent pattern of use (amt./frequency/route of admin.) • Prior efforts to stop • Medical consequences of use <input type="checkbox"/> Client Contends with Mental or Cognitive Disorder <ul style="list-style-type: none"> • Prenatal/birth complications- maternal health • Neurodevelopmental impairment • Age of onset of symptoms • Specialized services received in school/community • Impact to relationships <input type="checkbox"/> Client has Limited Resources/Access <ul style="list-style-type: none"> • Poverty • Under resourced community (urban or rural) • Limited education • Intergenerational trauma • Adultified minor • Experiences of racism/structural barriers • Missed opportunities for intervention <input type="checkbox"/> Client Experienced Acute Disturbance <ul style="list-style-type: none"> • Recent trauma • Severe and active substance dependence • Change in medications • Extreme emotional state • Recent diagnosis/life stressor <input type="checkbox"/> Adverse Childhood Experiences 	<ul style="list-style-type: none"> <input type="checkbox"/> Client Has Good Roots: <ul style="list-style-type: none"> • Caregiver consistency • Adequate structure in home • Positive role models • Stability • Accepted by loved ones • Received affection and care <input type="checkbox"/> Client has Community: <ul style="list-style-type: none"> • Active familial support • Friends and loving relationships • A steady home • Client is a positive influence for others (i.e., children, family, mentees) • Client is involved with Church, community orgs, schools, volunteerism • Professional community (i.e., military, civil service) • Letters of support <input type="checkbox"/> Client has Solid Prospects for Rehabilitation <ul style="list-style-type: none"> • Engages with treatment program • Age, youth and plasticity of brain • Previous record of compliance • Strong support network <input type="checkbox"/> Client is Remorseful: <ul style="list-style-type: none"> • Evidence for remorse in words and actions • Prepared statements of remorse • Willingness to make amends • Symptoms of distress since incident (suicidality, sleeplessness, behavior change) <input type="checkbox"/> Client has Little/No Criminal History: <ul style="list-style-type: none"> • First time offender • No history of violent offense • Offenses related to substance dependence • Surprise by loved ones (i.e., action was "out of character") <input type="checkbox"/> Client Has Plans for the Future: <ul style="list-style-type: none"> • Dreams of education • Plans for job/training • Hobbies and pastimes • Desire for family • Demonstrated effort to improve future (i.e. education/programs while detained). <input type="checkbox"/> Good character

Mitigating Factors N.C.G.S. 15A-1340.16

§ 15A-1340.16. Aggravated and mitigated sentences.

(a) Generally, Burden of Proof. - The court shall consider evidence of aggravating or mitigating factors present in the offense that make an aggravated or mitigated sentence appropriate, but the decision to depart from the presumptive range is in the discretion of the court. The State bears the burden of proving beyond a reasonable doubt that an aggravating factor exists, and the offender bears the burden of proving by a preponderance of the evidence that a mitigating factor exists.

...

(b) When Aggravated or Mitigated Sentence Allowed. - If the jury, or with respect to an aggravating factor under G.S. 15A-1340.16(d)(12a) or (18a), the court, finds that aggravating factors exist or the court finds that mitigating factors exist, the court may depart from the presumptive range of sentences specified in G.S. 15A-1340.17(c)(2). If aggravating factors are present and the court determines they are sufficient to outweigh any mitigating factors that are present, it may impose a sentence that is permitted by the aggravated range described in G.S. 15A-1340.17(c)(4). If the court finds that mitigating factors are present and are sufficient to outweigh any aggravating factors that are present, it may impose a sentence that is permitted by the mitigated range described in G.S. 15A-1340.17(c)(3).

...

(e) Mitigating Factors. - The following are mitigating factors:

- (1) The defendant committed the offense under duress, coercion, threat, or compulsion that was insufficient to constitute a defense but significantly reduced the defendant's culpability.
- (2) The defendant was a passive participant or played a minor role in the commission of the offense.
- (3) The defendant was suffering from a mental or physical condition that was insufficient to constitute a defense but significantly reduced the defendant's culpability for the offense.
- (4) The defendant's age, immaturity, or limited mental capacity at the time of commission of the offense significantly reduced the defendant's culpability for the offense.
- (5) The defendant has made substantial or full restitution to the victim.
- (6) The victim was more than 16 years of age and was a voluntary participant in the defendant's conduct or consented to it.
- (7) The defendant aided in the apprehension of another felon or testified truthfully on behalf of the prosecution in another prosecution of a felony.
- (8) The defendant acted under strong provocation, or the relationship between the defendant and the victim was otherwise extenuating.
- (9) The defendant could not reasonably foresee that the defendant's conduct would cause or threaten serious bodily harm or fear, or the defendant exercised caution to avoid such consequences.
- (10) The defendant reasonably believed that the defendant's conduct was legal.

- (11) Prior to arrest or at an early stage of the criminal process, the defendant voluntarily acknowledged wrongdoing in connection with the offense to a law enforcement officer.
- (12) The defendant has been a person of good character or has had a good reputation in the community in which the defendant lives.
- (13) The defendant is a minor and has reliable supervision available.
- (14) The defendant has been honorably discharged from the Armed Forces of the United States.
- (15) The defendant has accepted responsibility for the defendant's criminal conduct.
- (16) The defendant has entered and is currently involved in or has successfully completed either (i) a drug treatment program, (ii) an alcohol treatment program, or (iii) a mental, behavioral, or medical health-related treatment program, subsequent to arrest and prior to trial.
- (17) The defendant supports the defendant's family.
- (18) The defendant has a support system in the community.
- (19) The defendant has a positive employment history or is gainfully employed.
- (20) The defendant has a good treatment prognosis, and a workable treatment plan is available.
- (21) Any other mitigating factor reasonably related to the purposes of sentences.

Sample Mitigation Report 1

STATE OF NEW YORK
ONONDAGA COUNTY COURT

THE PEOPLE OF THE STATE OF NEW YORK,

Plaintiff

vs.

JOHN DOE,

Defendant

SCI NO. 2017-0162-1
INDEX NO. 17-0177

MITIGATION REPORT

November 30, 2020.

Karen E. Balman, MSW
Mitigation Specialist
100 Madison Street, Tower 1, 12th Floor
Syracuse, New York 13202
Phone: (315) 930-4070
Fax: (315) 930-4075
Email: Karen@LawCDH.com

INTRODUCTION

I prepared this Mitigation Report on John Doe at the request of attorney J. David Hammond, Esq., and with approval from the Assigned Counsel Program.

I am aware that no mitigation report was prepared by or for defense counsel during the pendency of this criminal case between January 10, 2017, when Mr. Doe was arrested, and March 1, 2017, when Mr. Doe was sentenced. I have been asked by current counsel to investigate the background and circumstances of Mr. Doe, and prepare a Mitigation Report, as I would have from the outset of the case, so that it could have been used for the purpose of plea negotiations.

Part I of this Mitigation Report addresses the history and background of Mr. Doe. Part II of this Report addresses the service and support provided by Mr. Doe to the U.S. Army as a Local National Linguist (LNL) and Part III explains the life-threatening danger that awaits Mr. Doe if he is deported to Iraq. Finally, in Part IV of this Mitigation Report, I address the post-conviction developments that now touch the lives and circumstances of the people and families affected by the outcome of this case and the impending deportation of Mr. Doe that threatens to tear him away from his wife, young son, and in-laws in the United States.

SUMMARY OF MITIGATION

Mr. Doe served and supported the U.S. military mission in his native country of Iraq during Operation Iraqi Freedom from 2007 to 2010, over a period of almost four years. He served with honor and great heroism, risking his life and the lives of his family to serve the U. S. Army as an interpreter. Mr. Doe's work as an interpreter familiar with local people and customs saved American lives and provided intelligence, keeping the U.S. Army informed of dangerous situations. On at least one occasion Mr. Doe literally saved the life of a U.S. Army Captain and team member, returning fire with his AK-47 and dragging him to safety during an ambush in which they were both seriously wounded. Mr. Doe faced

constant threats from Arab countryman who considered him a “traitor” due to his work with the U.S. military. Mr. Doe paid a high price for his service to the U.S. as these same Arab countrymen retaliated and took the life of his younger brother in a car bombing. Because of the never-ending danger he faced from terrorists retaliating for his service to the U.S. military, Mr. Doe was granted refugee status and he emigrated to the U.S. from Iraq. If Mr. Doe is deported, he faces certain death from insurgent forces still active in Iraq who remain fixated on retaliation against Mr. Doe as well as the other translators who supported our U.S. troops.

There are other factors connected to this case that have an affect on the lives of those closest to Mr. Doe. Corinne Gavigan, the complainant who called the police alleging sexual abuse by her then boyfriend, John Doe, is now married to that very same Mr. Doe. Shortly after Mr. Doe’s arrest, Corinne expressed her strong wishes to the ADA and defense counsel that the case not be prosecuted, but to no avail. Mr. Doe eventually pleaded guilty. Corinne and Mr. Doe have been living together since October 2017. They became parents when she gave birth to a son on December 14, 2018 and are now happily and safely living together as a loving family. Mr. Doe has no prior convictions.

As a result of this conviction, Mr. Doe faces mandatory deportation. The impending deportation casts a dark shadow not only over Mr. Doe’s life, but also over the lives of those most dear to him, Corinne and their son, Goran. Corrine’s parents and long-time Syracuse residents, Jim, a school teacher, and Patti, an administrative assistant for Pope John XXIII Parish in Clay, have embraced Mr. Doe as a son. They, along with their daughter, and many community members support Mr. Doe’s chance to become a U.S. citizen.

SUMMARY OF THE CASE AND DEPORTATION PROCEEDINGS

On January 8, 2017 Corinne Gavigan notified the police that she had been sexually abused at her home on that day by her boyfriend, John Doe. On January 10, 2017, Mr. Doe turned himself in at C.I.D. where he was arrested and charged with attempted criminal sexual act in the first degree and forcible touching. He maintained his innocence while detained. However, after limited interaction with his attorney, Mr. Doe waived indictment and pleaded guilty to a one count superior court information charging him with sexual abuse in the first degree. Mr. Doe was sentenced on March 1, 2017, less than two months after his arrest. The Court sentenced Mr. Doe to shock probation including time served and 10 years of probation with the issuance of an 8-year order of protection on behalf of Corinne.

Within one year of his admission to the U.S., Mr. Doe applied to adjust his status from refugee, to Lawful Permanent Resident, as required by Immigration laws. It is a slow and deliberate process. On June 8, 2017, Mr. Doe was denied Lawful Permanent Resident status, specifically and solely because of the instant offense.

Pursuant to the Immigration and Nationality Act, a person is subject to arrest for purposes of deportation if and when convicted of certain crimes. The conviction, must be “final.” A conviction that is pending on direct appeal is not final for purposes of deportation. According to the Board of Immigration Appeals, finality occurs when a direct appeal is no longer pending.¹ In this case, defense counsel failed to file a timely notice of appeal of Mr. Doe’s conviction. The conviction therefore became “final” after the expiration of the 30-day period to file a Notice of Appeal. With no appeal pending, on August 1, 2017, Immigration and Customs Enforcement (ICE) agents arrested Mr. Doe at his regularly scheduled meeting with the Onondaga County Probation Department. ICE took Mr. Doe to the Buffalo Federal Detention Facility in Batavia, New York where he remained detained until his release on bond on October 18, 2017.

¹ See *Matter of J.M. Acosta*, 27 I&N Dec. 420 (BIA 2018).

By order of the Appellate Division, Fourth Department dated November 8, 2017, the *pro se* motion of Mr. Doe to extend the time to take an appeal was granted and Michael Allen was directed to file a notice of appeal, which he did on November 13, 2017.² As a result of the filing of the notice of appeal, on January 22, 2018 the deportation proceedings were terminated without prejudice to recommence upon completion of the appeal. The appeal is pending. The Hiscock Legal Aid Society has been assigned to the appeal. In the event the appeal is not successful, Mr. Doe faces immediate deportation, but for this motion.

HISTORIC AND CULTURAL BACKGROUND

For the past thirty years, or since the first Persian Gulf War, Operation Desert Storm, Iraq has been a violent and sectarian society. IEDs, mortars, bombs, kidnappings, executions, assassinations, beheadings and war have been a way of life. This is the world that John Doe grew up in. It is a world he tried to escape. To understand Iraq is to understand a country of long-term and ongoing sectarian violence dating back to the end of the Ottoman Empire.

Before the creation of the Iraqi state in 1932, Iraq's territory belonged to the Ottoman Empire, and was home to a wide variety of different ethnic and religious groups that lived under relative ethnic and religious tolerance. That all changed when the British attempted to unify the country under the Sunni Islam oriented King Faisal I of Iraq. The decision to implement Sunni leadership, despite a Sunni minority in Iraq, created the exclusion or persecution of other religions and ethnic groups that persisted for years. At various points in time, Kurds, Assyrians, Armenians, Turkmen, Christians, Jews, Yazidis and Shi'ites have been subject to persecution or marginalization of some sort. Tensions between ethnic and religious groups continued to grow under the rule of the Ba'ath Party and later the rule of Saddam Hussein. There was a long-standing rift between Kurds and Arabs that had peaks and valleys over the thirty-year period. Between 2006-2009, a period referred to by some as civil conflict and by others as

² The Erie County Bar Association Volunteer Law Project assisted Mr. Doe to file this *pro se* motion.

civil war, a series of bombings and reprisals between Sunnis and Shi'ites escalated. Over time there have been outbreaks of fighting and full-blown insurgency, including such combatants as Mujahedeen, Ba'ath Party Loyalists, the Mahdi Army, Al-Qaeda, ISIS, Kurdish Separatists, militia, and an array of insurgents.

PART I

BACKGROUND OF JOHN DOE

On April 18, 1982, Mr. Doe was born in Kirkuk, Iraq to Kurdish parents, Hameed Doe (deceased, 1947 – 1997) and Nashmiya Saeed (DOB 1/1/1955) (Exhibit A). Mr. Doe is the third of eight children born to his parents. He has an older sister, Susan Doe (DOB 1978); a sister Jahan Doe (DOB 1980) who lives in Kirkuk and works as an anesthesiologist; a brother Goran Doe (deceased, 1984 – 2008); a sister Frados Doe (DOB 1985) who lives in Erbil, Iraq and is married, stay-at-home mother of two children; a sister Hayat Doe (DOB 1987) who lives in Kirkuk and is a married stay-at-home mother of three children; a brother, Ahmed Doe (DOB 1989) who lives in Nashmiya's home in Kirkuk with his wife and two children; and a brother Majad Doe (DOB 1991) who lives in Nashmiya's home in Kirkuk and is employed as a baker.

John Doe was born into a family legacy of loyalty, honor, compassion and battling injustice. A genogram mapping out Mr. Doe's genealogical lineage is attached as Exhibit B. Mr. Doe's paternal grandfather, Najeed Doe, and Saeed Doe, maternal grandfather and great-uncle, left their family home at ages 6 and 9 after Arabs killed their mother and stole the family's herd of sheep. Saeed Doe worked as a police officer as part of a group who were unsuccessful in attempts to remove the President of Iraq and friend of the Ba'ath Party, Abdul Salam Arif, from power. For his involvement, Saeed was punished and spent 10 years in a desert political prison. Najeed Doe suffered repercussions from Saeed's participation in the attempted coup for years. John Doe remembers soldiers coming to the family home, pulling Najeed from the house as his grandchildren draped themselves on the soldiers' feet, begging the soldiers not to

take their grandfather away. The soldiers left Najeed in his home, but the event became a stern warning etched in the memories of family members.

The women in Mr. Doe's family were not without their own acts of bravery, honor and justice. In 1948, there were many Jewish families living in Kirkuk, a culturally diverse city inhabited by people of many different religions, however, after the end of World War II, Jewish people became the target of persecution. In 1948, and at the time of the establishment of the State of Israel, there were an estimated 150,000 Jews living in Iraq.³ By 1952 more than 120,000 were airlifted, bused or smuggled out of the country.⁴ By 2020, the Jewish population in Iraq had been reduced to only four individuals. Mr. Doe's paternal grandmother, Zaerb, exercised her own compassion and assisted Jewish families escaping along the travel routes from Kirkuk to Iran, and then to the new State of Israel.⁵

Activities of the next generation remained heavily influenced by political tensions. paternal uncle, Abraham Doe, spent five years as a political prisoner while captors burned him with irons and ripped off his fingernails due to his reputation as a troublemaker to the Ba'ath Party. In 1991, upon orders from Saddam Hussein, Abraham Doe was put to death by firing squad.

Mr. Doe's father, Hameed, lives legendary in Mr. Doe's memory. As a young man, Hameed was a high school educated, champion bodybuilder. In the early 1970's, Hameed took part in the Iraqi-Kurdish conflicts as a Sergeant Major in the Kurdish Army under the leadership of Mustafa Barzani. In 1975, the Iraqi Army captured Hameed, and he spent approximately three years in Abu Ghraib prison as a political prisoner. After his release, Hameed married Nashmiya Saeed, and the pair raised a family. Hameed shared his love of competitive boxing with his son John. From an early age, John Doe reports he was in the gym with his father and, from ages 14 through 17, he was boxing at a professional level.

³ Marozzi, Justin, *Baghdad: City of Peace, City of Blood* (2014).

⁴ Yehuda, Zvi, *The New Babylonian Diaspora: The Rise and Fall of the Jewish Community in Iraq* (2017).

Mr. Doe relays that Hameed's defense of his Kurdish heritage won his father notoriety, respect and a degree of authority among the Kurdish people. In 1980, the war between Iran and Iraq began. Kurdish forces asked Hameed to join them in their fight against Iraq and Saddam Hussein. Hameed declined to participate in the war and resultantly lost his job, his money and his land. For the next eight years, Hameed suffered with depression and anxiety.

In 1997, Hameed suffered a heart attack and died. Nashmiya was widowed with eight children ranging from 6 to 19 years in age. As tradition in the close-knit Kurdish community dictates, Mr. Doe and his brother Goran, assumed responsibility for the care of and provision for the family. The family continued to resist Saddam's mandates that Kurds renounce their heritage, adopt Arabic language and cultural practices and "become Arab." To his credit, Mr. Doe learned to speak five languages; Kurdish, Arabic, Turkmen, Farsi and English.

Mr. Doe served in the Kurdistan Peshmerga Army from 1999 until 2005. When he first enlisted, he quickly attained the rank of Sergeant in the regular Peshmerga Army. He distinguished himself through courage and leadership and within a year he was assigned to a special division in the Kurdish Peshmerga that provided the security for Jalal Talabani⁶.

⁵ Starting in 1948 there was a well established and documented underground that smuggled Iraqi Jews out of the country at a rate of 1,000 per month. Simon, Reeva, Spector, Laskier, Michael, Menachem, and Reguer, Sara, *The Jews of the Middle East and North Africa in Modern Times* (2003).

⁶ Jalal Talabani was a well-respected Iraqi Kurdish politician who was one of the founders and Secretary-General of one of the main Kurdish political parties, the Patriotic Union of Kurdistan (PUK) dating back to 1975. In 2003, after the overthrow of Saddam Hussein he served as the President of the Governing Council of Iraq. In 2006 he became President of Iraq and held that office until 2014. He was a strong advocate for human rights and democracy.

PART II

SERVICE TO THE U.S. MILITARY

In 2007 John Doe was hired to be a Local National Linguist (LNL), colloquially called an interpreter. Interpreters were hired by U.S. contractors to provide service for the U.S. military. Mr. Doe was initially hired by Titan Corporation, which later was acquired by L-3 Communications, and in his final years of service he was hired by Global Linguist Solutions (GLS). He served as an interpreter for the U.S. Army from 2007 through 2010.

Because of his bravery, leadership and belief in democracy, Mr. Doe was recruited and encouraged to become an interpreter for the U.S. military by an Iraqi friend, Aram Hasan, who was already serving as an interpreter. Fellow Local National Linguist Aram Hasan explains in a letter why he recruited Mr. Doe as follows:

...I have known John since 2004.... At the time, John was working for a special division in the Kurdish Peshmerga guarding the Iraqi president, Jalal Talibani. John was an active member of his community in Kirkuk, always advocating for justice and against the violence and terrorism that frequently disrupted our every day life. His loyalty and bravery was something I admired and I advised him to apply as an interpreter for the USA Army in Iraq which was what my job was. John applied himself to learn English and in 2007 he became in interpreter...

Aram Hasan
Exhibit C

The Critical and Dangerous Role of the LNL in the Gulf Conflicts

After the invasion of Iraq in March 2003, the U.S. Military discovered that rebuilding the country and confronting an insurgency required a weapon not in its arsenal: Thousands of interpreters.⁷ To fill the gap, the Pentagon turned to defense contractors such as Titan Corporation, L-3 Communication and Global Linguist Solutions (GLS). Titan alone eventually hired more than 8,000 interpreters, most of them

⁷ Miller, Christian, *Foreign Interpreters Hurt in Battle Find U.S. Insurance Benefits Wanting*, Los Angeles Times (Dec. 18, 2009).

Iraqis.⁸ These civilians served as the voice of America’s military, braving sniper fire and roadside bombs. American soldiers called them “terps,” often giving them nicknames for security. (John was known as Henry). But what the Iraqi interpreters had to offer went well beyond linguistic ability: each of them was, potentially, a cultural adviser, an intelligence officer, a policy analyst.⁹ Insurgents branded them collaborators, traitors and spies and targeted them for torture and assassination.¹⁰ In effect they were in harm’s way aiding in fighting the war exactly like the soldiers, but had to face additional danger as targets in their own communities.¹¹

Many in the U.S. Armed Forces consider interpreters to be life-saving partners on the ground. Retired Army Col. Joel Armstrong who served in Iraq and was a leading proponent of the 2007 U.S. troop “surge” that helped reduce violence in the country, said Iraqi interpreters were crucial to the strategy’s success. “Without them, you really can’t operate effectively as a force. It’s just impossible.”¹² In addition to their critical language services, they intercept communications and provide intel, go on missions, and in many cases put themselves directly in harm’s way to save American soldiers’ lives.¹³

Former Secretary of Defense James Mattis knows the value of these interpreters. In a September 2018 memo - published three months before Mattis’ resignation - the Iraq War veteran spoke highly of the United States’ Middle Eastern partners:

Over the last 17 years of war, numerous Iraqi nationals have risked their own lives and their families’ lives by aligning with our diplomats and warfighters providing essential

⁸ Id.

⁹ Packer, George, *Betrayed*, The New Yorker (March 19, 2007).

¹⁰ Id.

¹¹ When we look at the number of deaths of and injuries to civilian contractors as compared to regular military the danger faced by interpreters such as Mr. Doe become clear. By 2010 a study showed that contractors make up more than 25 percent of total deaths in Iraq and Afghanistan. Official figures show that 5,531 troops and 2,008 civilian contract workers have died in Iraq and Afghanistan between the beginning of hostilities in 2001 and June 2010. Miller, Christian T., *This Year, Contractor Deaths Exceed Military Ones in Iraq and Afghanistan*, ProPublica (September 23, 2010). In that same period of time there were 44,000 contractor injuries compared to about 40,000 U.S. troops. *Id.*

¹² Supra note 10.

¹³ Cruz, Melissa, *Iraqi Interpreters Who Risked Their Lives Working with U.S. Military Shut Out by Trump Administration*, Immigrant Impact (September 3, 2019).

*mission support. We owe them support for their commitment.*¹⁴

Mr. Doe's Service to the U.S. Military

In 2007, Mr. Doe reports he began working as an interpreter for the U.S. Military through Titan Corporation. The United States placed a high degree of trust and confidence in Mr. Doe. He was cleared to carry a weapon on the base and during military missions, and often carried an AK-47. Americans treated Mr. Doe like a member of the team and he was issued a uniform, protective vest and helmet. On occasion, U.S. military leadership consulted Mr. Doe to assess logistical routes and determine what was safe and what was dangerous.

Mr. Doe was assigned through Titan to a military police unit at Forward Operating Base (FOB) Warhorse in Baqubah, Iraq.¹⁵ Enemy missile and mortar attacks frequently targeted FOB Warhorse. It was one of several bases that Mr. Doe was assigned to over his four years of service. While working with the military police at Warhorse he was quickly identified as having unique skills which he had honed while in the Peshmerga Army. Observing these skills, a small Special Forces Team recruited Mr. Doe and he accepted a much more dangerous job operating out of a base near Warhorse, in Al Khalis. These eight-member U.S. Army Special Forces teams serving six-month tours would rotate in and out of Warhorse. The addition of an LNL brought the team to nine members. A U.S. Army Officer named Captain Mingora led Mr. Doe's team. It was Mr. Doe's understanding that Captain Mingora worked for the CIA. The

¹⁴ Id.

¹⁵ Baqubah is the capital of Iraq's Diyala Governate, located about 31 miles to the northeast of Baghdad on the Diyala River. In 2003 Baquba had an estimated population of 467,900 people. During the course of the US-led occupation of Iraq, Baquba emerged as the scene of some of the heaviest guerilla activity, along with the Sunni enclaves of Fallujah and Ramadi. It was the site of the heaviest fighting during the June 24, 2004 insurgent offensive. Al-Tawhid Wal-Jihad, led by Abu Musab al-Zarqawi, took responsibility for the attacks. In a setback for insurgents, Iraqi and U.S. officials confirmed on June 8, 2006 that Zarqawi had been killed in an airstrike and subsequent raid about 5 miles north of Baquba. On January 3, 2007 the previous Iraqi government in Baquba was reported to have fallen, leaving the city in the hands of insurgents fighting against the American led coalition in Operation Iraqi Freedom. In January 2007, it was reported that Sunni insurgents were able to kidnap the mayor and blow up his office, despite promises from American and Iraqi military that the situation in the city was "reassuring and under control" The city at its peak had over 460,000 residents, but a February 2007 report labeled the city a "ghost town" as residents either fled criminal and sectarian violence or remained in hiding at home.

primary purpose of this Special Forces team was to go out into the towns and countryside to gather information (and pay for it) regarding insurgents operating in the area. While on the base they all wore uniforms but when they went out on missions to gather intelligence team members dressed in Arab clothing and drove in sedans, rather than Humvees.

On September 21, 2007, Mr. Doe and Captain Mingora were two of nine members of a 2-Humvee convoy making the dangerous two-and-a-half-hour drive from FOB Warhorse to Logistics Support Area Anaconda. Mr. Doe was with Mingora in one of the Humvees travelling on Baghdad Road when an IED exploded underneath the vehicle, halting the convoy's progression. Captain Mingora got out of vehicle to check the damage. As soon as he was out of the Humvee, enemy machine gun fire erupted. Mr. Doe saw Mingora go down with a gunshot wound to the neck. With little time to react, Mr. Doe fired off his AK-47 to create some cover so that he could attempt to reach the fallen Captain Mingora. Mr. Doe quickly moved from the Humvee to Mingora lying nearly lifeless on the ground. Mr. Doe dragged him to relative safety behind and under the Humvee, saving his life. As Mr. Doe was dragging his fallen comrade, he realized that his shirt was soaked with blood and that he had been shot in the left shoulder. The firefight waged on for approximately ten minutes before the ambush team disappeared. Mr. Doe lost consciousness and awoke to find himself in a hospital bed at LSA Anaconda with Captain Mingora in the bed next to him. He would learn at the hospital that they had been rescued and evacuated by helicopter. After about three weeks, Mr. Doe had sufficiently recovered from the bullet wound and the surgery to return to duty with the special forces team. Captain Mingora was sent home to the United States.

Mr. Doe was not financially compensated for his injury. He bears the mark of the gunshot wound on his left shoulder and has never fully regained the strength he formerly had in his left arm and hand. For saving Captain Minogra's life, Mr. Doe reports he was presented with a unit coin.

Because of a series of threats on his life, Mr. Doe decided not to work with the new, incoming Special Forces team. He took a few months off before returning to his work as an interpreter. For a time, he was assigned to F.O.B. Marez and then in May 2008, he was assigned to FOB Diamondback in Mosul and worked with a Military Transition Team (MiTT) and Psychological Operations Team under Major O'Neil and the 2nd Infantry Division.

In the final year of his service he worked with then 2nd Lieutenant Jacob L. Swartout. Jacob Swartout, who recently retired from the U.S. Army as a Captain, describes their missions into the towns and countryside where Mr. Doe's role was critical.

He was able to read their body language well to know if the unit was in danger by seeing the reactions of local nationals in the presence of U.S. Army forces. This occurred a few times during missions that we were getting ready to be attacked, ambushed, or have an IED on the road waiting for us. He warned us which saved many lives on multiple occasions.

Jacob L. Swartout
CPT, U.S. Army Ret.
Exhibit D



US Army Captain Jacob Swartout & Local National Linguist, John Doe

12

Captain Swartout confirms the high regard and respect that Mr. Doe earned from his platoon.

John Doe received our trust and respect as one of the finest Iraqi national linguists that served with our platoon. All the 1st Platoon Soldiers knew him well and trusted that he would do his job to translate between the people of Iraq and U.S. Army forces. If the platoon came under attack, he would do the same and risk his life to save those Soldiers who might need to be removed from harm's way while being under severe small arms fire or a rocket/mortar attack. His impact on the unit saved lives during missions and there were countless times that he warned the platoon of something developing that would have been an ambush or direct attack by terrorists.

Jacob L. Swartout
CPT, U.S. Army Ret.
Exhibit D

Captain Swartout recounts responding to the site of a bomb detonation with Mr. Doe and discovering a small group of insurgents attempting to further damage the base. Two of the terrorists were captured. One had his hand and foot blown off. Captain Swartout describes the incident as follows:

During a quick reaction force (QRF) mission at night, John Doe helped get vital information out of one of the suspects who had planted an IED against the U.S. Army logistics convoy outside of FOB Diamondback that damaged the vehicle(s). This mission was early in the morning and the platoon received orders from the Squadron Operations Officer to hunt down and capture the suspected terrorists that were spotted by U.S. Army Aviation unit rotary aircraft flying in the vicinity of the area. Upon arriving and confirmation by the rotary aircraft, the platoon caught the suspects by surprise. John Doe was present with me during that QRF mission and we had caught one of the suspects in the darkness of nighttime. The other suspects were caught by the other vehicles in the platoon shortly afterwards. Once we had captured all the suspects, John Doe was quick to get answers about the attack on the logistics convoy and then he translated to the Iraqi Police the information they needed for the transfer of suspects into their custody. His translation skills proved extremely useful to concluding detailed information about the planned and executed IED attack.

Jacob L. Swartout
CPT, U.S. Army Ret.
Exhibit D

Mr. Doe acknowledges he may have been an additional target of this particular terrorist attack. He explains that, while helping interrogate one of the terrorists, one terrorist said to Mr. Doe that they had come to get him "because you [Mr. Doe] are a traitor."

After an accumulation of a series of threatening events, and out of fear for his safety, but even more so, for his family, and because the U.S. was beginning to withdraw from Iraq, by the end of 2010 Mr. Doe reluctantly ended his service as an interpreter for the U.S. military.

PART III

Danger Awaits in Iraq

*Don't you understand these people's lives are in danger as we speak. They have been marked for death. They are going to die. They are going to be killed.*¹⁶

Senator John McCain

The late Senator John McCain underscored the danger faced by Iraqi interpreters from insurgents, who labeled them traitors to be executed, when he passionately spoke from the floor of the U.S. Senate in favor of expanding the special visa program for Iraqi and Afghan interpreters to seek safety in the U.S.

Mr. Doe faces the certainty of mandatory removal and deportation, based solely on his 2017 conviction for sexual abuse in the first degree. Only the vacating of this conviction stands between Mr. Doe and his return to the country he fled out of fear of reprisal for his service to the U.S. military.

There is little doubt as to the *bona fides* of Mr. Doe's fear. The ever-present threat of retaliation by remnants of the Ba'ath Party, Al Qaeda, ISIS, militia, and other insurgents is exactly the reason that the U.S. set up a special visa program for Iraqi and Afghan interpreters. It is exactly the reason Mr. Doe was granted refugee status. The very careful vetting process for those who receive refugee status by the U.S. Consulate is predicated on a finding that there is a "well founded fear of persecution." (8 U.S.C. § 1101 (a)(42).

The danger to the lives of the men and women who served as interpreters in Iraq is generally well recognized although often ignored. The danger is captured in the PBS movie "The Interpreters" released

¹⁶ Caballeros, Andres & Khan, Sofian, "The Interpreters," PBS Documentary (2019).

in 2019, when a Taliban spokesperson is heard in the film declaring that interpreters “still cooperating with foreign forces are enemies of the nation...collaborators of the infidels, so legally and morally we have the right to finish them off.”¹⁷ They are targeted and hunted down.^{18 19} Some are aware there is a price on their head.²⁰

In the case of Mr. Doe, the threats and events that have affected his family during the time that he served as an interpreter for the U.S. Military make the danger to his life all the more imminent.

Mr. Doe and his family have been targeted by terrorists in retaliation for Mr. Doe’s service and allegiance to United States forces. Regular death threats escalated in frequency and intensity during and after his work with the Special Forces team. Mr. Doe was constantly alert to the fact that he was targeted by Iraqi Arab terrorists for working with American military forces. When away from the relative security of the military base, Mr. Doe says he felt even greater danger, and the danger extended to his family as well. When Mr. Doe went home to visit family in Kirkuk, they all became targets of insurgents, 24 hours a day, seven days a week.

Even everyday activities were not without elements of danger. In 2007, after Mr. Doe had been shot in the ambush and had returned to his interpreter duties with the special forces team, he was waiting at the bus station in Kirkuk to catch a cab to Baqubah, near FOB Warhorse. While waiting for a cab, a middle-aged man forcefully bumped into Mr. Doe. It seemed strong and purposeful, as if the man wanted to get Mr. Doe’s attention. The man slowly walked away but nodded for Mr. Doe to follow. Mr. Doe quickly caught up to him and asked, “Why did you do that?” In a low and solemn voice the man gave Mr. Doe a warning; “Go home. Do not take a taxi.

¹⁷ Id.

¹⁸ Chulov, Martin, *Iraqi MPs Call for U.S. Entry ban as Translators Condemn “Betrayal,”* The Guardian (January 30, 2017).

¹⁹ Smith, Alexander, *Iraqi Interpreters: Global Linguist Solutions Cost Us Thousands in Rebates,* NBC News (May 2, 2015).

²⁰ Dagher, Sam, *Iraqi Interpreters: Hope Rises to Go to U.S.,* Christian Science Monitor (June 18, 2008).

They know who you are, and the taxi will turn you over to be held as a hostage.” Mr. Doe heeded the warning and walked home. He called the base and let his commanding officer know that he would be late returning to the base. The warning compounded his never-ending fear for his life and the lives of his family members.

In 2008, terrorists again informed Mr. Doe that his family was in danger, saying “we will kill your



family this time.” Mr. Doe stepped back from his duties as a translator for a few months until his innate loyalty, sense of duty and honor to the cause proved too strong, and Mr. Doe returned to his unit. In turn, terrorists made good on their threats. The first incident occurred earlier in the year when Mr. Doe’s brother, Goran, a QRF Police Officer, was the target of an attack by insurgents spraying automatic gunfire. A bullet grazed Goran’s head, but he recovered and returned to work. Terrorists were successful with their second attempt on Goran’s life. On June 13, 2008, Goran was assassinated when a bomb blew up his police car with him in it. He was just

A picture of Goran standing proudly in his police uniform is displayed in his mother’s home, commemorating the first anniversary of his death.

twenty-four years old. The terrorists used a young fourteen-year-old to detonate the bomb. The young boy was caught,

and at trial he admitted the assassination was in retaliation for Mr. Doe’s work with the U.S. military. Mr. Doe’s friend and fellow Local National Linguist, Aram Hasan, describes Goran’s assassination and Mr. Doe’s character in the face of terroristic threats:

“...He [John] was stationed in some of the most dangerous places in Iraq such as Mosul and Dialah and would frequently receive threats from terrorist[s] to quit his job or his family would be hurt. I remember in 2008 he quit his job for his family’s safety for a few months and when he started working again in Mosul his brother was killed within a month or two. I was close friends with his brother, Goran, who was younger than him but equally as brave and patriotic as John. His brother was a police officer in Kirkuk and

died due to a car bomb. John continued to work for the US army but relocated his entire family to another city, Erbil, for a year.

Aram Hasan
Exhibit C

In 2009, on a visit to his family home in Kirkuk Mr. Doe's car was firebombed while parked in a garage right near his home. A note was left on the car. "Keep working with the Americans."

Captain Swartout recognizes the danger faced by Mr. Doe and his family. He was aware of both Goran's assassination and the firebombing of Mr. Doe's car. He explained the danger as follows:

...Being an Iraqi national linguist was dangerous for John Doe, as it was for anyone translating for the U.S. Army in Iraq. He faced the possibility of being retaliated by his own countrymen for serving as a translator with the U.S. Army during his time back then. He feared for his life daily and those of his immediate family due to his line of work with the U.S. Army. He told me during a mission that he had lost a brother in 2008 who was a policeman in the city of Kirkuk killed by terrorist[s] in retaliation because of the translator work John Doe did for the U.S. Army. During one of his vacation rotations, John Doe went home and then reported back a week later and showed a few pictures of his blue 1991 BMW car that was bombed at his house. That bombing of his car was enough to where he had to make a lifesaving choice and soon decided to leave his job as an Iraqi national linguist. There were also other threats of retaliation against his family as many Iraqis knew what work he did for the U.S. Army and it was only a matter of time before he could have lost more family members...

Jacob L. Swartout
CPT, U.S. Army Ret.
Exhibit D

Captain Swartout expressed unequivocal concern that Mr. Doe would face a threat to his life if he returned to Iraq "where terrorists are waiting for his return."

Based upon my experience in the U.S. Army over the course of 22 years, my deployment to Iraq, and my experience with the people, culture and politics of Iraq, I am of the opinion that John Doe would face a high probability of threat to his life if he were to return to Iraq because of his services to the U.S. Army and its mission in Iraq. There are still many terrorists, Al Qaeda and ISIS forces in Iraq who seek to retaliate against any Iraqi identified as having provided services to the U.S. military.

Jacob L. Swartout
CPT, U.S. Army Ret.
Exhibit D

Fellow Iraqi interpreter, Aram Hasan, now living in the U.S., expresses the same concern.

Because of the danger surrounding our lives and our families, many interpreters like myself chose to apply for a special visa to move to the United States. If he were to be sent back to Iraq he would surely face imminent danger and pose a risk to the safety of his family who still reside in his home country.

Aram Hasan
Exhibit C

Mr. Doe and his family continued to receive threats of violence and, two months after the death of his brother, Mr. Doe packed up his family and assisted them in their flight to his sister's home in Erbil. The family stayed in Erbil for a year in hopes that over time, terrorists would forget the Doe name.

In 2010, Mr. Doe began the process to apply for a United States Special Immigrant Visa (SIV). Captain Swartout lent his support for Mr. Doe's application and relayed the following:

...I have personally worked with John Hameed Doe in my unit since March 2010 and see him capable of continuing his services with the US Government if approved. He has demonstrated faithful service and continues to do so for the US Government and wants to live in the United States to begin a new life without the daily fear and threats of living in Iraq...

I do recommend for the LNL; Serwan Hameed Doe is able to apply for his SIV while his approval and acceptance is determined by the criteria set out by Global Linguist Solutions, Secretary of Homeland Security, and the US Embassy in Baghdad through eligible processing."

Jacob L. Swartout
CPT, U.S. Army Ret.
Exhibit E

Additional documents pertaining to Mr. Doe's service to United States forces in Iraq may be found attached as Exhibit E.

From 2010 until 2015, Mr. Doe made several trips to Baghdad in order to apply for a visa at the U.S. Consulate and undergo vetting. Each trip brought its own danger, for even going to the Consular Offices marked a person. Mr. Doe lived with the fear of terrorist retaliation and continued to receive threats from Al-Qaeda on his cell phone. While waiting for visa approval, Mr. Doe worked as a private

security guard for a British oil production company and guarded the company's oil fields between Mosul and Erbil where the rigs were actively pumping oil. Mr. Doe recalls an incident in 2014 when Isis fighters surrounded the oil fields he was guarding, in an attempt to take control. The lives of Mr. Doe and others in the oil field were saved when the Isis fighters were repelled by F-16s and helicopters.

On March 25, 2015, Mr. Doe was admitted to the United States as a refugee because of continued threats to his person and his honorable service to U.S. forces. Mr. Doe reports threats against his family remaining in Iraq have dwindled since he relocated to the United States; however, Mr. Doe's perceived "treason" against the insurgents has not been erased from the minds of terrorists and, from time to time, Mr. Doe receives threats via social media. Should he return to Iraq, his life, and the lives of his family would be in grave danger.

PART IV

PRESENT DAY CONTEXT AND CONSIDERATIONS



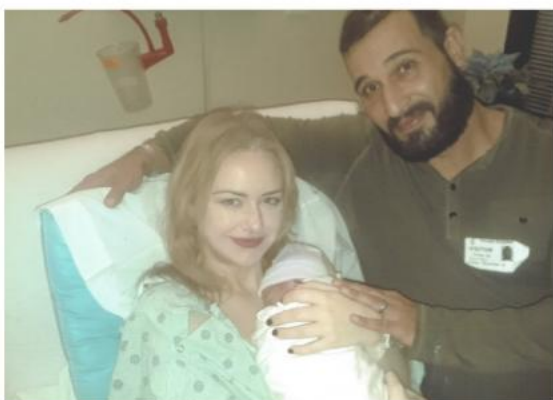
John and Corinne Doe

It is at the same time both ironic and tragic that the only person to witness the actions that led to Mr. Doe's conviction, not only did not want him to be prosecuted in the first place, but to this day does not want that conviction to stand. Corinne has married Mr. Doe and has given birth to their child. They are raising that child together, and she wants them to remain together as a loving and devoted family. That her own words would be used to send her husband back to Iraq to face certain death, splitting her family apart, has been, for Corinne Gavigan, torturous.

Since Mr. Doe's arrest on January 10, 2017, Corinne

Gavigan has done all she could do to stop what seemed like a runaway train. She explained to ADA Michael Whalen and defense counsel Michael Allen that she did not want the case prosecuted. The ADA explained to her that if she didn't cooperate, she could be arrested (presumably as a material witness) and, if she denied the sexual abuse occurred, she could be prosecuted for perjury. Out of fear, Corinne cooperated. She has written to the Immigration Court to gain Mr. Doe's release on bond. She has contacted Michael Whalen and Judge Bauer to vacate the order of protection. She has explained to Mr. Doe's Probation Officer that the sexual abuse incident did not occur.

By the time Mr. Doe was released from immigration detention on October 18, 2017, the pair had



Goran Doe born December 14, 2018

reconciled, and from that day forward have lived happily together. On April 22, 2018 they were married in a religious ceremony. On December 14, 2018 Corinne gave birth to their son, Goran, namesake of Mr. Doe's brother, the police officer who was assassinated by terrorists in retaliation for Mr. Doe's work with the U.S. military. In the affidavit attached as

Exhibit F she explains how she feels today:

Since we again started living together more than three years ago, John has been a devoted, loving and respectful husband to me, and father to our son. He has had a wonderful and stabilizing influence on my life. I am safe and secure. John is absolutely no risk to my safety or to anyone else. I certainly do not need an order of protection which I asked ADA Whelan to vacate more than three years ago. As a result of the conviction that resulted from my complaint to the police, John faces deportation. I fear that every day. It would destroy our family. I respectfully and humbly ask the District Attorney to agree to vacate the conviction of John Doe.

Corinne Gavigan
Exhibit F

People who have been in a position to observe Mr. Doe as both a husband and a father concur with Corinne's sentiments. Aram Hasan, an Iraqi interpreter who also sought protection in the U.S., has kept in touch with Mr. Doe and describes the family relationship as follows:

I have had the pleasure of meeting Corinne Gavigan and their son, Goran, many times and often visit their home when I can. John is a very loyal and trustworthy partner to Corinne and I have only seen happiness and love in their relationship. I am aware he was charged for improper conduct towards Corrine Gavigan but since I have known of their relationship I have never heard of any wrongdoing or inappropriate behavior from John towards Corinne. I talk to John almost every day on the phone, usually more than once, and he has nothing but words of love and respect, and pride for his family. His love for Corinne and Goran is something I would like to have one day if I would be lucky enough to have such a wonderful family.

Aram Hasan
Exhibit C

Other friends and co-workers who have come to know Mr. Doe and Corinne express similar written sentiments. For example, Kelly and her husband Donald Hurry observed the following:

As long as we have known Mr. Doe, he has been a great dad, and a very proud one, always talking about the baby. We ourselves have never seen him act disrespectful or mean to Corinne. They both always seem so happy when we see them together or separate.

Kelly A. Hurry and
Don W. Hurry, Sr.
Exhibit G

Samuel Brown, a former co-worker of Mr. Doe at the Sheraton Hotel has had Mr. Doe and Corrine at his home many times over the years and has seen the couple interact as follows:

I also know his wife Corrine, and have invited them to my house many times over the years. They are a lovely couple and I always have seen them happy together. I know John loves his family and works hard to provide for his wife and son. John treats his wife, Corinne, with respect and loves her more than anything.

Samuel Brown
Exhibit G

In a very poignant and touching letter, Corinne's parents, Jim and Patti Gavigan, present a very telling perspective regarding her safety as follows:

No one cares more deeply about the safety of our daughter Corinne and her son Goran than we do. We have gotten to know John well over the past three years and trust him explicitly to love, respect, and care for the safety of our daughter and grandson.

From our daily observation we are confirmed in our belief that not only does John present no danger to Corinne, he has been a stabilizing force in her life, and brings her a sense of well-being and stability. He has proven himself to be an exemplary and loving husband to Corinne and father to his son Goran. We are proud to call him our son-in-law.



Jim and Patti Gavigan enjoy time at the beach with John, Corinne and grandson, Goran

Patti & Jim Gavigan
Exhibit H

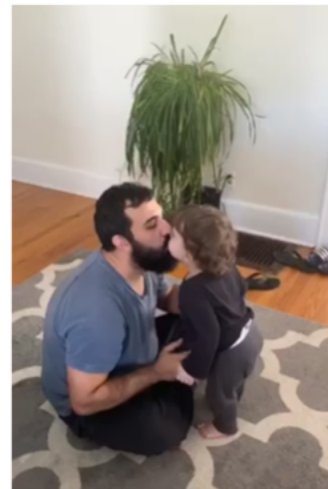
Many of the letters of support attached as exhibits express the sincere belief that Mr. Doe is a man of good character and that he would make a good U.S. citizen. They support the request to vacate the conviction of Mr. Doe and these statements may be found in their entirety attached as Exhibit G. For example, Lydia Rose Andrews, Mr. Doe's resettlement worker, has known Mr. Doe since his arrival in the United States in March 2015. She adds her perspective as follows:

Over the years, as I had closed his case 3 months after his arrival, he, and later Corrine have become my friends. I am aware Mr. Doe has been convicted of a crime against his partner, but believe his conviction should be vacated and that he should be allowed to pursue his citizenship. Since his conviction, his relationship with Corrine has grown and changed. Mr. Doe is a loving partner and father, often boasting about how intelligent and beautiful Corinne is, and excited for her growth, especially encouraging her to pursue her dream career. America is blessed to have him here, contributing to our workforce, society, and to his family. We are all better off having him here in America.

Lydia Rose Andrews
Exhibit G

During his more than three and a half years on probation, Mr. Doe has earned the respect and support of the Onondaga County Probation Department. In fact, Mr. Doe's conduct while under probation supervision was so exemplary that they recommended termination of his term of probation early, which was granted. As indicated in a memo written by Michael Whalen on December 21, 2017, Mr. Doe's probation officer had advised him that when he interviewed Corinne Gavigan back in October 2017, she indicated to him that "the allegations of the sexual assault did not happen." The notion that the allegations of sexual abuse may not be true was further reinforced when the Onondaga County Probation Department administered a polygraph exam on May 22, 2017. As indicated by the Probation Officer in a letter to the immigration court, it indicated that Mr. Doe "was telling the truth regarding his innocence to the criminal offense." A second polygraph administered in 2020 by a different polygraphist at the request of the Onondaga County Probation Department, determined that over the previous two years Mr. Doe had been compliant with the conditions of probation.

It would be tragic for this conviction, one that was obtained under a suspicious cloud, should cause such pain to a family and tragically to the complainant.



John and his son, Goran

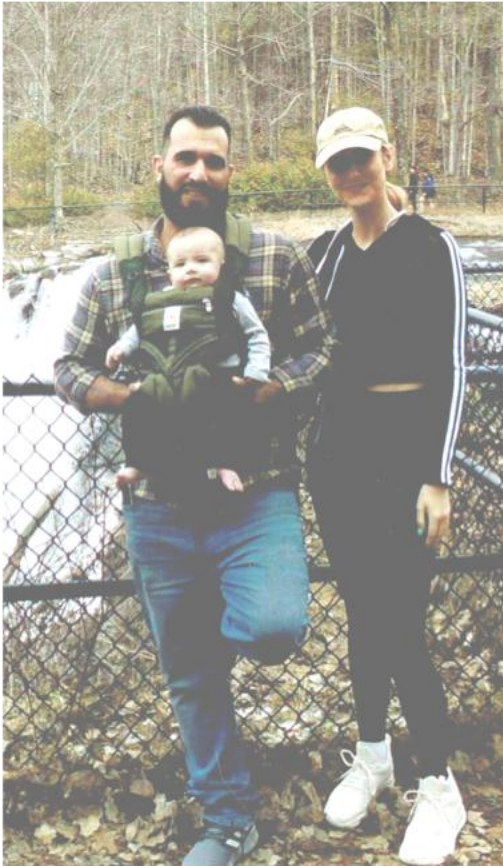
At this time our greatest fear is that John will be deported. It would be a tragedy to have him torn away from his wife and child, and it would devastate Corinne's family – our family – to be torn apart. We cannot imagine Corrine losing her husband, Goran losing his father, and us losing our son-in-law who has become like a son to us.

Patti & Jim Gavigan
Exhibit H

CONCLUSION

John Doe is a man without a country. Raised in the Kurdish culture, justice, ethics and morality trump the country boundaries of Iraq, Iran, Turkey and Syria. He is a man who dreamed of democracy and America. He desperately wants America to be his country. It is where he has found his wife, son, in-laws and friends. He hopes it is where he will find justice. He served the U.S. military honorably and looks forward to a day when he can claim his identity as one of its citizens.

Mr. Doe heroically served the U.S. mission in Iraq in his role as a Local National Linguist but gave



much more than the position required of him. He risked his life, suffered battle injury, and lost a to support the U.S. military and mission. He gave more than any person should be asked to give for the values he believes in. He gave more for this country than many Americans. And yet he faces death by those very same terrorists and tyrants if he is returned to Iraq. It is no longer his country.

“Our Nation has a long tradition of according leniency to veterans in recognition of their service.” *Porter v. McCollum*, 558 U.S. 30, 43 (2009). This tradition undoubtedly extends to people who work side by side with our soldiers, sharing the same dreams of freedom and democracy; risking life and limb.

John, Corinne and Goran Doe enjoy a local Central New York waterfall

Marcie Hascall Clark is an advocate for the men and women, who, as interpreters, risked it all for the U.S. mission in Iraq and Afghanistan. She founded a group called American Contractors in Iraq and Afghanistan. She points out that contractor deaths and injuries reflect their importance in fighting the wars. She makes this heart-felt point: "I don't think most contractors expect to be treated as nobly as our soldiers, but they don't expect to be forgotten either. I think there should definitely be some recognition of what they do."²¹

This motion is our opportunity to repay the debt of gratitude to John Doe and to show him the beauty of American justice.

Respectfully submitted,

Karen E. Balman, MSW
Mitigation Specialist
100 Madison Street, Tower 1, 12th Floor
Syracuse, New York 13202
Phone: (315) 930-4070
Fax: 315) 930-4075
Email: Karen@LawCDH.com

²¹ Miller, Christian T., *This Year, Contractor Deaths Exceed Military Ones in Iraq and Afghanistan*, ProPublica (September 23, 2010).

Sample Mitigation Report 2



October 25, 2017

Mr. [REDACTED] Esq.

[REDACTED] New York [REDACTED]

Dear Mr. Smith

At your request and authorization, the Center for Community Alternatives (CCA) has prepared the following pre-sentence memorandum on behalf of xxxl. It is hoped that this information will assist the Court determining the most appropriate sentence in this case that would best support Mr. xx. l in resuming a productive and law-abiding life following his release from incarceration. This report is submitted pursuant to §390.40(1) of the Criminal Procedure Law.

Introduction

This report details Xxx's personal history, the challenges he has faced, and, most crucially, his potential to overcome them. This report is not intended to excuse or justify the defendant's behavior but rather to assist the Court in imposing a just sentence that holds Xxx accountable, yet will allow him to resume his life with his wife and children in a productive way. In preparing this report, we considered the seriousness of the offense and the character of the defendant as relevant to the purposes of sentencing under New York State law that, as of 2006, include "productive reentry and reintegration into society" (New York State Penal Law §1.05(6) as amended in Chapter 98 of the Laws of 2006).

It is our understanding that Xxx Xxx has pled guilty Assault 1st and Criminal Possession of a Weapon 2nd. CCA does not wish to understate the seriousness of the offense, and we acknowledge the very serious injuries sustained by the victim as a result of Xxx's actions. We do emphasize that, according to DCJS records, Xxx has no prior convictions and despite a very challenging upbringing has become a young man focused on supporting his wife and children. The offense was in no way premeditated, and was committed spontaneously in the context of an intoxicated altercation while Xxx's decision-making capabilities were impaired. As will become clear throughout this report, the offense was out of character, and Xxx feels considerable and sincere remorse for his behavior and the harm he has inflicted on the victim. He also feels that he has let his family down by placing himself in a situation where he will not be there to raise his children. CCA urges the Court to show mercy in this case and impose a

David C. Condliffe, Esq.
EXECUTIVE DIRECTOR
Josefina Bastidas, Esq.
DEPUTY DIRECTOR
Kelly Gonzalez, Esq.
DEPUTY DIRECTOR
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Carole Eady
Paula Freedman
Betsy Gotbaum
Michelle A. Henry
Liz Jarit, Esq.
Vince Love
Mitali Nagrecha, Esq.
Richard Raysman, Esq.
Sheila Rule

□ 115 East Jefferson Street, Suite 300, Syracuse, NY 13202 T. 315.422.5638 F. 315.471.4924
□ 25 Chapel Street, 7th Floor, Brooklyn, NY 11201 T. 718.858.9658 F. 718.858.9670
□ 228 South Plymouth Avenue, Rochester, NY 14608 T. 585.328.8230 F. 585.328.8232
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minimum sentence of incarceration taking into account all of New York State's sentencing goals.

Xxxx's Childhood and Family Upbringing

Xxxx Xxxx was born on January █ 1995, in Ithaca, New York, to xxxx xxxxx and xxxxx Xxxx. Ms. Xxxx and Mr. Xxxx met in a group home as teenagers, and separated a couple of years after Xxxx was born. Mr. Xxxx lives in Utica and Ms. Xxxx currently resides in Yyyy, NY with Xxxx's two half-brothers, Xxxx Xxxx age 16 and Xxxx Xxxx, age ten.

Xxxx Xxxx's circumstances enveloped Xxxx in a difficult life he did not choose for himself. Xxxx was only 16 years old when she gave birth to Xxxx; Xxxx himself says he and his mother "grew up together." Xxxx and Xxxx initially lived with Xxxx's mother, xxxx x. During this time, Xxxx's father, xxx, was incarcerated for approximately 18 months at a shock facility and Xxxx's mother drove Xxxx and Xxxx to visit Xxxx when she could. It should be noted that Mr. Xxxx has not had any criminal justice system involvement since his release from prison, at around the same age Xxxx is now. Xxxx and Xxxx reunited after his release, but in Xxxx's words, they then "drifted apart."

Xxxx's upbringing reflects the considerable instability that often accompanies extreme poverty. Xxxx Xxxx supported herself and her children through a combination of child support provided by Xxxx Xxxx, public benefits and a variety of low wage jobs. The family lived in Section 8 public housing. His mother was Xxxx's primary custodial parent, but he frequently lived with his grandmother and as a very young child he lived with his father. This living instability was not limited to movement between family members, but he also moved from one physical location to another. In 2003, he moved with his mother to the town of Vancouver in Wayne County, New York. In 2005, he returned to Utica to live with his father but in 2006, returned to his mother's home which by then was located in Yyyy, NY. He remained in Yyyy from 2006 to 2009 when he relocated to Ithaca and lived with his grandmother until 2012. His contact with his father Xxxx was sporadic over the years, but the two have a positive relationship now – for example, Mr. Xxxx has frequently attended court to support his son throughout these proceedings. As is discussed below, interruptions to Xxxx's education accompanied his residential instability.

Following his parents' separation, Xxxx's mother's household was beset by violence and abuse, driven in large part by the alcohol abuse of her partners. Xxxx's mother had at least two intimate, long term relationships with abusive men, and Xxxx witnessed the abuse of his mother at the hands of both of those men. As he grew older, he tried to intervene to protect his mother and was himself beaten.

Xxxx's relationship with the father of Xxxx's half-brother, Xxxx, took its toll not only on Xxxx, but Xxxx as well. Mr. Xxxx lived with the family for seven years, and Xxxx describes him as a "monster," inflicting verbal and physical abuse. She lived in fear and was never sure what would set him off. She attributed her remaining in this abusive relationship to her youth and naiveté, believing that he would change. At one stage, she recounts taking the children to a battered women's shelter, but her boyfriend came and collected them all. Mr. Xxxx was eventually incarcerated (for unrelated crimes), and Xxxx finally left him.

From 2005 through 2011, Xxxx was involved with Mr. xx Xxxx, the father of Xxxx's youngest half-brother, Xxxx. Mr. Xxxx was also abusive, directing most of his violence towards Xxxx. Xxxx was not immune from

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beatings, however: he recalled one incident when he was about 11 years old when Mr. Xxx punched him in the face because Xxx was watching television and Mr. Xxx wanted the remote control. Xxx sustained a black eye. His little brother Xxx called the police and Mr. Xxx took off. When the police arrived, Xxx was crying but told the police it was his fault and that they should arrest him. He said that despite the violence, Lonnie was the only father figure in his life, and he did not want him taken away. Later, Xxx confirmed that she took out an order of protection, but it was breached, and she had to change all the locks on the family's house.

Xxx's response to the abuse that was inflicted on his mother was often to hide in another room. He tried to tune out the sounds of violence – the throwing of furniture and other household items and the physical fighting. On occasion Xxx tried to intervene and protect his mother and would pull Mr. Xxx off and even fight with him in an effort to get him to stop beating his mother. Sadly, this was not the last abusive man that his mother took up with: according to xxx Xxx, Xxx's wife, who lived in Yyy with Xxx and Xxx in 2013, her boyfriend at that time was also belligerent and violent towards Xxx, requiring Xxx to intervene to protect her.

As the oldest child, Xxx took on the role as the protector of his mother, a role that sometimes resulted in his physical abuse as well. The police were called to the home on occasion, often by one of the children. Xxx typically gave in and allowed her abusive boyfriends back. Xxx recollection clearly indicates he was disturbed by many aspects of the abuse in his family life. He was puzzled and affected by his mother's reaction. According to Xxx, she would joke about the abuse, but he believes she was actually "bottling up" the pain that would eventually come out in emotional outbursts. At the same time, Xxx's middle brother, Xxx, was an angry and disturbed child who Xxx states has disabilities, and for whom Xxx was sometimes responsible. In fact, Xxx stated that, "Xxx had to be like the father because no one else was there." To this day, Xxx feels guilty about not being able to do more to stop the abuse. Self-blaming by children who witness domestic violence¹ has been well documented in the literature; they also have significant problems with trust and may become hypervigilant, expecting danger even within normally safe environments.² In addition, child witnesses have many other psycho-social problems including characteristics present in Xxx such as depression, reduced social competence, learning disabilities, and lower levels of educational achievement.³

Domestic violence also contributed to Xxx's unstable life as he moved back and forth from Yyy to Ithaca to escape the danger in his mother's home. Xxx said she was aware that home life was affecting Xxx; she thought him to be depressed and anxious, noting he often stayed home with the curtains drawn. She also recognized that Xxx had issues regarding his on and off again relationship with his biological father, which she states Xxx always wanted more from. Xxx described her son as a "homebody", i.e., quiet, a

¹ This category includes situations where the child themselves was not directly victimized.

² Wolfe, D. A., Crooks, C. V., Lee, V., McIntyre-Smith, A., & Jaffe, P. G. (2003). The effects of children's exposure to domestic violence: A meta-analysis and critique. *Clinical child and family psychology review*, 6(3), 171-187.

³ Thornton, V. (2014). Understanding the emotional impact of domestic violence on young children. *Educational & Child Psychology*, 31(1), 90-100.

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child who did not go out a lot during his teenage years. He was not troublesome at home, although he had some learning disabilities that affected his school performance (discussed below), and his major pastime was playing basketball.

In addition to physical and verbal abuse, and oftentimes a trigger for such behavior, Xxx grew up around adult drinking and drugging. Xxx's various boyfriends used, and/or sold drugs as well as drank. Xxx herself drank to excess. None of her boyfriends worked, but lived off of Xxx Xxx's already meagre existence. Despite this unhealthy environment, Xxx has largely avoided drug and alcohol abuse. He describes himself as an occasional drinker, but acknowledges on the infrequent occasions when he drinks, he does so to excess. (Unfortunately and tragically, one of the rare occasions of Xxx's high intoxication was the night of the offense.)

While Xxx expresses love for Xxx, her oldest son, it is clear that for myriad reasons, she never fully assumed the role of parent with him. Xxx was very young when she gave birth to Xxx and, particularly during his childhood, she was involved with abusive men, had two more children, and was less attentive to him. Even during our interview with Ms. Xxx, she spent more time talking about Xxx, a very troubled child, and her concerns for him, than she did Xxx. Due to her impoverished circumstances and the need to hold onto her job, she has not so far found a way to attend court, nor is she able to regularly afford what she stated was the \$17 that it costs to accept Xxx's phone calls from the jail, although she does write. She has expressed a desire to buy her own house so that Xxx will have a place to stay when he is released.⁴ While she hopes that her son will receive a merciful sentence and will use his time while incarcerated to get an education, much as when he was growing up, Xxx Xxx displays little effectiveness in helping her son get through what will be the next phase of his already difficult life.

Educational Issues

Xxx's schooling mirrors his erratic family life. Each residential move was also an educational move involving new schools, new teachers, and new classmates. Xxx attended seven schools in three different communities over his very short educational life that lasted from kindergarten to ninth grade when he dropped out of school. This type of educational stability is associated with both academic and social problems at school, because school transfers require children to adapt to a new environment, and a different curriculum. School changes break bonds with teachers that are critical to learning and social development.⁵ A large body of research over more than three decades shows that academic instability is strongly associated with lower reading and mathematics achievements and higher school drop-out rates even when controlling for other socio-demographic factors.⁶

⁴ A felony conviction is often a barrier to public housing.

⁵ Obradovic, J., J. Long, J. Cutuli, C-K. Chan, E. Hinz, D. Heistad, and S. Masten. 2009. "Academic Achievement of Homeless and Highly Mobile Children in an Urban School District: Longitudinal Evidence on Risk, Growth, and Resilience." *Development and Psychopathology* 21:493–518.

⁶ For a comprehensive review of residential and academic instability, see Sandstrom, Heather, and Sandra Huerta. (2013). *The Negative Effects of Instability on Child Development: A Research Synthesis*. Washington, DC: Urban Institute.

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CCA's review of Xxx's school records reveals that he was, sadly, a child prototypical of the research findings described above. He was regularly referred for assessments to identify learning problems that were typically diagnosed as "significant delays in reading comprehension and written expression which adversely affects his performance" and "auditory memory and processing delays."⁷ With respect to social and behavioral interactions, Xxx's educational records are somewhat catch-all, describing him variously as "very polite to adults, wanting to do well and eager to please" yet at times "defiant and stubborn." Based on these educational assessments, Xxx was typically classified as learning disabled and assigned both consultant teacher services to assist with comprehension, and social work counseling services to address behavioral issues associated with learning disabilities.

In general, the myriad of evaluations and assessments of Xxx over the years reflect learning problems, inconsistent attendance, but few behavioral problems. The assessment done in 2008, when Xxx was in the 7th grade, is typical of his school records. Xxx said that he skipped school on occasion because he had few clothes and was embarrassed to go to school in the same, sometimes dirty clothes day after day. There is only one school suspension recorded, for "defiance," which research shows to be a highly subjective and often racially coded label.⁸ The 2008 assessment notes that his mother, xxx Xxx, asked that Xxx be evaluated by a psychiatrist. In our interview with Ms. Xxx, she recalled wanting such an assessment because she considered her son to be depressed. However, there is no evidence that the xxx School District followed through on this request for services related to emotional problems. The psychological evaluation that was conducted focused on educational competencies but issues such as depression or trauma were left unevaluated and untreated.⁹ The "poll" results showed teachers labeling Xxx as immature, given to "excessive talking" and occasional rudeness. Despite these negative characterizations, it should be noted that the special educational assessment for that year indicates no school suspensions. The social worker states he tried to engage Xxx in a counseling relationship but this proved to be "fruitless".

With all due respect to the Yyy School District's efforts, none of these reports indicate concern about Xxx's residential and educational instability which was demonstrated by his frequent moves and changes of school. His academic difficulties and minor behavioral concerns were taken at face value; there were no probes about the kinds of issues, such as witnessing domestic violence that can profoundly affect the development of a young person. Research shows that trauma "results in neurological changes that may diminish memory, concentration, and language"¹⁰ – all required for school success. Yet there was no help

⁷ From Rochester City School District Individualized Education Program, 2006-2007 dated 12/11/2006 when Xxx was in the 6th grade.

⁸ Weissman, M. (2015). *Prelude to Prison: Student Perspectives on School Suspension*. Syracuse, NY: Syracuse University Press; Ferguson, A. A. (2000). *Bad boys: Public schools in the making of Black masculinity*. Ann Arbor, MI: The University of Michigan Press.

⁹ Psychosocial Assessment Addendum, prepared by Michael Dramer, LCSW, Rochester City School District dated 4/28/2008.

¹⁰ Griffin, G. and Sallen, S. 'Considering Child Trauma Issues in Juvenile Court Sentencing', 34 *Child. Legal Rts. J.* 1 (2013-2014), at 10.

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given to this child who was living in a chaotic environment beset by domestic violence and adult substance abuse. Xxx was essentially left to fend for himself.

By 2010, Xxx had returned to XXX where he was enrolled as an eighth grade student at the VVVV Middle School. He was 15 years old at the time, compared to the average age of eighth grades falling somewhere between 13 and 14 years. He was again facing a new environment, new teachers, new curricula, and new school rules. In responding to CCA's request for school records, school personnel underscored the following "PLEASE NOTE STUDENT WAS ONLY ENROLLED WITH US FOR 4 MONTHS" (emphasis in original).¹¹ The records show that by this time, Xxx was quite disengaged from school. His attendance was sporadic and he failed every class. While he was suspended frequently, the records show that many suspensions were for minor behaviors labeled insubordination.¹² Xxx left Ithaca and again returned to Yyyy where he was briefly enrolled in ninth grade in XXXX High School, but did not attend.

Thus, by the age of 16, his dismal experience with school ended, and Xxx joined the ranks of school dropouts. Xxx attributes this to depression (she noticed that Xxx was not eating or sleeping properly, and seemed unmotivated) which, despite trying to get Xxx to see a doctor, again went untreated. Xxx's failure to complete high school is in fact highly likely to be connected to his repeated exposure to violence and its associated trauma: "traumatized youth... are more apt to drop out of high school than non-traumatized youth."¹³

Tragically, students who do not complete high school are statistically likely to be incarcerated, with one in four young, male, black high school dropouts in 2009 being incarcerated or in juvenile detention on any given day, due in part to the declining need for unskilled labor in a modern economy.¹⁴ However the educational research, above, completes the picture: a childhood marred by abuse and instability increases the likelihood of learning difficulties, which in turn increases the likelihood of dropping out. The National Center for Learning Disabilities reports that, in New York State in 2010-2011, only 48% of students with disabilities graduated from high school, compared with 77% of students generally.¹⁵ Xxx had the odds stacked against him.

Young Adulthood

¹¹ Dewitt Middle School, Student Support Services, records sent August 22, 2017.

¹² Op.cit. 5. Research showing racial disparities related to school suspension. In fact, nationally, the myriad of reforms to reduce school suspension no longer allow suspension for "insubordination."

¹³ Griffin, G. and Sallen, S. 'Considering Child Trauma Issues in Juvenile Court Sentencing', 34 *Child. Legal Rts. J.* 1 (2013-2014), at 10.

¹⁴ Dillon, S. 'Study Finds High Rate of Imprisonment Among Dropouts' (October 8, 2009), *The New York Times*, available at: <http://www.nytimes.com/2009/10/09/education/09dropout.html> (last accessed 10/17/2017)

¹⁵ National Center for Learning Disabilities, 'Diplomas at Risk: A Critical Look at the Graduation Rate of Students with Learning Disabilities,' (May 2013) p8, 14, available at:

http://nclid.convio.net/site/PageNavigator/Understood/Active/Understood_AD13_Diplomas_061814.html

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By 16, Xxx Xxx left his nominal role of “child” and took up the adult roles of father and employee. His mother recalls putting in a ‘missing person’ report around this time because Xxx ran away from home (likely as a result of living with Xxx’s abusive boyfriend). While never fully attached to school, another factor that made dropping out necessary in Xxx’s view was the birth of his first child, Xxx, who was born July 13, 2012. xxx is the daughter of Xxx and his one-time girlfriend, xxx. Despite becoming a father at a very young age, fatherhood was very important to Xxx. In anticipation of his daughter’s birth, Xxx first took a job at the xxx Bakery in Yyyy, New York. Mr. Xxx has continuously supported his daughter, even after splitting up with the child’s mother, paying about \$50 per month from his meagre earnings at various and sporadic low-paid, part time jobs. Xxx has worked on and off as a dishwasher (e.g.,xxx), and as a stocker (xxxx). His lack of transportation (he does not own a car) often proved to be an impediment to obtaining or maintaining work, but again, the odds of finding steady employment were against Xxx. According to a 2009 study, for minority men who did not complete high school, the unemployment rate is around 69%.¹⁶

Returning to Ithaca in 2012, Xxx entered into a long term relationship with xxx Xxx whom he married on xxx, 2017. x and Xxx have been together for five years and have one son, Xxx Xxx, Jr., born xxxx 2017. Xxx previously worked at the xxxx Center in xxx and is now employed full-time as a housekeeper at the xxx Hotel.

Xxx and Xxx have known each other since they were children. They were in kindergarten and first grade together, attending xxx Elementary School. Xxx appears to be Xxx’s best friend: she knows about his family life and how it has affected him. She says he always felt he had to protect his mother and younger brothers and to this day, sleeps lightly, a habit he developed while growing up in order to protect his mom. Xxx confided in Xxx about his depression. She confirms that he is largely a homebody and not very social. She also confirms that he was an infrequent drinker, generally only drinking on the rare occasions that they were out with friends.

Xxx Xxx describes her husband as caring and very attentive to his children. Now 21 years old, Xxx has been with Xxx since she was 16. Both Xxx and Xxx remember the date they met – xxxx 2015. Xxx was present for the birth of their son in xxx 2017 and was his full time caretaker as Xxx went back to work six weeks after giving birth. Not only did he care for Xxx Jr. each day, but he also did the night feeding because Xxx had to get up early for work. By all accounts, Xxx has been an excellent father to his children.

Xxx ended his first interview with CCA stating, “My kids mean more to me than anything else.”

Offense Circumstances

¹⁶ Dillon, S. ‘Study Finds High Rate of Imprisonment Among Dropouts’ (October 8, 2009), *The New York Times*, available at: <http://www.nytimes.com/2009/10/09/education/09dropout.html> (last accessed 10/17/2017)

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While not in any way justifying Xxx Xxxx's criminal behavior, there are circumstances that will assist the Court in understanding why Xxx, who has never before been involved in any crime, let alone a crime of violence, shot at the victim in this case. As described above, Xxx's upbringing helped set the stage for his actions. As a child growing up in a household beset by domestic violence, Xxx, like many young people in similar situations, became a hypervigilant individual. He not only regularly witnessed violence in his home, but in his communities as well. Xxx himself was robbed at gunpoint when he was about 16 years old, which understandably made him fearful. There was one event however one event that pushed him to the make the decision to obtain a weapon himself.

As described by Xxx and confirmed through independent interviews with his mother, Xxx Xxx, his wife, Xxx Xxx, and father, Xxx Xxx, Xxx was assaulted shortly after attending a friend's funeral in May 2016.¹⁷ In yet another example in a series of tragic life circumstances of poverty and violence that surrounded Xxx, his friend, xxx, died from an overdose. After the funeral, Xxx left alone and was jumped by three men, suffering a deep cut to his face (the scar is still visible today). At the time he was also afraid for Xxx, who was still inside and pregnant. When Xxx returned home with Xxx, he was in shock, shaking and anxious. He also told Xxx that his attackers threatened that they would come for him again, and she observed that he began to feel unsafe going outside by himself. The attackers lived in their community, and Xxx saw them in a group regularly. This experience understandably increased his existing nervousness and hypervigilance, and he vowed to himself that "he could never get jumped again." Immediately after this incident, Xxx bought a gun.

He says he bought it out of fear, and describes his mental state since the funeral as "paranoid". He did not want to feel helpless when faced with violence, and based on his experience in the attack after the funeral, did not think he could count on anyone, even friends, to come to his aid. Indeed, Xxx knew almost everybody at the funeral and no one helped when he was attacked – and as a result he says he trusts no one.

Neither his parents nor Xxx were aware that Xxx had a weapon, but Xxx says she too believes he carried it out of fear, rather than to be "flashy". He never brandished it or bragged about it; it was not something he used to enhance a street reputation. Research on the proliferation of gun violence in poor communities of color finds that there are two primary reasons influencing widespread gun possession. One is the "ecology of danger" in communities and a second is guns as "symbols of respect, power and identity."¹⁸ Xxx possession of a gun fell into the former category.

On the night of the offense, xxx 2017, Xxx was at a bar with a few friends. He said it was only his second time out since the birth of his son in xxx 2017, for whom he had been the primary caretaker for several

¹⁷ Almendarez, J., 'Ithaca vigil planned for young man who died from heroin overdose' (May 11, 2016), *The Ithaca Voice*, available at: <https://ithacavoices.com/2016/05/ithaca-vigil-planned-for-young-man-who-died-from-heroin-overdose-sunday/>

¹⁸ See Fagan, J., & Wilkinson, D. L. (1998). Guns, youth violence, and social identity in inner cities. *Crime and Justice*, 24, 105-188.

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months. He reports being highly intoxicated (9.5 out of 10) at the time of the incident, having consumed a bottle of Hennessy Black, a bottle of Ciroc Vodka, some Paul Masson Apple Brandy, two beers and a Long Island Ice Tea. The level of intoxication of all parties – Mr. Xxx, his friends and even the victim¹⁹ – was confirmed by several witnesses. Xxx got into a verbal altercation after he accidentally bumped into another patron on the way outside after closing. The situation escalated to the point where Xxx's friend took hold of Xxx by his arms from behind. At this point, the victim swung at him, but missed.²⁰ Xxx describes being terrified that he was in danger and unable to protect himself (due to being held back), still highly intoxicated, and instinctively reaching for his gun in his pants and firing at the victim. At the time, he felt he was doing the right thing by protecting himself. He now realizes that his wrong and impulsive overreaction seriously harmed the victim and nearly cost him his life.

At least since the funeral of his friend, but likely earlier, Xxx had been experiencing hypervigilance and disproportionate fear. He realized quickly that he had overreacted and made a terrible decision, but, without attempting to excuse his conduct, describes that, at the time, he was (wrongly) afraid for his life, felt disempowered due to being held by his friend, and instinct took over.

Xxx Xxx has been consistent in his remorse about his actions, and particularly once he learned of how seriously he had harmed the victim, Mr. xxx. He immediately took responsibility for his actions and cooperated fully with the police. When he encountered the police on the night, he fully followed their instructions to get on the ground and disclosed that he had a gun. In hours of interviews with CCA, he has not tried to justify or excuse his actions in any way. He articulates a strong commitment to avoid any of the circumstances that contributed to his actions on xxx, vowing never to drink again and to steer away from the kinds of places that present possibilities for such encounters. He has been a cooperative inmate while detained at the xxx County Jail and is attempting to make the best of his situation by attending programs offered, such as parenting, as well as classes to prepare him for his GED. He also attends the Golden Key church program twice a week.

Xxx reports that he has already got a lot out of the Conflict Resolution program at Tompkins County Jail. He has a folder full of exercises and ways to resolve conflict, and reports that his relationship with Xxxe continues to grow despite his incarceration, because their communication has improved. Now, he writes a lot, to help regulate his emotions, and uses conflict resolution practices in dealing with aggressive inmates.

Xxx describes herself as “destroyed” by the charges against Xxx, his current detention, and his impending incarceration. Their relationship has been the mainstay of her life for five years. To Xxx, Xxx's offense behavior is completely out-of-character. She describes him as a person who does not like to argue, noting that when they have disagreements, he ordinarily leaves the house briefly and then comes back and talks about it. She observes him as a kind and polite man who is interested in bettering

¹⁹ According to his police statement, with regards to identifying the offender.

²⁰ “I went to hit him,” Police Video of Rayvon Butler, at 2.27.

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himself for the benefit of his family. Even in jail, Xxx reports that Xxx has been trying to make the best of his circumstances; Xxx says he has been very excited to attend GED classes. During their first call after his arrest, he said, “I love you and I am sorry.”

Sentencing Considerations

It is CCA’s understanding that Xxx Xxx pled guilty Assault 1st and Criminal Possession of a Weapon 2nd with a sentencing range of a five year minimum and a cap of 15 years. We respect that it is entirely within the discretion of the Court to detxxxx the sentence. We offer these comments to urge the Court to impose a sentence that both holds Mr. Xxx accountable for his criminal actions yet allows him the future prospect of reuniting with his wife and children and playing a positive and active role in their lives. To this end, we offer insights from research that applies to Mr. Xxx’s situation: research on adolescent brain development; research on hypervigilance and its association with trauma and violence; and research regarding the efficacy of incarceration.

Importantly, we offer these considerations fully within the context of Mr. Xxx’s life. As detailed above, despite an unstable childhood in a household that experienced serial domestic violence, Xxx himself has never been considered a violent person. Instead, he is described by his mother, father and wife as a homebody, who largely keeps to himself. Although he lacked dependable and positive father figures, Xxx, even as a young father, has been devoted to his son, and a source of support for his daughter. To reiterate his own words, his children “mean the world to him.” In short, the offense is, by all reports, completely out-of-character, and Xxx Xxx seems to be a young man worthy of a second chance that can best be effectuated by a shorter sentence of incarceration.

The science of adolescent/young adult brain development: Xxx Xxx is 22 years old, an age that according to a large body of research, is within an age cohort where the brain is still developing. This science has contributed to sentencing reform throughout the U.S., most recently in New York State. The Council of State Governments Justice Center paper on ‘Reducing Recidivism and Improving Other Outcomes for Young Adults in the Juvenile and Adult Criminal Justice Systems’ found:

Researchers focused on brain development have found that 18- to 24-year-olds—also referred to as young adults²¹—stand out as a distinct developmental group with heightened impulsive behavior, risk taking, and poor decision making. Young adults are also frequently not connected to education or jobs [which] increase[s] the odds that a young adult might come into contact with the justice system.²²

While young adults are susceptible to negative external influences, they are also susceptible to positive external influences. Prison, particularly for lengthy terms of incarceration, is not a positive environment for young adults who are just assuming the responsibilities that come with mature adulthood –

²¹ Also described as “transition-age youth” or “emerging adults.”

²² Reducing Recidivism and Improving Other Outcomes for Young Adults in the Juvenile and Adult Criminal Justice Systems, November 2015, available at <https://csgjusticecenter.org/wp-content/uploads/2015/11/Transitional-Age-Brief.pdf>

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employment, marriage, and children – and can have life-long, negative effects. As noted by the Supreme Court in *Roper v. Simmons* and *Graham v. Florida*,²³ the unique characteristics of adolescent/young adult brain development is equally applicable regardless of the nature of the offense:

The reality that juveniles still struggle to define their identity means it is less supportable to conclude that even a heinous crime committed by a juvenile is evidence of irretrievably depraved character. From a moral standpoint, it would be misguided to equate the failings of a minor with those of an adult, for the greater possibility exists that a minor's character deficiencies will be reformed.

- *Roper v. Simmons*, 543 U.S. 551, 570 (2005)

The boundary of 18 as the end of childhood and beginning of adulthood is an artificial one countered by research showing that people's brains do not fully mature until their mid-20's. In 2015, the U.S. Department of Justice commissioned a paper to summarize research on and recommendations to make the criminal justice system "more developmentally appropriate in its response to young adults".²⁴ In particular, risk-taking behaviors, such as driving while drunk and using illicit drugs, are greater among 18-25 year olds than among older adults.²⁵ Further, in a study that created a composite measure of "psychosocial maturity" that included measures of impulsivity and sensation-seeking, 18-21 year olds showed significantly less maturity than 22-25 year olds, with increasing maturity in those aged 26-30 years.²⁶

Perhaps most importantly, the 16-24 year old age group matures and outgrows their impulsive and risky behavior.²⁷ This is equally applicable regardless of the nature of the offense. Indeed, the Office of Juvenile Justice and Delinquency Prevention's (OJJDP) review of the "Pathways to Desistance Study" reports that most serious juvenile offenders "mature" out of crime. Particularly as he has never committed any other violence, Xxxx is still likely to outgrow such impetuosity and poor decision making.

CCA believes that Xxxx Xxxx shows every promise of change and rehabilitation. It is in the community's best interests that Xxxx's future not be irrevocably destroyed by his mistake through the imposition of an unduly harsh punishment. Rather, we believe that Xxxx must be allowed a path back to the community,

²³ 543 U.S. 551, 570 (2005); 130 S.Ct. 2011 (2010)

²⁴ Schiraldi, Vincent, Bruce Western and Kendra Bradner, (2015). "Community-Based Responses to Justice-Involved Young Adults." *New Thinking in Community Corrections Bulletin*. Washington, D.C.: U.S. Department of Justice, National Institute of Justice, 2015.

²⁵ Dayan J, Bernard A, Olliac B, Mailhes AS, Kermarrec S. (2010) "Adolescent brain development, risk-taking and vulnerability to addiction." *J Physiol Paris*: Nov 104(5):279-86.

²⁶ Steinberg, Laurence, Cauffman, Elizabeth, Woolard, Jennifer; Graham. Sandra; Banich, Marie. "Are adolescents less mature than adults? Minors' access to abortion, the juvenile death penalty, and the alleged APA 'flip-flop.'" *American Psychologist*, Vol 64(7), Oct 2009, 583-594.

²⁷ Laurence Steinberg & Elizabeth Scott, "Less Guilty by Reason of Adolescence: Developmental Immaturity, Diminished Responsibility, and the Juvenile Death Penalty," 58 *Amer. Psych.*, (2003), at 1015, n. 13.

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because his best opportunity to rehabilitate and atone for his crime will come through his becoming a productive, contributing member of the society.

Understanding XXXX XXXX's Behavior within the Context of Research on Trauma and Hypervigilance: As detailed in the personal history of XXXX XXXX, above, his childhood surrounded by domestic violence left him fearful and depressed. Multiple studies have now indicated that traumatic experiences actually alter the physiological structure of the brain and fundamentally alter brain development. Child trauma (of which domestic violence is a well-established type) has clinical effects including "Negative alterations in cognition [which] might include exaggerated beliefs (such as the world is always dangerous) while negative alternations in mood might include continually feeling estranged from others. Altered arousal and reactivity might include the person having difficulty concentrating, becoming easily agitated, or remaining hyper-vigilant."²⁸

When faced with a potential threat to our safety, our brains are hardwired to facilitate a series of response to ensure our ability to "fight or flight" in attempt to protect ourselves from the perceived danger. The amygdala initiates this process by sending a distress signal to the hypothalamus. The hypothalamus, which is the "command center" or the human brain, then communicates to the rest of the body via the nervous system, to ensure the appropriate physiological response to allow the person to "fight or flee" the situation at hand.²⁹ The science of brain development has also found that exposure to domestic violence impacts brain development, causing the "fight or flight" reaction, present in all human behavior, to be exaggerated among children who have witnessed domestic violence.³⁰ As another study showed, "Traumatized youth are more likely to be hyper-aroused and over-interpret signs of danger. When they do not feel safe, they are much more likely to overreact and engage in negative behaviors, such as fight or flight."³¹

Of course XXXX should not have been carrying a firearm, and CCA would never suggest that his actions were reasonable. However, his perceived fear of being victimized, particularly after having been viciously attacked by a group of men at his friend's funeral, clearly impaired his decision making, resulting in his unprecedented purchase of a gun. XXXX is already demonstrating his commitment to address his tragic mistake by thoughtfully participating in the Conflict Resolution program offered in the jail.

Deleterious Impact of Incarceration, Particularly on Young Offenders: The National Academy of Sciences devoted an entire chapter in its seminal report, 'The Growth of Incarceration in the United States:

²⁸ Griffin, G. and Sallen, S. 'Considering Child Trauma Issues in Juvenile Court Sentencing', 34 *Child. Legal Rts. J.* 1 (2013-2014), at 8.

²⁹ Harvard Health Publishing (2016, March 18). Understanding the Stress Response. Harvard Medical School: Cambridge, Mass. <https://www.health.harvard.edu/staying-healthy/understanding-the-stress-response>

³⁰ Tsavoussis, A., Stawicki, S. P., Stoicea, N., & Papadimos, T. J. (2014). Child-witnessed domestic violence and its adverse effects on brain development: a call for societal self-examination and awareness. *Frontiers in public health*, 2.

³¹ Griffin, G. and Sallen, S. 'Considering Child Trauma Issues in Juvenile Court Sentencing', 34 *Child. Legal Rts. J.* 1 (2013-2014), at 20.

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Exploring Causes and Consequences'³² to the experience of incarceration. It synthesized an extensive literature that describes prisons as very harmful environments characterized by violence (physical and sexual), overuse of solitary confinement, unattended health and mental health problems and idle time. Many aspects of prison life contribute to trauma-based symptoms, including depression, emotional numbing, anxiety, isolation, and hypervigilance, symptoms already part of Xxxx Xxxx's psychological profile. Research shows that the conditions of incarceration magnify pre-existing vulnerabilities. Moreover, long term incarceration fosters coping mechanisms that are maladaptive and damaging to successful community reentry.³³ Young people fare particularly poorly in carceral settings:

The process of institutionalization is facilitated in cases in which persons enter institutional settings at an early age, before they have formed the ability and expectation to control their own life choices. Because there is less tension between the demands of the institution and the autonomy of a mature adult, institutionalization proceeds more quickly and less problematically with at least some younger inmates. Moreover, younger inmates have little in the way of already developed independent judgment, so they have little if anything to revert to or rely upon if and when the institutional structure is removed.³⁴

Sentencing Recommendation within the Context of New York State Law

New York Penal Law 1.05 (6) articulates the goals of sentencing, each of which has resonance for Xxxx Xxxx's case.

- a. "To insure the public safety by preventing the commission of offenses through the deterrent influence of the sentences authorized"

There is no doubt that these charges are serious and worthy of deterrence. Xxxx himself is acutely aware of his culpability for the crimes he committed, and feels remorse and self-blame. As noted, he fully cooperative with the police, confessed to the crime and admitted he had a gun. His remorse is genuine, as is his profound regret. He is also very motivated to keep himself from making bad decisions in the future, and is detxxxxd to serve his sentence and return to and remain with his family to be a dedicated and supportive husband and father. Xxxx now prizes his liberty in a way he may not so clearly have previously.

³² National Research Council. (2014). *The Growth of Incarceration in the United States: Exploring Causes and Consequences*. Committee on Causes and Consequences of High Rates of Incarceration, J. Travis, B. Western, and S. Redburn, Editors. Committee on Law and Justice, Division of Behavioral and Social Sciences and Education. Washington, DC: The National Academies Press.

³³ Haney, C. (2003). Mental health issues in long-term solitary and "Supermax" confinement. *Crime & Delinquency*, 49(1), 124-156; Liem, M., & Kunst, M. (2013). Is there a recognizable post-incarceration syndrome among released "lifers"? *International journal of law and psychiatry*, 36(3), 333-337.

³⁴ Id.

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b. “The rehabilitation of those convicted, the promotion of their successful and productive reentry and reintegration to society”

Now at 22 years old, Xxx is still young and amenable to rehabilitation. The environment he will be exposed to in the coming years will be challenging, and a shorter sentence of incarceration can play a crucial role in his continued growth and development. While neither CCA nor Xxx advocate that his behavior be excused or go unpunished, CCA does suggest that a long period of incarceration would work directly against Xxx’s reintegration back into his community.

As noted, institutionalization can have profound effects on young people, because imprisoned youth are encouraged to adapt their learning of how to be an adult to the prison environment. Forced to conform to the rules and regulations of the prison officials regarding basic daily functions, incarceration further reduces an individual’s ability to practice autonomous decision making skills that will be necessary to independent living in the community. Negative peer influence among inmates also fosters socialization that is maladaptive and may have lasting negative effects on individuals following their release.³⁵

Xxx and his wife are both concerned about his ability to remain a caring presence in the lives of Xxx Jr. and xxx. The relationship between Xxx and Xxx is strong, with evidence of longevity. A shorter sentence of incarceration will make it more likely that this marriage will be able to last.

Accordingly, CCA strongly urges the court to limit the sentence to be served in prison in favor of more time under post-release supervision, with intensive transitional community support. Parole can mandate various conditions including a bar to drinking, curfew, prohibition from going to bars as well as relevant pro-social programming. Xxx will benefit from the structure and guidance of his Parole Officer as well as the support of stable and prosocial family members including his wife, her parents, his grandmother, father and hopefully his mother, who herself is in recovery. Such a sentence would adequately hold Xxx accountable while also promoting the goal of reintegration.

c. “Confinement when required in the interests of public protection”

Xxx’s conduct on the night of the offenses was so clearly out of character that, without in any way excusing it or diminishing the profound impact upon the victim, it is impossible to fathom without his extreme intoxication. Further, Xxx has never had the opportunity to address his hypervigilant personality attributable to his childhood trauma of experiencing domestic violence. He now recognizes that there are appropriate, nonviolent ways of keeping himself safe and resolving conflict, and intends to take advantage of any conflict resolution program offered in prison. It is CCA’s belief that, if Xxx is given the opportunity to properly address his past trauma, he will not present a danger to the community. He has never been arrested for violence, and his reputation among friends and families is of a quiet, gentle person. All who know Xxx agree that this was unprecedented, and does not reflect his true nature. Crucially, the offense

³⁵ Haney, Craig. The Psychological Impact of Incarceration: Implications for Post-Prison Adjustment. U.S. Department of Health and Human Services, The Urban Institute, December 2001.

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seems to have been committed out of an unreasonable level of fear and a failure to respond appropriately, rather than an attempt to assert dominance, simple uncontrollable aggression, or any real desire to hurt another person.

Conclusion

Xxxx Xxxx, as a child of domestic violence and residential and educational instability, has faced a short lifetime of assaults on his psychological wellbeing. Despite this, save for the instant offense, he has become a young man dedicated to his children and wife, has never been in trouble with the law previously, has often been employed despite being a school dropout, and has no signs of chronic substance abuse. Unfortunately however, his childhood left him hypervigilant and fearful, leading him to make a terrible decision in response to being attacked, purchase a gun, and use it when he felt threatened.

Xxxx is a young man whose life circumstances objectively mitigate his level of culpability, such that justice would be served by imposing a lesser term of incarceration. Accordingly, CCA urges this Court to focus on Xxxx Xxxx's future rehabilitation and reentry as yielding the best outcomes for the community at large. Investment in youth is never misplaced, and Xxxx still has youthful adaptability on his side: he is capable of rehabilitation and reintegration. Importantly, most traumatized youth do recover from their experiences, "because trauma's impact on the brain and normal child development can be reversed with appropriate treatment and other supports."³⁶

The Honorable Michael A. Wolff, a trial judge who has written and lectured on sentencing, reminds us that too much punishment can undxxxx public safety by making it more likely that a person re-offends. Judge Wolff states:

We must acknowledge that the reason for sentencing is to punish, but if we choose the wrong punishments, we make the crime problem worse, punishing ourselves as well as those who offend. If we are to think rationally about what is in our best own interest - that is, public safety - we should try to detxxxx what reduces recidivism.³⁷

CCA respectfully but strongly urges the Court to grant Xxxx Xxxx to be held accountable for his crime through a sentence of incarceration that will still allow him the opportunity to resume his role as father, husband, and productive, law-abiding member of society.

Thank you for your consideration.

Respectfully,

Marsha Weissman, Ph.D.
Senior Fellow

³⁶ 'Trauma: What Child Welfare Attorneys Should Know', *The National Child Traumatic Stress Network & The American Bar Association Center on Children and the Law* (funded by SAMHSA, US Department of Health and Human Services) (2017).

³⁷ Michael A. Wolff, "Evidence-Based Judicial Discretion: Promoting Public Safety Through State Sentencing Reform," 83 *New York Law Review*, 5, 1389, 1395 (November 2008).

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Amy Knibbs
Director of Client Specific Planning

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Sample Mitigation Report 3

Background and Social History Report on Xxxx Xxxx

The Center for Community Alternatives (CCA) has prepared the following report relative to the case of Xxxx Xxxx. The purpose of this report is to provide background information regarding Mr. Xxxx, including the circumstances that led up to his criminal behavior on August 29, 1994. The information in this report has been compiled following several interviews with Mr. Xxxx, his mother, xxxx, his sister, Xxxx (Xxxx) Xxxx, his brother Kenneth Xxxx, and Sharon Xxxx (aunt). We have also reviewed information compiled by the defense investigation that includes summaries of interviews with a former employer, Xxxx Xxxx, two former coworkers, Xxxx Xxxx and Xxxx Xxxx, and Xxxx Xxxx, a former teacher. The report is also based on information provided by Xxxx Xxxx who was the complaining witness in this case. Additionally, CCA has reviewed a variety of documents relevant to this case and Mr. Xxxx background, including police reports, trial and sentencing transcripts, criminal history and probation reports, letters sent to Mr. Xxxx by Ms. Xxxx during his detention, educational and mental health records pertaining to Mr. Xxxx, and mental health and medical records pertaining to Mr. Xxxx' mother, Xxxx Xxxx. We have also reviewed a psychological evaluation performed by Dr. xx and affidavits provided by Xxxx Xxxx, and Ms. Xxxx.

The results of CCA's examination of Xxxx Xxxx' social and family history reveals a young man who was exposed to uncommon levels of family violence and chaos as well as economic stress. **Mr. Xxxx assumed an adult role in his immediate family from a very early age due to an atypical dependence upon him by his mother combined with the absence of any other adult support to the family. While Mr. Xxxx has a prior history involving street level drug sales, all indications are that he engaged in this behavior largely to support his family. He has no prior history of violence of any sort; rather, his history is one of a young man, who from a very early age, and despite a horrific family background, held various jobs.** The information contained in this report also shows that while Xxxx Xxxx came to the attention of authorities, such as school officials and probation officers, also at a young age, there was little to no effort made to help him use his entrepreneurial skills in a law-abiding way. More importantly perhaps, there was little effort made to address the underlying family conditions that would place a young man at extremely high risk of criminal involvement. In CCA's view, the conditions that Mr. Xxxx was born into and raised in could well have contributed to more serious criminal involvement than the drug sales that constitute the major part of his criminal history. Moreover,

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a careful analysis of the circumstances of the crime for which Mr. XXXX' is currently incarcerated indicates that it was again a misguided effort to maintain what he perceived were important family ties.

The information contained in this report does not justify Mr. XXXX behavior on August 29, 1994. **However, CCA is of the opinion that had this information been available to the judge (and even the prosecutor) either during the pretrial process or at time of sentencing, it is the type of information that likely would have resulted in a substantially different outcome, i.e., resulting in a conviction to a lesser offense and a concomitant lesser sentence.**

Personal and Family Background

XXXX XXXX was born on August 2, 1973 into a family beset by trauma and dysfunction. Mr. XXXX' birth, as well as that of his sister, XXXX, was and is treated as a family secret. XXXX and his sister were born of the result of an incestuous relationship between XXXX XXXX (XXXX XXXX) and XXXX XXXX. Mr. XXXX was the live-in boyfriend of XXXX's mother, XXXX XXXX XXXX, and in essence was XXXX's stepfather. XXXX XXXX, described by family members as a violent man, forced XXXX to have sexual relations with him in order to spare her mother violent beatings. XXXX, who was born November 13, 1958, was but fourteen years old when XXXX was born. Mrs. XXXX obviously had deep shame regarding the family history. While she eventually told CCA about the circumstances of XXXX's birth, Mrs. XXXX initially described XXXX's father as a police officer who died in the line of duty. XXXX XXXX said that when she confided in her mother that XXXX XXXX in essence had raped her and made her pregnant, her mother did not believe her. Mrs. XXXX's second child by XXXX XXXX, XXXX (XXXX) XXXX, was born one year later, on August 8, 1974, yet XXXX XXXX XXXX still denied the relationship between XXXX and her daughter. It was only after XXXX XXXX went after XXXX's younger sister that XXXX XXXX XXXX acknowledged the sexual abuse perpetrated by XXXX on her daughters. The sexual relationship between XXXX and XXXX XXXX is confirmed in the psychiatric evaluation report by Dr. Harold XXXX, dated April 14, 1981. XXXX was impregnated by her mother's live-in boyfriend when she was 13 and the boyfriend was 54. (Appendix A)

XXXX XXXX does not remember XXXX XXXX who was his father and also his step-grandfather, and likely had little or no contact with him. XXXX's paternal history was never explained to him in a straightforward manner and XXXX variously described his father as a police

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officer killed in an off duty incident or as a man shot by another woman; in several probation reports, the father is described as dead or living in Florida.

Xxxx Xxxx and her two children remained with her mother until Xxxx was about five years old. Mrs. Xxxx met her now ex-husband, J Xxxx, sometime in 1976; the two were married in 1977. J Xxxx had children from a previous marriage; in addition, J and Xxxx Xxxx had two children, Willie, born January 14, 1977 and Kenneth Xxxx, born, January 23, 1980. Much as other victims of childhood abuse who are vulnerable to abuse in their adult relationships, Xxxx Xxxx, was physically abused by her husband. Xxxx and J first separated sometime in 1982, but Xxxx remained a presence in the household and is described as “in and out” of the house for several years. Xxxx Xxxx eventually fled from this abusive relationship in 1985, taking her children, living for a short time at a battered women’s shelter in Manhasset, New York, run by the Coalition for Abused Women. Case sumxxxx notes taken during the fall of 1986, from the Xxxx Child Guidance Center confirm Mrs. Xxxx’s need to seek refuge from the domestic abuse: “During this time Mr. Xxxx beat Mrs. Xxxx up so badly that she sought help from Coalition for Abused Women.” However, school and other records indicated that Xxxx and Xxxx Xxxx continued to live together in this violent relationship sporadically until 1987 when they separated. The two were divorced in 1988.

As if the chaos and violence in his immediate family were not difficult enough, in 1983, Xxxx’s mother, Xxxx Xxxx Xxxx, died suddenly, leaving behind 10 children. Xxxx, as the oldest child, took in her siblings and half-siblings and for a period of time there were up to 14 people living in the impoverished Xxxx household. Xxxx Xxxx, who was in and out of the home, was for the most part an unemployed construction worker. Xxxx Xxxx made attempts at working as a receptionist in a plastics factory, and as a nurse’s aide, but generally was overwhelmed by family responsibilities and was often supported by public assistance.

As discussed below, the family history of incest, violence, poverty and instability took its toll on Xxxx Xxxx. It also affected Xxxx Xxxx, who is described in school and mental health reports in terms characteristic of an ineffective parent. According to Xxxx Xxxx’ school and mental health records, Xxxx Xxxx became deeply involved in a charismatic church and is recalled by school staff interviewed for purposes of this report as dressing in white religious robes when she brought the many children in her care to school. Mrs. Xxxx herself states that she was a

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missionary for xxx Revival Center and the xxxx Church; she states she was “saved” in 1979. Mrs. Xxxx’s religious faith became the driving and dominant force in her life. Xxxx Xxxx recalls much of his free time as a young boy was spent in revivalist prayer. Records from the xxx Guidance Mental Health Clinic, where Xxxx Xxxx was a patient, stated at the time of intake “Xxxx claimed to get direct messages from God, telling an intake worker that ‘God reminded her’ to come to the clinic.” The intake sumxxxx further described Xxxx Xxxx as obsessed with her religion, noting: “Mrs. Xxxx, who was dressed all in white, spent considerable time talking about her involvement with the xxxx church and how she had been saved in 1979.” At the time of this report, Mrs. Xxxx was 22 years old and was described as “. . . striking in her childlike quality. Indeed she appeared more like a sibling as she spoke about her children and the good times they had together, than a parent.” (Appendix B) When interviewed by CCA for the purposes of this report, Mrs. Xxxx spoke about her religious beliefs in a similar manner; a visit to her home revealed walls covered with hand-lettered Biblical sayings and references and several of the interviews with her conducted for this report were preceded by prayer.

Xxxx Xxxx apparently had psychiatric/psychological problems as a child and young adult. The psychiatric evaluation performed on Xxxx Xxxx states “The patient’s mother was a patient at this clinic some years ago for reasons which are not specified.” At the time of this evaluation (April 14, 1981), Mrs. Xxxx was reportedly under the psychiatric care of a Dr. Goodman. Xxxx Xxxx’ evaluation noted that Xxxx Xxxx was in outpatient psychiatric care in 1981 and described her as follows: “The patient’s mother, described as being very religious (currently said to be in outpatient psychiatric treatment), may herself be seriously disturbed. While the extent of this is not clear, the quality of her mothering must be called into question” . . . The confidential intake sumxxxx dated April 23, 1981 gives an example of inadequate/abusive parenting: Xxxx Xxxx disciplined Xxxx for burning his brother’s arm while lighting matches by beating Xxxx and placing his hand on a stove burner. (Appendix B) Further evidence of Xxxx Xxxx’s difficulties is revealed in notes from an “orientation group meeting” dated March 24, 1981: “Mrs. Xxxx, 23 years old, mother of 4 children, attended the session. She was evidently embarrassed at her dress as she didn’t remove her coat, which was fairly shabby. Mrs. Xxxx Xxxx, formerly known to our Center in 1975 as Xxxx Xxxx, was very comfortable in the group and with me . . .

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Mrs. Xxxx is currently in treatment with a private therapist, Dr. G, to whom she has been going for 2 years.” (Appendix C)

The progressive destitution and disorganization of this fragile family, essentially headed by a young woman in her twenties, are reflected by increasingly frequent residential relocations. The Xxxx-Xxxx family often lived in two or three houses over the course of a year. A review of school and mental health records reveals the following residences from 1973, the year of Xxxx’s birth, through 1991, when he was first incarcerated in state prison:

- 1973 - 1979**
- xxx Street, New York nd
- 1980**
- xxx, New York
- xxx, New York
- 1981**
- xxx, New York
- xxx, New York
- 1982 - 1983**
- xxx, New York
- 1984**
- xxx, New York
- 1985**
- Shelter run by the Coalition for Abused Women, New York
- xxx, New York
- xxx, New York
- xxxx, New York
- 1986**
- xxx, New York
- Coalition for Abuse Women, Safe House, New York
- xxx, New York
- 1987**
- xxx, New York
- 1988**
- xxx, New York
- xxx, New York
- 1989**
- xxx, New York
- xxx, New York
- xxx, New York

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- emergency housing
- 1990**
- xxx, New York
 - xxx, New York
 - xxxx, New York
 - xxx, New York
 - xxx, New York
 - xxx, New York
- 1991**
- xxxx, New York
 - xxx, New York

Educational History

The foregoing list of residences reflects 17 different addresses and 29 moves in 18 years. These were accompanied by changes in school. From the time he entered elementary school, until the 11th grade (when Mr. Xxxx dropped out of school), Xxxx attended three elementary schools, five middle/junior high schools and three high schools. CCA requested records for all the schools Mr. Xxxx attended and has obtained some, but not all, of these records. The available records are attached as Appendix D.

According to Xxxx Xxxx, Xxxx was enrolled in the Head Start program in New York. The first public school he attended was in the xxxx Public School system; records indicate that Xxxx received a certificate of attendance for the 2nd marking period dated January 31, 1980. By 1983, records reflect that Xxxx was enrolled in the fourth grade at xxx School. The family moved the next year and Xxxx spent his fifth and sixth grade at xxxxl Elementary/Middle School in, New York from which he received a certificate of promotion on June 20, 1985. In the fall of 1985, Xxxx entered the 7th grade at xxxMiddle School. The available records are somewhat confusing with some documents indicating that Xxxx transferred out of this school in June 1986, but other records reflect xxxx grades for the following school year - 1986 - 1987. Still another form shows a transfer out in October 1987 but the grade records show grades through June 1987. There are also records from xxx Junior - Senior High School for this same period (fall of 1986) that indicate that Xxxx Xxxx was enrolled in that school as of xxx, 1986 for a period of three weeks. Xxxx was also apparently enrolled in xxxx Junior High on xxx, 1987. Xxxx spent his 1987 - 1988-school year at the xxxx Junior High School. The family's instability during this time,

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including time spent in the battered women's shelter, resulted in several changes of residences accompanied by school changes. These dislocations occurred during a critical time in Xxxx's educational and social development.

Xxxx Xxxx entered xxx School in the fall of 1988. Steve Xxxx, one of Mr. Xxxx' teachers at the time (and now an Assistant Principal at the xxxx Middle School) recalled Xxxx as a troubled kid, who was suspended on occasion. School records show that Xxxx was suspended in xxxx1988 for refusing to remove his hat. Again, school records reveal poor academic performance, which were attributed to excessive absences. The exception to this pattern was a course in xxxy where Xxxx attended regularly and did well; in this class, he was described as "industrious and cooperative." School records indicate a formal withdrawal from xxxxx in xxxx 1989, citing "Moving to xxxx as the reason. Records indicate that Xxxx Xxxx entered xxx High School on 1989 and was enrolled in the 9th grade. However, by xxxx, 1989, Xxxx was withdrawn citing a move to Xxxx, New York. There are no further records of Xxxx Xxxx' school enrollment, although the July 7, 1995 Presentence Report prepared by the xxx County Probation Department states that Xxxx dropped out of xxxx High School in the 11th grade. ¹ By 1990, Xxxx Xxxx was incarcerated in the County xxxx Correctional Facility, where he participated in GED classes and earned his GED. (see Certificate attached, Appendix E)

Xxxx Xxxx' grades and general academic records, at least beginning in 1985, depict a young boy who was having difficulty in school. His grades were low - either barely passing or failing. Some of the school records also include comments regarding poor attendance or excessive absences. **There is no indication that Xxxx Xxxx was enrolled in special education, received any special programming to address his truancy or tutoring regarding his low grades. There is also no indication in school records that school officials evidenced concern about the transient nature of Xxxx's school or home life.**

Work History

¹The presentence report erroneously places the school in Brooklyn, New York. Wyandanch High School is located on Brooklyn Avenue in Wyandanch, New York.

Xxxx Xxxx began working to help support his family at a very early age. Mr. Xxxx' work history sheds additional light on the ways in which his family life was at best confusing, and at worst, denied him of any semblance of a healthy childhood.

Xxxx's first job was working for a barber named J. xxx. At roughly ten years of age, Xxxx convinced Mr. xxxxx to hire him to sweep the shop. This initial work experience was recalled by Xxxx, his mother and sister Xxxx. The Xxxx Barber Shop was located atxxxx, New York; Xxxx worked at the barber shop for about two years and gave his mother his earnings toward family support.

A State Education Department form included with Mr. Xxxx' records from xxxx Middle School verifies that in July 1987, Xxxx applied for a worker's permit. He was 14 at the time and held various summer jobs. As the affidavit of Xxxx Xxxx confirms, when Xxxx Xxxx was 16, he worked as a stock clerk at xxx Auto Supplies at 218 Broadway in Xxxx, Long Island. CCA is aware that two co-workers, Xxxx Xxxx and Xxxx Xxxx, as well as Mr. Xxxx were still at this workplace in late April 1998 and were interviewed by Jxxxx Gx who found them to recall Xxxx Xxxx as a generally nice young man who came from a very difficult family life. Mr. Xxxx remembered Xxxx Xxxx as initially tough but eventually came around on the job. As is clear from Mr. Xxxx' affidavit, the information about Mr. Xxxx would have been available in 1994 and 1995. After his employment with Tager, Xxxx worked at Jiffy Lube in xxx, and had summer jobs cleaning school buses and doing odd jobs with his uncle Alfred Hampton. Mr. Xxxx was about 17 years old when he worked at these jobs.

Mr. Xxxx admits that his entry into the world of street level drug sales was an economic decision to support his family, including his mother, siblings and aunts and uncles (many of whom were younger than him). **Later, Mr. Xxxx relied on this sort of activity to support Xxxx Xxxx and her mother as well. Mr. Xxxx' involvement in sales of drugs, interspersed with efforts to obtain lawful employment, is a characteristic of his assuming adult and parental roles in his personal and family relations.**

In 1990, Mr. Xxxx was incarcerated for the first time. His criminal record as well as limited education made it more difficult for him to secure gainful employment. Nonetheless, over the next several years, Xxxx Xxxx was in and out of prison, held various low-paying jobs and also sold drugs. In 1993, he worked for a period of time for xxx in Xxxx, New York.

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Mental Health History

The first record of mental health counseling for Xxxx Xxxx is April 1981 when Xxxx, then seven years old, was referred to the xxxx Child Guidance Center by his school due to academic and emotional difficulties. Agency records however, indicate that Xxxx's counseling did not begin until xxx 1981 for various reasons including the fact that Xxxx was living with his maternal grandmother for a time. It was also during this time that Mr. Xxxx first recalls witnessing his stepfather beating his mother. Xxxx Xxxx reported that it was also the time that Xxxx learned definitively that Xxxx Xxxx was not his biological father. According to Mrs. Xxxx, her mother, Xxxx Xxxx, told Xxxx that he was the result of an unwanted pregnancy.

Much of the Xxxx Xxxx' mental health records reflect therapists' concern about his family situation. It was noted that parental discipline relied on "whippings," reflected drug use by Xxxx's stepfather, family poverty, domestic violence and mental health problems on the part of Xxxx's mother. Xxxx Xxxx was initially diagnosed as conduct disorder -under socialized and aggressive; the psychiatric evaluation concluded: "This is a child who comes from a somewhat deprived, possibly abusive background, his mother before him also apparently having been abused by her own mother; i.e., being twice impregxxxxd by her boyfriend when the patient's mother was only 13." (Psychiatric evaluation by Dr. S, previously referenced as Appendix A)

Xxxx remained in individual counseling on and off until 1986, including several periods when, due to residential changes, there was little or no contact with the family. Xxxx was generally described as motivated for treatment. In her closing sumxxxx November 29, 1982, his therapist noted that Xxxx, who was less than 10 years of age at the time, came to treatment unescorted by any adult, and had to cross dangerous streets to reach the Center. (Appendix F) The Xxxx records also offer insight into Xxxx's role in his family describing Xxxx Xxxx's atypical dependence upon him to help support the family and younger siblings. **There is a great deal of confusion described ranging from Xxxx referring to his uncles as cousins due to their proximity in age, and Xxxx Xxxx referring to her children as friends.**

That Xxxx Xxxx played an adult role in his family as young as ten years old is confirmed in reports by his prixxxx therapist xxx, Psychiatric Social Worker as well as his mother's recollections. In case notes dated May 10, 1982, the therapist commented: "Mrs. H [Xxxx]

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expected good deal from him [Xxxx] while she was sick.² He went to store daily - on other hand treated him same as siblings.” (Appendix G) Ms. Sxxx writes in her Closing Sumxxxx dated xxx 1985: “During this time maternal grandmother died very suddenly. Xxxx was very close to his maternal grandmother and her death was a shock. In addition, maternal aunts and uncles who had no place to live came to live with Xxxx and his mother requiring many adjustments. Xxxx reacted positively to the additional responsibilities placed on him.” (Appendix H) Xxxx Xxxx revealed the extent to which Xxxx played a quasi parental role in her family when she spoke of “Xxxx, me and the kids” in describing the family’s various residential moves. Xxxx Xxxx’ case file at the Xxxx Child Guidance Center was formally closed in May 1987.

Criminal History

The end of Xxxx Xxxx’ counseling at the Xxxx Child Guidance Center in 1986 was quickly followed by Xxxx’s first encounter with the juvenile justice system; the charge was closed as adjusted in December 1987. During this time, Xxxx Xxxx attended six schools, and lived in four different residences including the battered women’s shelter. On xxx, 1988, Xxxx Xxxx, then 15-years old was arrested for Criminal Possession of a Controlled Substance 3; he was adjudicated a juvenile delinquent for the crime of Criminal Possession of a Controlled Substance 7° on xxxx, 1989 with a disposition that included intensive probation supervision plus 60 hours of community service.

Less than three months following this adjudication, Xxxx Xxxx was again arrested and charged with Criminal Sale of a Controlled Substance 3. He pled guilty to this charge on xxx, 1989. According to the presentence report completed in connection with this incident, Xxxx was involved in a street corner sale of \$20 of crack cocaine to two undercover police officers. The presentence report evaluation of Xxxx Xxxx was very negative. It called him a “savvy, precocious, repeat drug offender” and recommended against Youthful Offender treatment and called for incarceration. These comments and recommendations were made despite the fact that this was Xxxx Xxxx’ first adult arrest and there was little evidence of any programming during the brief period of time that Xxxx was under juvenile probation supervision. The presentence

²Xxxx Xxxx was hospitalized sometime between December 1981 and November 1982.

report makes no reference to the fact that in 1989, Xxxx Xxxx who was 15 to 16 years old, lived in at least four different addresses, including a motel that was identified as an emergency shelter. There is no recommendation for any psychological support or counseling for Xxxx and his young and overwhelmed mother. On xxx, 1990, Xxxx Xxxx, a 16-year-old first offender received a split sentence - 6 months of local incarceration plus probation.

Mr. Xxxx' second felony conviction arose from a plea of guilty in xx1991 to Criminal Possession of a Controlled Substance 5. He was sentenced on xxxx, 1992 to two to four years in state prison. Mr. Xxxx was released on parole in xxxr 1992. Shortly thereafter, Xxxx had his parole supervision transferred to xxx, New York, so that he could live with his sister Xxxx. In xxxx 1993, Mr. Xxxx was again arrested for drug possession and sale charges, was convicted of attempted criminal possession of a controlled substance 3^o and sentenced to 3 to 6 years in state prison on xxx, 1994.

In sum, Xxxx Xxxx' criminal history consists of three nonviolent drug convictions. None of the arresting information or information contained in any of the presentence reports suggests that Mr. Xxxx was in any way involved in violent criminal activity or ever possessed any weapons. In fact, the presentence reports contain serious misrepresentations about the number of convictions and the 1994 report by the xxxCounty Probation Department states that Mr. Xxxx was convicted of five felony drug offenses, when in fact it was his third such conviction. This error was carried over to the 1995 presentence report. (A detailed analysis of the probation reports prepared about Mr. Xxxx is attached as Appendix I.) The presentence reports did note that Mr. Xxxx admitted selling drugs and consistently stated that his involvement was at least in part due to the need to support his family. The presentence report prepared in 1991, in connection with Xxxx's second conviction included the following: "He [Xxxx Xxxx] said that his mother does not have a lot of money and they needed money to buy things to help his family out." Unfortunxxxxly, Xxxx Xxxx was not reinterviewed for the 1991 report as she had no telephone at the time. **The 1991 report relied on the initial presentence report prepared in 1990. This practice continued with each and every report and included in practices in xxx so the errors and omissions contained in the first report were passed along in each subsequent report. There was no mention of the circumstances of Xxxx Xxxx' birth, his mother's mental health**

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problems, his chaotic and impoverished family circumstances, the frequent change in addresses and schools, nor the history of family violence.

Circumstances Surrounding the Instant Offense

Xxxx Xxxx first met Xxxx Xxxx in 1992 when he visited his sister Xxxx (Xxxx) who had previously moved to xxxx. Ms. Xxxx occasionally babysat for Xxxx's son. Xxxx moved in with his sister in xxx 1992. By this time Xxxx was also living with Xxxx who took her in after Xxxx's mother, Xxxx Xxxx Washington, threw Xxxx out of her own home. Xxxx lived with his sister and Xxxx and Xxxx and Xxxx fell in love. Xxxx became pregnant and Xxxx and Xxxx's daughter Nahquavyia, was born xxxx, 1993.

On xxx 1994, Xxxx Xxxx was sentenced in Xxxx County Court to 3 to 6 years upon his conviction for attempted criminal sale of a controlled substance 3°. He was incarcerated at Hudson Correctional Facility and received fairly regular visits from Xxxx and had almost daily telephone contact with her. Xxxx's mother also visited Xxxx at Hudson and in July told Xxxx that Xxxx had another boyfriend. Xxxx became increasingly distraught over the loss of his relationship with Xxxx and the well-being of his daughter based on reports that he was given by Xxxx, her mother and his mother, Xxxx Xxxx, that Nahquavyia was hospitalized several times between xxxt 1994.

On xxx, 1994, Xxxx Xxxx was assigned to a work detail that was sent to the Correctional Training Center in Xxxx and was assigned to prepare food for trainees. Upset about his daughter's health and rumors about Xxxx's infidelity, he telephoned her and told her he was coming over to see her. Carrying the kitchen paring knife that he had been using to prepare food, Xxxx Xxxx walked out of the DOCS training academy, walked to the medical center on xxxnd Avenue and about 9:00 a.m. took a cab to xxxx where Xxxx was living.

According to the Xxxx Xxxx' police statement, shortly after Xxxx arrived at her home, she and Xxxx began arguing about the rumors of her cheating on him. It was at this time that Xxxx hit Xxxx and poked her with the knife. Xxxx and Xxxx subsequently made up and Xxxx remained in the home. While Xxxx's cousin showed up at her apartment before the police arrived, and while she was not allowed entry, she did not called the police but rather simply left the premises.

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The police arrived at the Lark Street residence about 2:00 p.m. based on their information that Mr. Xxxx' girlfriend and daughter lived there. Xxxx Xxxx states that he grabbed Xxxx and made the threats to injure her as he feared for his life and that he never intended to harm Xxxx. In an interview with Ms. Xxxx during the course of the preparation of this report, she also indicated that she did not want Xxxx to leave after the police showed up as she was afraid that the police would kill him. This is further confirmed by Ms. Xxxx' affidavit.

Press reports, including an article that appeared in the Xxxx Times Union dated August 30, 1994 also suggest that family members did not fear for Xxxx's safety. Xxxx's mother is quoted as stating "I'm shocked. I don't have anything bad to say about him [Xxxx Xxxx]." The article further depicts an intimidating police presence, describing the police dressed in "ninja-like" SWAT-team garb. The incident ended when the police stormed the apartment where Xxxx and Xxxx were sleeping on the bed and apprehended Xxxx.

Immediately after the incident, the Xxxx Times (xxx 1994) reported that Xxxx Xxxx told reporters that she still loved him. Xxxx visited Xxxx much of the time that he was detained at the Xxxx County jail prior to his trial. CCA has reviewed letters written by Xxxx to Xxxx over this time period; portions of these letters are excerpted below as they indicate that the two maintained their relationship over this time and that the relationship remained characterized by mutual concerns about fidelity. The letters also indicate that Xxxx appreciated Xxxx's support of her and the baby.

"I want xxx to get to know you and grow up with a father something I didn't have and neither did you . . . What i'm (sic) saying is I want her to have a father figure something I didn't have. Cause if I did, I wouldn't be the way I am now. You were something like a father to me. I don't want xxx to get a boyfriend and be in a situation like I was with you. You took care of me when no one wanted me. I appreciate that. I wanna be with you cause I love you." (emphasis in original). (Letter dated xxx, 1995 attached as Appendix J).

In a letter dated xxx, 1995 Xxxx writes about wanting to be with Xxxx when he gets out of jail, but concerned that her past relationships with other men will cause him to abandon her. She also tells him that she will help him with his court case.

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Xxxx Xxxx testified against Xxxx Xxxx during his trial on the instant charges. Mr. Xxxx was convicted on xxx of Kidnapping 1, Kidnapping 2, Escape 2, Assault 2, Endangering the Welfare of a Child and Unlawful Imprisonment and was sentenced on xxx, 1995. The Appellate Division reduced the sentence to 20 to life.

Case Sumxxxx and Recommendations

Xxxx Xxxx is currently serving a sentence of 20 years to life imprisonment for the above conviction. The information developed for this report however indicates that the actual offense behavior committed by Mr. Xxxx was escape from a correctional facility and assault in connection with a domestic dispute with his girlfriend. Moreover, Mr. Xxxx' behavior can be understood only within the context of his life, and much of this information was not provided to the judge at the time of sentencing. The presentence report prepared for the court did not develop any independent social history information, but relied on previous presentence reports that were themselves inadequate. None of the presentence reports addressed Xxxx Xxxx' horrific upbringing including the circumstances of his birth, nor did it address his, nor his mother's mental/emotional health issues. There was also no victim impact statement included with the report; Ms. Xxxx was contacted by letter but did not respond. Despite Xxxx Xxxx' intimate relationship with Xxxx Xxxx and the fact that the two shared a daughter, Nahquayvia, there was apparently no effort to interview Ms. Xxxx or meet with her in person.

The investigation and review of the circumstances of Xxxx Xxxx' life present a picture of a young man who has never been a violent, predatory individual as is implied by his current sentence. Rather, he is a young man who managed to survive a terrible childhood that began with the rape of his mother by her stepfather (Xxxx's father/step grandfather), continued in an environment where he became a witness to the abuse of his mother by his stepfather and was surrounded by chaos, and likely mental health problems on the part of his mother. Remarkably, Xxxx Xxxx responded to these appalling conditions by assuming responsibilities far beyond his age and maturity. He helped care for his mother when she was ill, helped care for his siblings and her siblings, nieces and nephews in the chaotic extended family and began working even before his teens. His co-workers and supervisor still remember him fondly, although even at 12, Xxxx was seen as a troubled child. Xxxx Xxxx admittedly became involved in drugs - as a street level dealer in order to support himself and his family. He continued this role in his relationship with

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Xxxx Xxxx, supporting her, her mother Xxxx and his child through money earned through short term temporary jobs and street drug sales. Prior to his arrest on the instant offense, Xxxx Xxxx had never been convicted or arrested for any crime that involved any level of personal violence.

In many respects, Xxxx Xxxx' life is a product of the failure of social, mental health, educational and criminal justice systems. This in no way justifies any of Mr. Xxxx' behavior, but it does suggest that his positive attributes were not developed and many of the very troubling conditions of his life were ignored. There is no indication of intervention on the part of the social service or educational systems in light of family domestic violence and instability (multiple changes in residence and schools). There is no indication that the emotionally frail Xxxx Xxxx was provided with assistance in parenting her children as well as the siblings that she assumed custody of. By the time Xxxx appears in the juvenile justice system, there is no evidence that this initial opportunity for intervention resulted in a more than cursory exploration of the factors which contributed to this young teenager's involvement in drug selling. The presentence report is notable for its lack of depth. Not surprisingly, Xxxx Xxxx quickly gets into trouble again, before there was even a chance of developing a relationship with a probation officer. The quick response starts Xxxx Xxxx on his life in and out of prison, for nonviolent, drug-related crime. Upon his release, he was directed to drug treatment, although there was no professional evaluation that indicates that Xxxx Xxxx was addicted to drugs. Xxxx Xxxx was not given any specific help in obtaining vocational training that might have redirected his entrepreneurial skills in more pro-social ways.

Xxxx Xxxx essentially learned a sense of family that was at once supportive and dysfunctional. Whatever her limitations, Xxxx Xxxx managed to keep her family together and take in her siblings when need be. Xxxx learned that family is important, even where interpersonal relations are cruel and harsh. He learned that you do what it takes to survive. Mr. Xxxx essentially recreated this definition of family with his girlfriend Xxxx, making and taking responsibilities and commitments for which neither were ready. Xxxx Xxxx supported Xxxx Xxxx, her mother and eventually his daughter as he supported his family - temporary jobs and drug sales. In keeping with his own lessons as a child, he romanticized and idealized this relationship and became overwrought when he learned that his daughter was not being well-cared for and his girlfriend was taking up with another man. His escape was not a well-planned

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endeavor, but an impulsive act that took place because of opportunity (an unsecured work assignment) prompted by his emotional overreaction about the loss of his “family” (Xxxx and Nahquayvia).

CCA understands that this report is being submitted in support of a motion to vacate Xxxx Saunder's conviction and his sentence. The information in this report could have been provided to the trial court pretrial or at sentencing. Had CCA been brought into this case at sentencing in 1995 we would have recommended the minimum sentence be imposed. Based on the foregoing analysis we make that same recommendation today. We would also like to point out to the court that CCA will be available to assist Mr. Xxxx at the time he becomes eligible for parole in identifying vocational and mental health counseling services that would help him make a successful transition to the community. CCA would provide this information to the Division of Parole.

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What is a Social Biography Packet? Provided by Raj Jayadev at Silicon Valley De-Bug

WHAT IS A SOCIAL BIOGRAPHY PACKET?

A comprehensive packet to show the character of and support for a person facing charges in the courts

WHO IS THE AUDIENCE?

- District Attorney – to lower, change or dismiss charges
- Probation – to recommend sentencing
- Judge – to determine sentencing
- Prison – to determine placement
- Defense Attorney – to better defend their client
- The Person facing charges – for a chance to reflect on their lives and realize their support
- Family and Community – to express and rally support for their loved one

WHEN IS IT USED?

At Any Stage of the Court Case. It can be used for bail hearings to show that the person has community support that will help him/her show up to court; for plea negotiations or sentencing to show alternatives to incarceration and demonstrate support; and/or for youth transfers to juvenile court to show a young person’s challenges, community support, and capacity to grow.

WHAT SHOULD A SOCIAL BIOGRAPHY PACKET ADDRESS?

These are some of the themes that a social biography packet could address. It should be developed *with the person facing charges, the family and the defense attorney* so that it can be effectively used.

- Public Safety Concerns
- Chance of Reoffending
- Support in the Family and Community
- Future Prospects
- Remorse/ Recognition of the Seriousness of the Incident

WHAT ARE SAMPLE DOCUMENTS TO GATHER?

Make sure the documents address the themes that the packet is highlighting. These should be vetted through the attorney.

- Character Letters
- Pictures of the person
- Certificates of Program completion
- School records
- Awards
- Positive newspaper or other media clippings
- School records
- Immigration records (especially if the person was a victim of crime)
- Medical records demonstrating health issues
- Mental health records
- Paystubs
- Letters offering acceptance to school, employment, programs
- Rent paystubs



MOASENI JR. LEASIOLAGI
 Family and Community Support