

# A Social Workers Role on a Death Penalty Mitigation Defense Team

# What is mitigation?

- The definition of mitigation is to make something less harmful, unpleasant or bad.
- A mitigating factor, in legal terms, is any information or evidence presented to the court regarding the defendant or circumstances of the crime that might result in reduced charges or a lesser sentence.
- Mitigation can be used in a wide variety of criminal cases beyond death penalty cases.
- Mitigation does not attempt to excuse the client's behavior, but provides the jury with information about the client's life circumstances so that they might consider the punishment of life in prison rather than the death penalty.

# What is a mitigation team?

- This is a multi-disciplinary team that is brought together for the penalty phase of a capital trial.
- The goal of the team is to obtain a life sentence from the jury instead of the death penalty.
- This team, ideally, should be in place once the defendant has been indicted for Capital Murder.

# Who makes up the team?

- Two attorneys- one of which must have experience working on capital cases
- A fact investigator- usually a private investigator
- A mitigation specialist- this role can be filled by a social worker, psychologist or a psychiatrist. Recently attorneys have been working full time as mitigation specialists.
  - A social worker is commonly recommended because of the depth of education in dealing with clients and their families. Social workers are also trained to investigate and evaluate individual, family and social factors as well as environmental situations that can affect a defendant.

# Why is it important to have multiple professions on the team?

- Each professional contributes unique talents to the team.
- Each team member has specific duties that the other team members may not be qualified to conduct.
- When collaboration of ideas and strategies takes place on behalf of the client, there is a better chance of the jury empathizing with the client and buying into the rationale of the mitigation defense.

# Importance of multiple professions continued

- Team members rely on each other to put together the best mitigation defense possible for the client.
  - Attorneys argue the legal side of the case to the court.
  - The fact investigator investigates relationships between and among the client's family and social circle. They help to find witnesses to testify on the client's behalf

# Importance of multiple professions continued

- The mitigation specialist (social worker) explains to the jury what circumstances led to the event, the psychosocial and developmental problems that may be present and why the client couldn't "just get over" his/ her unfortunate circumstances
- The mitigation specialist (social worker) gathers all of the evidence to be presented to the jury and works with the attorney to create visual aids such as genograms, charts and timelines.

# What role does the social worker play?

- The social worker acts as a liaison between the attorney and the client, the client's family, and all other individuals from whom information is sought.
- The social worker focuses the team by serving as point person through whom all information can flow and be distributed.
- The social worker maintains relationships with agencies and institutions that will provide the documentation for developing the life history.

# Social Worker's Role continued

- A social worker works with the client and their family as well as any other person in the client's life to gather information.
- A social worker can be the acting case manager for the client in relation to the defense team.

# Social workers role continued

- The social worker advocates for the client to the team as well as to the jury.
- The social worker shares with the defense team knowledge of human behavior that can be used to improve juror understanding of mitigating circumstances.

# How does the social workers role on the team differ from a psychologist or psychiatrist?

- A psychiatrist or psychologist can be used to conduct a full psychological evaluation on the defendant so that she/ he can present a formal diagnosis to the jury.
- A neuropsychologist is often used to determine the possible presence of brain damage of some etiology.
- An expert in substance abuse is also utilized if the situation calls for it. This person can be a social worker , psychologist or psychiatrist.

# What unique set of skills does a social worker bring to the team?

- We have a long history of theoretical and practical application of models and theories, interdisciplinary collaboration, multidimensional assessment, and relationship building.
- Social workers have knowledge and expertise in case management, assessments, casework, mediation, and information distribution through written reports.

# Social work skills continued

- Social workers have training in written and verbal communication that enables them to communicate clearly with the team as well as the client and his/ her family.
- Social workers assist the attorney(s) in learning how to communicate to the laypeople who will eventually become jurors and decide the defendants fate.
- Social workers can use basic and advanced interpersonal skills to expand communication and collaboration among the team, the defendant and the jurors.

# Forensic Social Work in the future

- Education and training for social workers wishing to work in death penalty mitigation is challenging to find.
- New curriculum should be developed within our schools of social work at the undergraduate, graduate and continuing education levels.

# Unmet need

- The need for social work mitigation expertise surpasses availability.
- Many students and graduates express an interest in working in the criminal justice system, there are few, if any, schools that offer curricula tailored to capital mitigation investigations.

# Unmet need continued

- Coursework and field placements developed with law schools and law students could create a learning environment conducive to both social work and law. It would help them gain expertise and forge relationships that would follow them beyond graduation.