

Terry Lenamon on the Death Penalty

Sidebar with a Board Certified Expert Criminal Trial Attorney



Terence M. Lenamon is a Florida Bar certified expert in the area of criminal trial law. With over 17 years experience he has built a reputation as one of Florida's most respected criminal defense lawyers. His defense has been sought by many high-profile clients and has led him through 20 first-degree murder trials and eight death penalty cases. That experience has brought him national recognition as a go-to commentator on death penalty issues. He is the force behind both deathpenaltyblog.com and Florida Capital Resource Center (floridacapitalresourcecenter.org), and can be reached at terry@lenamonlaw.com.

Detailing Mitigation Defense – Rolling Up Your Sleeves to Find the Mitigating Facts behind a Death Penalty Fight

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Whenever the State notifies the court and opposing counsel that it intends to seek the death penalty in a case, then the defense of that matter literally explodes in complexity. Now, under the assumption that there may be a penalty phase to the case, the defense team must identify, investigate, and present [mitigation factors](#) that can pertain to any number of issues, such as:

1. *Fetal and birth trauma* (prenatal malnutrition, fetal exposure to alcohol, drugs and toxins, maternal diabetes, liver and thyroid disorders and toxemia)
2. *Childhood developmental history* (ages mastered developmental tasks, i.e., walking, talking)
3. *Early physical health of client* (chronic illnesses, high fevers, traumatic injuries, infectious diseases, nutritional status; whether medical attention provided)
4. *Early signs of mental illness or deficiencies* (mental retardation, developmental disorders, mental illnesses such as schizophrenia or bipolar disorder; onset of adolescent or adult mental illness; treatments, self-medication)
5. *Educational history* (when/where attended school, learning disorders, special education, referrals for assistance)

6. *History, nature and extent of mental, physical and/or sexual abuse* (isolation, shunning, scapegoating, beatings, burnings, having to watch repeated abuse of family members, loved ones)
7. *History and course of drug addiction* (introduction to drugs, toxins, self-medication)
8. *Nature of relationships with parents and significant others* (bonding and trust present, presence, abandonment, betrayal by parents)
9. *Residential history* (foster homes, juvenile settings, evictions)
10. *Support systems* (within family, school, community; presence or absence of loved ones and advocates)
11. *Personal self-care skills* (ability to have a sense of self esteem and feeling of being personally competent)
12. *Poverty* (living conditions, lack of food, starvation or malnutrition, lack of heat, lack of medical care, lack of clothing)
13. *Number and nature of traumatic life events* (loss/illness of significant others, victim/witness of extreme violence, physical/sexual abuse, loss of home, hospitalization)
14. *Health history* (accidents, infections, hospitalizations, untreated conditions, medical treatment)
15. *Nature of work experiences* (childhood jobs; number and nature of jobs; ability to perform tasks; willingness to perform; job related injuries/illnesses)

16. *Juvenile and adult criminal history* (influence of co-defendants; experiences with law enforcement, juvenile detention centers, courts, parole and probation, prisons, and work release programs, rape, inmate violence and violence and abuse perpetuated by the institution)
17. *Military history* (combat, exposure to toxins, nature of jobs, special training, commendations, indications of Post Traumatic Stress Disorder)
18. *Religious and spiritual experiences and activities*
19. *Nature of significant relationships*, (family friends, spouses, ex's, impact of these relationships and/or the loss of the relationships of the client)
20. *Physical and mental health histories of parents and other family members*
21. *school histories of parents and other family members*
22. *employment history of parents and other family members.*

How Can the Criminal Defense Team Find and Flesh Out All These Facts?

Obviously, locating all the documentation and talking with all the people with relevant facts (and possible admissible mitigating evidence) on all these various areas of a defendant's life cannot be accomplished by a single defense attorney and his trustworthy assistant, no matter how entertaining the *Perry Mason*[™] and *Matlock*[™] television series may have been.

Today, the capital defense team is made up of two trial attorneys at the minimum, one of which must be death-penalty qualified under state law. An investigator must be hired for the team, as well as a mitigation specialist. (See related article, "What is a Mitigation Specialist in a Death Penalty Case?")

While the attorneys and the investigator are important contributors to the case, it is the mitigation specialist that is primarily responsible for accumulating all the documents that pertain to each of the categories listed above as well as speaking with each of the people with information that pertains to them.

Afterwards, the mitigation specialist summarizes and analyzes everything that has been compiled, and presents the information to the attorney and the case's experts (psychiatrist, etc) for further analysis and discussion. Usually, the mitigation specialist culls the information through two main organizational tools: *chronologies* and *genograms*.

Chronologies are time lines with annotations. A good chronology can take 5000+ pages of documents (including interviews and witness statements) and pare that down into a working document of 100 pages or less.

Genograms are pictorial representations of influence patterns; usually they include family histories of medical, psychological and social dysfunction. (For example, a history of schizophrenia or a history of childhood hospitalizations will be demonstrated in a genogram.) Genograms not only succinctly identify the number and nature of the influences over which the client had little control, but also provide a clear illustration of how these influences have worked together in a *cumulative effect* upon the defendant.

Locating Mitigating Facts – an Ongoing, Vital Job for the Defense Team

This fact-gathering process is not completed in one round and then finished. Building of chronologies and genograms is a complicated and on-going process, growing over time as more and more work is done out in the field.

Chronologies are amended; genograms are edited and expanded. There cannot be too much background information in a death penalty case.

At some point, certain areas will begin to suggest the need for other experts to be included in the defense. Psychologists may be necessary to analyze facts revealing themselves in the growing chronology; social workers expertise may be required to explain the facts revealing themselves in school records, family employment and abuse records, and the like.

In the capital case, the gathering of facts, the review of facts gathered to determine other information that must be located, and the organizing of all the information not just for internal use but for both admissibility at trial is a complicated, costly endeavor that must be done and done well.

It is not extravagant to estimate that mitigation investigations can take years to accomplish and yet the work of the mitigation specialist and the fact-gathering and analysis efforts of the death penalty defense team are not well-known or well understood by the

public at large today.

Nevertheless, nothing is more important to the mitigation defense than finding and assessing *all* the facts pertinent to the man or woman facing death at the hands of the State. The defendant's life depends upon this complicated, time-consuming, and tedious task.