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**Discerning what can be learned from seasoned sentence mitigation practioners' experiences of the accused and their family members as historians, specifically in the context of socio-cultural factors, in the development of life history presentation in capital defense proceedings**

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Lisa Kelly  
Discerning What Can Be Learned From  
Seasoned Sentence Mitigation Practitioners'  
Experiences of the Accused and Their  
Family Members as Historians, Specifically  
in the Context of Socio-Cultural Factors, In  
the Development of Life History  
Presentations in Capital Defense  
Proceedings

#### ABSTRACT

This qualitative study employed a study of thirteen participants, including social workers, who interview the accused and their family members in death penalty cases, to discern what could be learned from seasoned sentence mitigation practitioners' experience of defendants and their family members as historians. Those interviewed in sentence mitigation investigations are asked to discuss sensitive information while in the midst of a legal process surrounding a violent crime and rendering the accused and their family members extremely vulnerable. The information interviewees provide may have direct bearing on sentencing of the accused. In capital cases, defendants are highly unlikely to avoid a death sentence absent presentation of a life history presentation that contextualizes the behaviors of the defendant.

A finding of this study is practitioners experienced the accused and their family members as poor historians and oppressing socio-cultural factors influence their capacity as historians. Additional findings relate to practitioners experience of race in sentence mitigation practice and the accused and their family members' reflection on socio-cultural factors at various stages of the sentence mitigation process.

**Discerning What Can Be Learned From Seasoned Sentence Mitigation Practitioners' Experiences of the Accused and Their Family Members as Historians, Specifically in the Context of Socio-Cultural Factors, In the Development of Life History Presentations in Capital Defense Proceedings**

A project based upon an independent investigation,  
submitted in partial fulfillment of the requirements  
for the degree of Master of Social Work.

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2011

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## Table of Contents

ACKNOWLEDGEMENTS .....	ii
TABLE OF CONTENTS.....	iii
CHAPTER	
I INTRODUCTION .....	1
II LITERATURE REVIEW.....	4
III METHODOLOGY .....	22
IV FINDINGS .....	27
V DISCUSSION.....	40
REFERENCES .....	55
APPENDICES	
Appendix A: Human Subjects Review Committee Approval Letter.....	59
Appendix B: Recruitment Posting .....	60
Appendix C: Amended Informed Consent .....	61
Appendix D: Interview Guide.....	63

## **CHAPTER I**

### **Introduction**

This exploratory study is designed to make a contribution to the practice of social worker sentence mitigation work by discerning what can be learned from seasoned sentence mitigation practitioners' experiences of the accused and their family members as historians, specifically in the context of socio-cultural factors, in the development of life history presentations in capital defense proceedings.

A review of the literature found no empirical studies on point with the focus of this study. A minimal amount of literature was found to examine the experiences of family members of the accused in the death penalty process, however this literature did not specifically examine these experiences in the sentence mitigation process. Lacking in the literary discussion is any examination of the socio-cultural perspective of the accused or their family members. The available literature discussing sentence mitigation practice was found to focus largely on macro levels of purpose. The researcher found minimal research on the micro-level of practice in sentence mitigation work. What was found focused primarily on the ethics of practice at the intersection of social work practice and legal practice.

The accused and family members of the accused in capital cases represent vulnerable populations. These populations are relatively unexplored. Both carry enormous social and emotional burdens. Those interviewed in the development of capital defendant social histories are asked to discuss sensitive information while in the midst of a process surrounding a violent crime. The information they provide may have bearing on the sentencing of the accused. The

development of sensitive interview protocols to minimize harm and gain reliable information is critical. A more nuanced understanding of practice experiences can aid development of these protocols and a more nuanced understanding of the process of procuring mitigation evidence, contributing to the protection of rights of the accused, contributing to social work knowledge of the oppressed and more rigorously challenging the protection of Constitutional rights.

Interviewing these vulnerable individuals not only provides an advocacy effort on behalf of the accused, but can also make a contribution of important information to social work by expanding on insights to interviewing vulnerable populations. Life-history narratives can be used in social work research which intends to understand contributing factors in the lives of vulnerable and oppressed populations. Data gained from narratives in capital defense cases can be applied to testing the validity of theories linking social and ecological factors and criminality. Utilizing narratives arising in capital defense cases as a methodology linking interdisciplinary fields has the potential to contribute to micro and macro level improvements and interventions. Therefore, greater understanding of the accused and their family members as historians offers potential improved defense advocacy and potential interdisciplinary engagement in examining the nexus of criminality and social vulnerabilities.

The purpose of this exploratory study is to discern what can be learned from seasoned sentence mitigation practitioners' experiences of the accused and their family members as historians, specifically in the context of socio-cultural factors, in the development of life history presentations in capital defense proceedings. The lack of literature on this topic encouraged the researcher to design a study to begin to explore and generate a discussion of practice experiences with this highly vulnerable population. In an effort to define the skills necessary to meet the needs of the population and the goals of the legal intervention, and consider how this fits into the

role of social work practice and social model of attending to the client, the study asked what can be discerned from seasoned sentence mitigation practitioners in death penalty work and about the experience of the accused and their family members as historians, specifically in a socio-cultural context.

Chapter II of this study will provide a review of the literature, which formed a basis through which this study was designed. Chapter III will discuss the methodology through which the sample was recruited, the interviewing process, and data analysis. The findings generated through the data analysis will be presented in Chapter IV and discussed in Chapter V. Strengths and limitations of the study, as well as how the implications of the study may contribute to a body of knowledge central to the missions of social work practice will be discuss in Chapter VI.



## **CHAPTER II**

### **Literature Review**

The following literature review focuses on previous research related to sentence mitigation practice. The first section will begin with an overview of the role of the interdisciplinary team in the legal process and legal history of the sentence mitigation practice. This second section will examine themes in the literature related to the socio-cultural factors influencing the accused and their family members in the death penalty process. The third section will examine the scope of sentence mitigation practice and theory and practice in interviewing vulnerable populations.

#### **The Interdisciplinary Team & Legal History of Sentence Mitigation**

Capital defense mitigation specialists are critical members of the defense team, and provide a service constitutionally required in effective representation. Capital defense mitigation specialists construct extensive life history reports for the purpose of providing evidence at sentencing hearings or in post conviction habeas corpus proceedings. The term “mitigation specialist” has been applied to a wide range of practitioners in capital cases – from law students, clinical psychologists, investigators who gather factual information about the client, to social workers. Social work is the profession most akin to the specialty of mitigation investigation because social workers engage in practices of relationship building, have the capacity to make multi-dimensional assessments of the accused and their family members, and are highly skilled

at developing biopsychosocialspiritual assessments. Additionally, social work practice is grounded in theoretical perspectives and systems-focused models.

In 1963, the decision of the United States Supreme Court in Gideon v. Wainwright (1963) ruled that it is an obligation under the United States Constitution that the government provide defense representation to those that cannot afford to retain legal representation in criminal cases. The majority of defendants in capital cases are indigent. The fundamental right to representation entitles the accused to more than a lawyer; in capital cases, the accused is entitled to an investigation and presentation of mitigating factors that may shed light on the accused's history and how it contributes to the presenting circumstances.

A qualified interdisciplinary capital defense team requires no less than two defense attorneys, an investigator, and a mitigation specialist. At least one member of the defense team is required to be trained and experienced to screen for the presence of mental or psychological impairment of disorder, and should have the ability to “harmonize the mitigation investigation with the overall defense effort” (ABA 2003, 33-34). The ABA guidelines cite a 1998 report prepared by a subcommittee of the Judicial Conference of the United States, which describes the qualification and roles of the mitigation specialists:

Mitigation specialists typically have graduate degrees, such as a Ph.D. or masters degree in social work, and have extensive training and experience in the defense of capital cases. They are generally hired to coordinate an investigation of the defendant's life history, identify issues requiring evaluation by psychologists, psychiatrists or other medical professionals, and assist attorneys in locating experts and providing documentary materials for the to review...Without exception, the lawyers interviewed by the Subcommittee stressed the importance of a mitigation specialist to high quality

investigation and preparation of the penalty phase. Judges generally agreed with the importance of a thorough penalty phase investigation, even when they were unconvinced about the persuasiveness of particular mitigating evidence offered on behalf of an individual defendant (quoted in ABA 2003).

The accused's right to sentence mitigation services does not constitute entitlement of a sentence mitigation specialist with the specific qualifications of a Masters of Social Work. In the adversarial process of the criminal justice system, the accused is most equitably represented if the most qualified professionals are appointed. Despite the monumental importance of the mitigation investigation, currently, there are no licensing authorities for mitigation specialists. Nor are there prescribed educational criteria for an individual to be considered a mitigation specialist (Hughes, 2009). It is difficult to imagine that a professional untrained in mental health assessment can adequately perform this aspect of mitigation work. This is significant in consideration of the skill level of masters level social workers in working with the accused and their family members in development of life history presentations.

The duty and objective of the social worker sentence mitigation specialist is to develop extensive social histories of the client's life and the influence of the numerous individuals involved in their lives. Mitigation specialists coordinate an investigation of the defendant's life history, identify issues requiring evaluation by a psychiatrist or other medical professional, and provide reports for review by legal teams. Mitigation evidence is intended to provide informative objective information about the the circumstances of a person's life in order to contextualize the individual in his convicted circumstance and facilitate better understanding of his or her humanity. This can have a bearing on sentencing, sometimes keeping the accused from suffering the death penalty.

The duty and objective of the capital defense attorneys is to provide zealous, effective, quality legal representation and form a theory of defense, including the strongest presentation of mitigating evidence. The defense is constitutionally required to present mitigating evidence at the sentencing hearing.

Social workers engage in multidimensional, system-based assessments in a contextualizing process. The social worker's professional world view is based in seeing the person in the context of environment. Defense attorneys engage in a systems-based assessment in an analytical process. The defense attorney's professional world view is based in seeing the person in a linear progression to the event (Hughes, 2009). In law there is a stance that individuals should serve punitive consequences for their behaviors. In social work there is a stance that persons behave in particular ways due to internal forces or effects of their environment. The professional engaged in the practice of law, prosecution or defense, asks the question "Did the accused commit the wrongful act?" while the social worker and mitigation specialist asks "Why did the accused commit the wrongful act?" (Hughes, 2009).

The role of the capital mitigation specialists developed out of the rulings in Furman V. Georgia (1972). This United States Supreme Court decision ruled on the requirement for a degree of consistency in the application of the death penalty. The United States Supreme Court has emphasized the importance of thorough capital mitigation investigations through multiple legal decisions, including in Williams v. Taylor (2000), Wiggins v. Smith (2003), and Rompilla v. Beard (2005). The decisions in these cases find that failure to provide thorough competent sentence mitigation investigation constituted an ethical breach resulting in ineffective assistance of counsel.

Williams v. Taylor (2000), claimed that the prosecution had violated the holding in Brady v. Maryland (1963) by failing to disclose a pretrial psychiatric report of an accomplice.

Wiggins (2003) was convicted of capital murder in 1989 and sentenced by a Maryland judge. He elected to be sentenced by jury. His lawyers moved to bifurcate the sentencing, meaning to separate or divide the issues at trial. They represented they intended to prove Wiggins did not kill the victim by his own hand and, if necessary, to present mitigation evidence. The motion was denied. At sentencing, Wiggins' lawyer stated in her opening statement that the defense would introduce information about Wiggins' difficult life, but the information was never introduced. Before closing arguments, co-counsel moved to preserve a bifurcation issue for appeal, detailing the mitigation information. Wiggins was sentenced to death.

Wiggins sought post conviction relief on the grounds counsel failed to investigate and present mitigating evidence. Seeking post conviction relief, new counsel presented testimony of a forensic social worker establishing the severe abuse the defendant had experienced in childhood. The State Court of Appeals affirmed the trial court denial of the petition, concluding trial counsel had made a reasoned strategic choice. Subsequently, the Federal District Court granted Wiggins' relief holding that the Maryland court's rejection of the ineffective assistance claim applied an unreasonable application of federal law. The decision held Wiggins' lawyers violated his Sixth Amendment right to effective assistance of counsel. The Federal District Court granted relief finding that original counsel's representation was ineffective assistance of counsel by failing to facilitate and present mitigating evidence.

In Rompilla (2005) the defendant was sentenced to death in the Pennsylvania Supreme Court. Counsel filed a motion for post-conviction relief, claiming ineffective assistance of counsel by his lawyers having failed to present significant mitigating evidence about Rompilla's

childhood, mental health and capacity, and alcoholism. The state courts found that the trial counsel had sufficiently investigated mitigation evidence. The decision held that even when a capital defendant and his family members assert that no mitigation evidence exists, counsel must make reasonable efforts to investigate and review material counsel knows prosecution will likely rely on as evidence of aggravation at the sentencing phase.

The United States Supreme Court recognized the “diverse frailties of humankind” in its decision in Woodson v. North Carolina (1976). The requirement of the decision in Woodson v. North Carolina (1976) addressing sentencing procedures and “significance to relevant facets of the character and record of the individual offender or the circumstances of the particular offense” enable jurors to consider “compassionate or mitigating factors stemming from the diverse frailties of humankind.”

Mitigation investigation is constitutionally required. Capital cases are afforded procedural protections not required in lesser criminal trials. Mitigation evidence is necessary because the sentencing authority must consider the defendant’s background. Lastly, in capital cases, defendants are highly unlikely to avoid a death sentence absent presentation of a life history presentation that contextualizes the behaviors of the defendant.

Bifurcation of capital trial phases safeguards the introduction of mitigating factors as “a constitutionally indispensable part of the process of inflicting the penalty of death” (Roberts v. Louisiana (1976). Cheng (2010) examines a defense perspective and the legal doctrine which “demands paring the legal mechanism and mitigating information for the sake of resolution” and mitigation as “for the sake of explanation.” More than thirty years ago the United States Supreme Court began requiring that sentencing be individualized in death penalty cases. In theory, presentation of mitigation evidence insures the accused is considered as a whole

individual. Cheng (2010) addresses the bifurcation of capital trials into separate phases of guilt and sentencing as presenting two “distinct domains of knowledge – legal and human.” Cheng (2010) examined “procedural and strategic mechanisms through which these two domains unsettle and reconstitute the other” and found the procedural construction demands an examination of the human aspect to reach resolution of the legal construct (Cheng, 2010).

Dichotomous construction alone does not protect the accused from decision making rooted in bias or emotion. Blume (2000) found that jurors experience defendant acceptance of responsibility to be mitigating. Again, the posture of legal practice and behavioral sciences clash – acceptance of responsibility is admission of guilt from the legal perspective, while from a behavioral perspective such an admission may be viewed positively. Blume (2000) also notes that race and gender of juror, victim and defendant are significant to perceptions of mitigating evidence. Lane (2009) argues that in Williams (2000) the court, through emphasis on the defense failure to present evidence of “William’s nightmarish childhood,” “implicitly signaled what it considered powerfully mitigating about a defendant’s life is evidence of extreme family dysfunction.”

### **Mitigation and Aggravation**

Mitigating evidence can be utilized to argue why the accused should be sentenced to life not death. Integration of mitigating factors into both trial phases is known as “frontloading.” It is a process that provides jurors with a necessary bridge to address the “existing fundamental epistemological gap” in trial phases and their respective goals (Cheng, 2010). The defense must strategically introduce and incorporate themes and aspects of the sentence mitigation investigation findings throughout the guilt finding phase in order to construct this bridge in the event the defendant is found guilty and a sentencing phase occurs. This strategic process affirms

the necessity of mitigation specialists to engage the accused and their family members in providing intimate details of their life histories. Introducing mitigating factors and themes throughout the guilty finding phase begins a processing of meshing the guilt finding phase and the sentencing phase of the trial.

Prosecution will introduce aggravating factors throughout both trial phases. The defense is required to review factors the prosecution may introduce as aggravating factors. Cheng (2010) asserts the crime itself can be assumed to be aggravating. Rompilla v. Beard (2005) in summary held that the defense in a capital case is required to obtain and review a client's life history regardless of representation from the client or his family that no mitigating evidence is available. American Bar Association Guidelines

The American Bar Association guidelines specify that counsel “need to explore...family and social history (including physical, sexual or emotional abuse; family history of mental illness, cognitive impairments, substance abuse or domestic violence; poverty, family instability, neighborhood environment and peer influence).” Life history investigations should investigate a minimum of three generations and findings should be triangulated to develop a more comprehensive bio-psycho-social-spiritual assessment (Schroder, 2003, American Bar Association Guidelines). Multi-generational investigations allow the investigator to identify historical influences of culture and sub-cultures. These guidelines fail to address investigation into the effects of the construction of racism in the United States.

### **Socio-Cultural Influences and the Death Penalty Population**

**Implications of race in sentence mitigation practice and the death penalty.** Lane (2009) refers to Craig Haney “who advocates mitigation for Black capital defendants accounts for ‘biographical racism – the accumulation of race based obstacles, indignities, and



criminogenic influences that characterize the life history of so many African-American capital defendants.” Lane (2009) points to the “social dynamics and political landscapes” that have influenced and worsened risk factors in families of black capital defendants. Family history and dynamics, with a specific focus on deficits, are a construction of the mitigation evidence. Presenting the family as a contributor to mitigating circumstances carries a risk of significantly harming the family. Family factors must be contextualized to provide a thorough understanding of the family history, events, and circumstances. Lane (2009) argues that typical stereotyping of Black families may be reinforced when mitigation discourse fails to address the family construct as embedded in ideologies of race that subordinate black families. Regardless of race, it is critical to find a balance to presenting mitigation related to the family in a manner that helps to explain the defendant without damaging the family.

Jurors are predominantly White in trials of Black capital defendants. Any mitigation presentation of a Black defendant that lacks a nexus to social construction of race risks reinforcing biased juror perceptions of the Black defendant and reinforcing otherisms (Lane, 2009). Lane (2009) expresses concern about jurors who operate from the ingrained belief of “white families as paradigms of normality and functionality.” It is not to say that all jurors practice racist thinking, but it is a necessary advocacy to incorporate the component of racism in mitigation, simply because racism exists.

The majority of individuals charged with a capital offense are persons of color. In 2009, approximately fifty-six percent of defendants were non-Caucasian (DPIC, 2010). Alfonso (1986) asserts “mitigation specialists of the dominant culture who have not thoroughly investigated personal feelings and biases cannot adequately serve minority clients.” Professional competence is a requirement of “actualizing ethical principles” (Schroeder, 2003). Cultural

competence can be deemed essential to the interview process and professional competence in sentence mitigation.

Those interviewed in mitigation investigation are often not strangers to cultural oppression and social exclusion. Race and culture are distinctly present in the death penalty process as evidenced by the racial and economic disparity of capital defendants. Lane (2009) argues the accused or family members will have an aversion to the racial implications of the mitigation framework and argues the benefit of “thinking through racial implications of the dysfunctional family paradigm” to deconstruct cultural and relational barriers. Using narrative practice as an approach may flesh-out racial and culturally based relational disconnections (McAdams, 2006).

**Capacity and diagnosis.** Mental illness and intellectual disabilities are prevalent among this population. According to a study by Glaze and James, in 2002 greater than fifty percent of all prison and jail inmates had a mental health issue. Mental health issue was defined as including diagnosed and undiagnosed mental illness, substance abuse issues, and history of trauma. Mental health issues often go undiagnosed in correctional facilities. Blume (2000) found jurors perceive intellectual disability and mental illness and a history of child abuse to be highly mitigating evidence (Blume 2000). It is not uncommon for persons struggling with mental illness to self-medicate through use of prescription and non-prescription drugs, and alcohol. Blume (2000) found that drug use could be considered aggravating or mitigating.

According to Fabian (2003), the mitigation specialist must be prepared to explain diagnosis and causative factors. Fabian states an explanation of the etiological factors of a diagnosis is critical to jury understanding this as mitigation evidence, and asserts that absent a correlation of causal factors to diagnosis, a jury may fail to understand the influence of

socioeconomic and biopsychosocialspiritual factors and not understand a diagnosis itself is not indicative of future dangerousness. The sentence mitigation evidence must explain a correlation between the criminally indicted behavior and the defendant's history. Social workers have skill sets to assess, interpret, and explain the relationship between causation and manifestation of behaviors.

### **Scope of Sentence Mitigation Practice**

Mitigation specialists are integral to the representation of death penalty clients. Mitigation specialists compile comprehensive biopsychosocialspiritual histories based on exhaustive investigations. Social worker mitigation specialists have the capacity to make multidimensional assessments of the client and the client's family. Mitigation specialists analyze the significance of the information in terms of impact on development, including effect on personality and behavior, and find mitigating themes in the client's life history. The presentation of mitigating evidence and themes is intended to guide a jury's decision making in the sentencing phase of the capital defense case. Tomes (1997) states "Aside from perhaps a greater expertise in diagnosing mental disease or defect, psychiatrists and psychologists may be far less able to investigate a defendant's background to develop mitigation evidence than a trained clinical social worker."

The courts recognize sentence mitigation as a necessity to constitutionally adequate representation. The Courts have further recognized error when with respect to sentence mitigation services. In Williams v. State, (1996) the appellate court ruled the trial court's limitation of mitigation specialists services to 25 hours per week to be an abuse of discretion. In this case, however, the error was ruled harmless as sufficient mitigating evidence was presented.

Life history research is an empirical study of a person's life. Information learned in the assessment can often be empirically linked to theories of social behavior, ecological theories and criminal behavior (Schroeder, 2003).

### **Theories and Practice**

Ecological approaches are valuable in interpreting biopsychosocialspiritual data and “can provide a framework for understanding the client’s life in a larger context” (Schroeder, 2005). Keddell (2008) identifies an ecological approach as recognizing micro, meso, and macro levels factors as influencing one’s subjective experience. Keddell also discusses the construction of identity and environment and states “environments promote or hinder personal development and human rights.” Keddell adds that factors related to gender, ethnicity, culture and class have differing levels of influence on one’s sense of identity and subjective experiences.

Relational theory provides concepts for supporting that formation of a healthy human development arises in the context of relations to others (Schroeder, 2005). Research has established the link between childhood abuse and maltreatment and interference with developmentally competencies. According to Sanderson & McKeough (2005), when this occurs, children may adopt maladaptive coping skills negatively effecting social and emotional competencies and increasing risk of behavioral challenges. Studies indicate many accused of capital offenses have significant histories of abuse, neglect, discrimination, and chronic poverty. Many experience socio-cultural traumas prior to and in the death penalty process (DPIC, Schroeder, 2003; Schroeder, 2005).

Social workers apply theoretical constructs to understand the client in the context of their life experience. The application of theoretical constructs by the practitioner can broaden and deepen the understanding of the individual and the mitigation themes. Beginning with the

accused and his or her ability as a historian is a valuable component of understanding the client's life experience. Sanderson & McKeough (2005) describe the self-narrative as "self-definitional" and providing the narrator and listeners "partial knowledge of the various realities of the teller and knowledge of the multiplicities of self." Self-narratives communicate historical content and reveal the narrator's style of organization and sense of "meaning-making" (Sanderson & McKeough, 2005).

Mitigation specialists are charged with providing objective investigations and evaluations; and are not providing a therapeutic relationship despite the needs of the client. However, mitigation specialists will want to approach the interview processes with a protocol that minimizes potential retraumatization of the accused and their family members.

Researching sensitive topics and vulnerable populations has "inherent potential psychological risks to the participants" (Lee and Renzetti, 1990; Sieber, 1992). Some researchers argue that exploitation is inherent in sensitive-topic research, not only due to the nature of the subject, but due to the power differential between the researcher and the participant (Fine, Weis, Weseen, Wong, 2000; Stacey, 1991). Lee and Renzetti (1993) discuss the context of researching sensitive topics and equate sensitive as "controversial and threatening." The authors state "A sensitive topic is one that potentially poses for those involved a substantial threat, the emergence of which renders problematic for the researcher and/or the researched, the collection, holding, and/or dissemination of research data" (Lee & Renzetti, 1993, p.5). According to Beck & Britto (2006), what is considered sensitive in the interview process is determined in the context of culture, gender, age, social status, and factors which may create an experience of intrusion. Sentence mitigation practice and investigations carry this risk.

Sentence Mitigation practitioners must consider approaches that balance objectivity and empathy as a means of improving depth in their investigations. According to Ellen (1984), respondents who feel safe and free of judgment are more likely to provide accurate information. Literature on the family members of death penalty defendants indicates that family members experience trauma and negative feelings towards the criminal justice system (Beck, 2003; Eschholz, Reed, Beck, & Leonard, 2003; King & Norgard, 1999; Smykla, 1987; Vandivver, 1998). Beck & Britto (2006) confirm family members of capital defendants distrust anyone related to the criminal justice system and fear the accused will be negatively affected by interviews. Beck & Britto (2006) also find family members of capital defendants experience guilt and concerns about how their own history with the accused may have contributed to the crime.

In the death penalty process, family members are restricted from the accused and there is a potential through the criminal justice proceedings the accused will be sentenced to death. King (2005) argues there is a process of assimilating the death penalty into the individual and family life and the emotional experience could be described as a state of chronic grief. According to King (2005), families of defendants in capital cases may grieve for the accused, the victim and their family, and for the loss of their own life construction prior to the crime and subsequent legal proceedings.

Beck & Britto's study (2006) utilized a feminist approach and restorative justice framework, and was found to "improve yield" of understanding of the family members' lived experiences from their perspective. This study found mothers of capital defendants experienced high rates of depression and with respect to the family crisis and capital crimes "the effects of a capital crime were largely born by the female family members." Notable to this study was the

finding that reciprocity and follow through with commitments made in the interview process relative to how the interviewer used the story was important to the family member experience of the interview. This is significant with respect to minimizing harm in the process of advocating for the accused.

Narrative theory has potential therapeutic value by allowing the narrator self-expression and having a witness to their life story. By narrating a story the narrator can ease the telling of difficult, sensitive material as there is an opportunity to objectify the content. The narrator can also communicate through his or her own cultural lens. Syed & Azmitia, (2010) state there is a connection between the identity status model and narrative content. The authors state “identity status and narrative models tap into similar developmental processes, but narratives are more flexible in that they allow participants to specify what is important to them at the time through their storytelling.” Narrative practice in sentence mitigation relies not only on the accused or their family member as the storyteller, but on the sentence mitigation practitioner as a listener. The sentence mitigation practitioner can bear witness and validate the experiences of the accused or their family member, simultaneously accomplishing the goal of the sentence mitigation investigation and providing a therapeutic experience. The sentence mitigation practitioner can extract themes from the narration and also gain understanding from the manner in which the story is told. Allowing a story to be told in response to an inquiry, rather than soliciting answers to specific, probing questions allows the narrator more ownership and a sense of control. Rappaport (2006) discusses utilizing a narrative approach as a means to empowerment. Rappaport relies on the definition of empowerment as

“an intentional, ongoing process centered in the local community, involving mutual respect, critical reflection, caring and group participation through which people lacking

an equal share of valued resources gain greater access to and control over those resources” (Cornell University Empowerment Group, 1989, p.2),”

and states “The ability to tell one’s story, and to have access to and influence over collective stories, is a powerful resource” (Rappaport, 2006).

Use of narrative can potentially broaden the scope of disclosures (Schroeder 2005).

Schroeder (2005) cites Karger (1983) asserting “those who define the questions to be asked define the parameters of the answers, and it is the parameters of the questions and the ensuing answers that function as the lens by which people view reality” (Karger, 1983. p. 203).

According to Parry & Doan (1994), culture can be the most influential determinant in peoples’ lives because culture is constructed from collective stories engrained in the lives of individuals.

The stories of capital defendants and their families can be compiled and told in order to communicate the cumulative and collective differences in the life stories of capital defendants. Statistics and demographics of capital defendant populations imply a high probability of vastly different social realities for capital defendants and those of the dominant culture. Schroeder (2005) argues standardized use of narratives could potentially influence social and community narratives. Schroeder (2005) asserts this is possible “because of the power of narratives to inform and connect from an insider/outsider viewpoint.”

Shapiro & Ross (2002) discuss the narrative as a form of psychotherapy and state use of narrative can “help clients recognize and reflect...and to empower them to reformulate a more-preferred life direction.” Further, discussing a sense of empowerment through use of narrative, Shapiro & Ross (2002) recognize the contribution of sense of ownership in empowerment stating “The patient puts together the pieces.”



## **Marginalization**

Capital defendants overwhelmingly represent marginalized populations. The death row population disproportionately represents the most vulnerable – those of poverty, color, youth, intellectual disability, and the mentally ill (DPIC, 2010; King, 2005). Prosecutorial efforts to execute these human beings, through a legal mechanism in which jurors decide fate – jurors who are not cohorts of the defendant, further marginalizes the population the accused represents. Power differentials are acted upon through social and racial ideologies and are repeatedly acted upon throughout the construction of the judicial system. Prosecutorial discretion and juror discretion are not free of personal bias, nor is the defendant population. Narratives of the accused or their family members are not without personal or socially derived bias, and lastly, the experience of the listener is not without bias. In McClesky v. Kemp (1987), at the end of the opinion, the Court states that discretion plays a necessary role in the implementation of the criminal justice system, and that discrimination is an inevitable by-product of discretion.

## **Summary**

While the literature yields limited information with respect to social workers in the role of sentence mitigation specialists on capital defense teams, social workers bring specific skill sets ideal to this work. The United States Supreme Court decisions paved the way for defense teams, through mitigation specialists, to bring mitigating factors to sentencing phases in advocacy of clients. Social workers are uniquely qualified to perform this work via culturally sensitive practices that can procure and assess information in order to produce mitigation evidence and themes. Social workers in sentence mitigation practice can also explore the effects of race and socio-cultural factors on an individual and systemic level. There is a need to examine sentence mitigation practitioners' experiences of the accused and their family members

as historians, specifically in the context of socio-cultural factors, in the development of life history presentations in capital defense proceedings.

## **CHAPTER III**

### **Methodology**

#### **Study Purpose**

The purpose of this study was to gain insight and an understanding of sentence mitigation practitioners' experiences of the accused and their family members as historians, specifically in the context of socio-cultural factors, in the development of life history presentations in capital defense proceedings.

#### **Study Authorization**

The study was pre-authorized by the Smith College School for Social Work's Human Subjects Review Committee. (Appendix A)

#### **Study Design and Sampling**

This exploratory study used a non-random purposive sample of thirteen (13) sentence mitigation specialists to gather qualitative data related to the study purpose. The inclusion criteria required that interviewees possess a college level degree and have experience in death penalty case(s). Inclusion criteria also required that interviewees be able to converse fluently in English and have experience in the development of life history presentations in sentence mitigation practice in the United States.

#### **Recruitment Process and Nature of Participation**

The sample was obtained as a result of a combination of snowballing technique and direct outreach to seasoned sentence mitigation specialists.

The researcher began recruitment efforts by contacting the National Alliance of Sentencing Advocates and Mitigation Specialists via telephone and email to introduce the study and request assistance in contacting potential participants. The researcher was aware that the National Alliance of Sentencing Advocates and Mitigation Specialists maintained an online-listserv. The researcher requested permission to post a notice of the study on the listserv and learned that use of the listserv was exclusive to members of the National Alliance of Sentencing Advocates and Mitigation Specialists. The researcher reviewed the membership criteria and joined as member. The researcher then posted a notice (Appendix B) explaining the purpose of the study and the requirements of participation, as well as the researcher's contact information. A requirement of participation included having a MSW and/or DSW. The researcher received three individual emails from three individuals interested in participating; only one met the educational criteria originally set in requirement for participation.

The researcher contacted a member of the Human Subjects Review Committee requesting to change the educational criteria set forth in the initial and approved Human Subjects Review Application in order to include practitioners with a BSW or a Masters level of education in another discipline. The Human Subjects Review Committee approved this change in criteria for participation and noted that this change must be noted as an amendment in the final thesis documentation (Appendix C). Following approval in this change of criteria, respondents were contacted informing them of this change in criteria and were provided an Informed Consent and copy of an Interview Guide. Respondents were requested to sign and return the executed Informed Consent. Upon receipt of the executed Informed Consent, interviews were scheduled.

The researcher then reposted the notice of the study on the National Alliance of Sentencing Advocates and Mitigation Specialists online-listserv identifying the change in

criteria. The researcher received 5 responses to the 2<sup>nd</sup> online- listserv. The researcher again sent an Informed Consent and Interview Guide to the potential participant requesting a signed Informed Consent be returned to the researcher.

The researcher was then contacted by a potential participant (respondent to 1<sup>st</sup> online- listserv posting) stating “I have some concerns that your work could help in the prosecution of innocent persons who are our (Mitigation Specialists) clients. Although anonymous, we will be revealing confidential information known only to the Defense teams. Have any others raised this concern?” The researcher responded to this concern explaining that no other potential participants had raised this concern and inviting the concerned practitioner to share their concerns and noting that the researcher in no way intended or wanted to risk jeopardizing any client or practitioner and would consider revising the study if there were a known risk. The researcher did not hear from this practitioner again. The researcher also did not receive any response from another practitioner (respondent to 2<sup>nd</sup> online-listserv posting) following multiple attempts to schedule an interview time.

One potential participant, prior to consenting, inquired “What theoretical model of human behavior is your research exploration based upon?” and “What publications are you intending to publish your results?” The researcher responded to this inquiry saying the author had no intent to publish the findings of the study at this time, and the theoretical model of human behavior the researcher intended to rely upon was an ecological perspective. This practitioner consented and became a participant in the study

The researcher began the interviewing process with the six eligible participants. Four of these participants offered names of potential participants. The researcher noted the same name of potential participants from more than one interviewed participant. Two of the interviewed

participants directly contacted potential participants encouraging them to contact the researcher to participate. These participants thereby identified themselves as participants in the study. The researcher compiled a list of the offered names and emails and sent 10 individual emails to potential participants. The researcher received 7 contacts through this collective effort to recruit participants. Again, if the potential participant responded with interest in participating in the study, an Informed Consent was forwarded with a request for the executed Informed Consent to be returned. Upon receipt of the Informed Consent, an interview time was scheduled.

### **Data Collection**

Interview data was collected using audio-recording equipment, specifically Olympus Digital Voice Recorder VIN8100PC. Interviews were conducted via telephone. Interviews were planned to be a maximum of one-hour in duration. The average interview was 50 minutes. The shortest interview was 37 minutes and the longest was 1 hour and 11 minutes, resulting in a mean interview time of 44 minutes.

The instrument used to gather data (Appendix D) included demographic questions and open-ended questions related to sentence mitigation practice and the specific population of capital defendants and their families in the death penalty process. Clarifying questions were asked when it was thought necessary. Interviewees were provided an opportunity to share any additional information they deemed relevant to the study.

The interviews were recorded via an Olympus Digital Voice Recorder VIN8100PC. Following the interviews, the recorded interview was transcribed by the researcher. At the completion of transcription of the interviews, this researcher analyzed the collected data beginning with reading the transcribed interviews, identifying important responses and coding

these responses by highlighting the transcribed texts, and making written notes in the margin columns of transcription about context of answers and theoretical notes.

The researcher then created new documents reflecting individual study questions and copying and pasting the responses by assigned participant number. Next, a content analysis was conducted on the transcribed interviews to identify major themes related to the experience of the accused and their family members in sentence mitigation practice. Again, the researcher highlighted themes within the texts and continued the process of note making in the margins of the transcription identifying both themes and theory. Themes were identified and categorized. The researcher also drafted notes as to how responses to individual questions were overlapping in theme. The researcher read the transcripts and researcher's work product multiple times to ascertain themes

In the first analysis themes were identified and categorized as they appeared to the researcher. In the second analysis the information was manipulated to organize multiple responses to each individual study question in one document, together with predetermined themes originating from the initial analysis.

This qualitative study was designed to make a contribution by discerning what can be learned from seasoned sentence mitigation practitioners' experiences of the accused and their family members as historians, specifically in the context of socio-cultural factors, in the development of life history presentations in capital defense proceedings.

## **CHAPTER IV**

### **Findings**

#### **Introduction**

The purpose of this study was to discern what can be learned from seasoned sentence mitigation practitioners' experiences of the accused and their family members as historians, specifically in the context of socio-cultural factors, in the development of life history presentations in capital defense proceedings.

This chapter will present detailed characteristics of the sample population. Demographic characteristics of the accused and their family members, as presented by the mitigation specialist, will also be presented.

#### **Demographic Characteristics of the Sample**

The sample included thirteen mitigation specialists with experience in sentence mitigation practice in death penalty cases voluntarily participating in the study (N=13). Eleven participants were female (85%) and two were male (15%). The sample lacked racial diversity; all participants identified as Caucasian. Seven identified as American, one as Irish American, two as Irish, one as Jewish, one as Norwegian-Polish, and one as "WASP," meaning "mixed European heritage."

In relation to educational background, eight participants had a Masters of Social Work degree, including a participant with a Masters of Social degree and a Doctor of Social Work degree, and a participant with a Masters of Social Work degree working towards a Doctoral of



Social Work degree. The sample also included 2 participants with a Masters in Forensic Psychology, 1 with a Masters in Criminal Justice, 1 BSW, and 1 JD.

One participant reported working in sentence mitigation practice while earning her MSW. No other participants reported having experience in sentence mitigation work prior to their Masters level of education. One participant earned a Doctoral Degree while working in sentence mitigation practice, and two practitioners have completed some Doctoral level work while practicing.

Three practitioners reported having work experience in sentencing advocacy prior to entering sentence mitigation practice. Three practitioners reported internship experience in a forensic setting while in graduate school. Two practitioners reported having both an internship in a forensic setting and work experience in sentencing advocacy prior to entering sentence mitigation practice. One practitioner had prior work experience in a legal setting, but no experience or exposure to forensic practice.

Eight (62%) of the participants reported being in private practice and five (38%) are employed by State funded programs. Participants reported working a collective average of 42.5 hours per week. The collective average caseload was 4.2 cases, which were in various stages of the legal and mitigation process. Participant's years of experience in sentence mitigation practice was 3 ½ years to 25 years, and the median years of experience in sentence mitigation experience was eleven, and the average number of years of sentence mitigation experience was twelve years.

In summary, this was a well-educated and experienced group of practitioners who had collectively interviewed hundreds of defendants and family members in preparing life history presentations in the sentence mitigation process.

## **Characteristics of Accused and Their Family Members**

Participants described the defendant population as universally poor. Participants reported clients are more likely to be persons of color and non-American than Caucasian-American. Participants also reported clients are primarily young and identifying as male. Other descriptors of this population included suffering mental illness, substance abusers, victims of trauma, victims of racism and classism. Participants identified diagnosed and undiagnosed learning disabilities as prevalent among this group. Participants experienced family members as also faced with similar biopsychosocial stressors.

## **Findings**

For the purposes of this paper, findings are focused on inquiries 11 – 15 of the Interview Guide (Appendix D).

The following section provides a summary of the findings identified through a qualitative analysis of participant responses to the study inquiries which asked participants to describe experiences of the accused and their family members as historians in a socio-cultural context in the development of life history presentations.

The major findings of this study are:

1. Practitioners experienced the accused and their family members as poor historians and oppressing socio-cultural factors influencing their capacity as historians.
2. Practitioners experienced race as a factor in the death penalty process and as influencing the interviewing process.
3. Practitioners experienced differing demographic presentations between practitioners and the accused and their family members as factoring into the professional relationship and sentence mitigation investigation process.

4. Practitioners did not experience defendants or their family members as reflecting on socio-cultural factors as influencing life choices, opportunities or direction.
5. Practitioners experienced the process of preparing the defendant and sharing the mitigation information and mitigation themes as an opportunity in which the defendant could begin to reflect on his or her own life experiences and social identity in a manner that supports the process of realizing an external reality and begin to reflect on their place in a socially constructed world. Practitioners generally experienced the presentation of the sentence mitigation investigation evidence and the narrating process as a transformative experience for defendants as they begin to reflect on socio-cultural factors influencing their life choices, opportunities and direction and these factors as contributors to their place in the criminal justice system and begin the process of assimilating the death penalty process into his or her life.

### **Population as Historians**

**Finding No. 1.** Practitioner responses indicate the accused are generally experienced as poor historians. Participants identified multiple factors that influence clients' abilities as historians. These factors included experiences of oppression, shame and embarrassment, and an organic inability to recall information, and a mistrust of sharing information with someone outside of their cultural circle, much less someone working within the criminal justice system. One participant commented "Most haven't come to terms with what their life has been like."

The effects of trauma and memory were thematic as reported by participant experiences of the accused. This includes trauma associated with the criminally charged act. Multiple practitioners recognized the trauma defendants experience as a result of committing a violent crime, whether it occurred intentionally or accidentally. Fear and resistance are noted to be

encountered, often as a consequence of a clients' inability to cope with the violent crime. Denial and not wanting to face the sentencing phase is also reported. Participants also acknowledged influences which the client may not have an awareness of as impacting ability as a historian. Multiple examples were provided, for example the influence of in-utero substance abuse, or family history that had not been shared with the defendant but impacted the defendant's life circumstances.

Twenty-three percent (23%) of participants reported experiencing family members as similar historians to defendants; four participants reported family members as "better" or "improved" historians, indicating a greater capacity to reveal particulars and contextualize the client's life story. Greater than twenty percent of the participants commented on experiencing family members as resistant. One participant commented on experiences of families disowning the accused and not wanting to cooperate with the mitigation investigation, however, the majority of participants reported experiencing family members as more cooperative and attributed willingness to assist in the mitigation investigation as arising from concern for the accused. Fifty-three percent (53%) of participants reported that in their experience, there is almost always a family member that will be "objective" and "will tell the family secrets" providing a more comprehensive view of the family history and dynamics. Practitioners experienced family members as sharing similar limitations as defendants with respect to the role of historian. All thirteen (100%) of participants noted the need to verify information with records when possible.

All participants repeatedly stressed the necessity of relationship building and establishing trust in discussing the population as historians and their capacity to disclose to the practitioner. Participants identified developing relationships through spending time with the client and their

family members, proving themselves an advocate and rapport building. Participants used the word “trust” or “trustworthy” twenty-one times in responding to this inquiry and seven of the responses referred to the need for “rapport”. Practitioners made reference throughout the interviews to the value of preparing clients for emotional experiences and building relationships that reduced resistance.

One participant commented on working with family as collateral sources:

“As historians they have similar problems as clients. Initially there is a lot of withholding of what they think is negative and think will hurt the client and that is often the most mitigating stuff. It’s a process of building a relationship of trust and sort of educating them about what you think is bad will help save his life. It’s about getting them to where they understand that and are comfortable enough to disclose. For me one of the key indicators that I am doing something right is when a person says ‘I have never told anyone this before.’”

In response to this inquiry and other areas probed in this study, participants articulated engagement in the sentence mitigation process was often a first lifetime experience for the interviewee to disclose sensitive information and feel heard and validated. One participant commented on the experience of the accused and their family members stating:

“I notice that the interview is often a first time for many of these people that someone cared about them in a mature way. Its empowering them to understand their story and the complicated nature of the story needs to be told to put this whole thing in context.”

Relationship building and establishing trust are underpinnings to defendants’ and family members’ ability as historians.

## **The Influence of Race in the Interface with the Criminal Justice System**

**Finding No. 2.** Participants identified race as a prevalent issue in the criminal justice system and in sentence mitigation practice.

“Race is a major issue for me. I am a white female,... am always trying to phase in what they experience and is it related to culture or race, does it color how they perceive things.

Race is a huge piece that is sometimes easily overlooked. Socioeconomic status is another. When you untie the poverty piece you begin to understand how it affects everything, where you live, violence, all factors in all roles in how people live.

Participants identified the need to address racism and the difficulty of addressing issues of race with clients and family members, as well as professionals within the criminal justice system. One participant stated:

“We know that social workers understand implication of racism and oppression. Translating that for mostly upper class white lawyers in the criminal justice system can be threatening and difficult. It can be treacherous. Sometimes I feel more comfortable delving into race with my clients than with those I work with. They understand the intersection. They have been profiled. They understand the impact. It’s an accepted reality. There is still an unwillingness of those working in system to look at racism as a proximate cause to behavior risks. They are happy to hear about environmental, mental health, scientifically quantified facts. Race or poverty - its perceived as too squishy and not data driven.”

Three participants commented on race in a political context. All thirteen participants commented on the overwhelmingly number of persons of color representing the defendant status and overwhelmingly Caucasian persons filling professional positions within the criminal justice system. A participant responded to this inquiry:

“It pervades everything. The entire system because a lot of what this is about is politics. The underlying politics. Those in power dealing with those that are not. Its there at every step. Its really hard to get a handle on. Its obvious but insidious. I have this conversation all the time with clients. I always raise it at some point. I am white and come from a privileged place. It’s a real issue. I don’t bring it up except in the context of relationship building. I think it is important in the team too. Most people representing defendants are White.”

One participant did not identify racism as a particular factor in death penalty practice. However, this participant identified racism as a predisposing factor in reaching the death penalty stage. This participant states:

“Not in my experience. I have a higher percentage of clients that are African American with criminal history that are pretty extensive that started earlier on, especially with drug charges. The decision to charge and the racism starts before they get on my caseload. It

starts with the police and community policing. Its pretty even handed when it reaches my desk.”

With respect to racism being introduced as a structural component of mitigation, participants were split and there was no conclusive finding. Participants were probed on race as a structural component of mitigation. The term “structural” is meant to conceptualize that race is constructed and exists in all social contexts and life circumstances, particularly affecting people of color. When probed on race as a structural component of mitigation, one participant stated:

“It has to be there because our clients have faced racism from day one. They may not recognize it because it is there from day one. Some clients have been discriminated against and treated unfairly even in their family because they were darker within their family and community. It shapes their character. It has to be addressed in mitigation.”

Another participant when probed on race as a structural component of mitigation added:

“As far as a structural component of mitigation, that’s a tough question. We have an opportunity to make that visible and talk about that the best way we can. You try to do that, but it is not easy.”

### **Influential Socio-cultural Factors and the Client-Practitioner Relationship**

**Finding No. 3.** In response to inquiries on socio-cultural factors which influenced life choices, opportunities, and direction in the lives of the defendant population, 100% of the participants identified poverty as a universal factor among this population, which creates a more unilateral client base. Poverty influences all facets of the client’s lives - where they live, access to education, and clients’ lives demonstrate an adaptation to unremitting life circumstances. Practitioners report the accused and their family members disproportionately experience and live with violence, substance abuse, and trauma. Participants identified race, and ethnicity, educational disadvantage, learning and cognitive disabilities, addictions, violence, mental illness, institutional experience and failure, and cultural misunderstandings as common factors among the capital population. Specifically, addressing race and ethnicity, practitioners identified a non-

American, non-Caucasian client base. Practitioners frequently noted clients tended to be younger and to hold expectations of their own and peers having shorter lifetimes.

This is captured in the following participant comment:

“Where I am practicing now there is a big difference. I think with African Americans here there is a lot of history to it that may vary on location. XXXXXX is pretty conservative and the African American population here has had a horrible time. They are at the bottom rung. I see a state of passivity and they struggle..... I sense a fatalistic approach to their life.”

In summary, participants recognized a disempowered population.

Cultural barriers that cause relational disconnections or influence the interviewees ability as a historian are noted as a specific area of practice requiring thoughtful, well-researched approaches. All participants talked about the critical necessity to address differing demographic presentations between the sentence mitigation practitioner and the population and the criminal justice system.

### **Practitioner and Population Reflection on Socio-Cultural Factors**

**Finding No. 4.** Participants were asked “Please describe your experience of the accused and their family members in context of socio-cultural factors, as communicated by the accused and their family members.”

Responses to this study inquiry indicate participants recognize oppressing, marginalizing socio-cultural factors in clients and their family lives, however, participants noted clients’ adaptation to those factors and indicated clients did not express these factors necessarily as hardships. An example contextualizing client experiences and adaptation, and the absence of narration follows:

“Some reflect on socio-cultural factors, I had a client with a mentally ill mom. He played it off. She was mentally ill and using crack and he never talked about her using crack, only about her being mentally ill. I asked him ‘Why didn’t you tell me?’ He said it was



not important. Where he grew up every mom on the block uses crack. It's not the same perspective. Clients don't understand their life circumstances and detrimental affects. With that client, he was selling drugs from his doorstep as a child. He has a different perspective and construct. There is a de-sensitivity."

Generally, practitioners did not experience defendants or their family members as reflecting on socio-cultural factors as influences in life choices, opportunities or direction. Only one participant commented on experiencing the population as reflecting on socio-cultural factors. The balance of the sample stated defendants and their family members did not articulate or reflect on socio-cultural factors as influencing life choices, opportunities, or direction, yet 100% of the sample identified addressing differences in demographic presentations between practitioners and the defendants and their family members as critical to the relationship building process in the professional relationship.

One participant spoke about a lack of client narrative on socio-cultural factors stating: "I don't think they see those outside of how they are." Another participant attempted to contextualize this state of being stating:

"Sometimes there is distrust because of their history of dealing with other institutions. There is anger. I see them as accepting things as normal and not recognizing their life experiences as anything other than normal. They experience violence as normal. Maybe in our life it is abnormal, but they are seeing people shot, or dead bodies. I have a client in XX, in XX there are certain levels of poverty that seem normal. Everyone is struggling. Within their homes or communities it is experienced as normal. Getting them to understand that and what we define normal as is hard."

A third participant added:

"It's a daily struggle to survive. There is little room to reflect in a way that is going to be effective for people to move out of that context - to tolerate it enough to try to move away from it."

## **Influence of the Sentence Mitigation Investigation Process & Capacity for Change**

**Finding No. 5.** Practitioners experienced the process of preparing the defendant and sharing the mitigation information and mitigation themes as an opportunity in which the defendant can begin to reflect on his or her own life experiences and social identity in a manner that supports the process of realizing an external reality and begin to reflect on their place in a socially constructed world.

Practitioners generally experienced the presentation of sentence mitigation investigation evidence and the narrating process as a transformative experience for defendants as they begin to reflect on socio-cultural factors influencing their life choices, opportunities and direction and these factors as contributors to their place in the criminal justice system and begin a process of assimilating the death penalty process into his or her life.

Multiple participants identified and described the sentence mitigation investigation offering a first lifetime experience for the client or a family member to disclose and narrate a sensitive life experience.

In response to the inquiry asking the participant experience of the accused as a historian in a socio-cultural context, a participant stated:

“They don’t. It’s a process of them coming to an awareness because of our intervention. Great question. I believe the greatest gift that I bring to these families in this work is the process of them coming to awareness of what they have been struggling with and what they are reflecting, this opportunity to reflect on their place in the world.” and “When I begin to write their history, ...there are transformations...they get to an understanding they would never have had. It is in a black and white chronological presentation. Clients have the opportunity and ability to reflect and learn and know and know what to do next.”

Another participant reflected on the process and shared:

“Because they are living it and traumatized by it they are very distorted in the view it had. How would you describe an upbringing when they say it was “good” and “my mother loves me” but are living in extreme poverty, where there is violence every day. Kids are

living with PTSD in neighborhoods like those coming home from war. When they hear the story told in court, we go over before anyone goes over in court. Its' such a journey for them and me, as I learn about their life and they learn about their life and they will know what my theory of mitigation is and the factors of mitigation are, they may never say it was an impact and resist and in the end they still learn in the process. If it happened to someone else they may see why it is seen as bad.”

Addressing this further, another participant offered:

“When I testify I sometimes am asked by a prosecutor if I am a psychologist, as a way to catch me. I say no I am a Social Worker and the defense attorney will then ask me about my profession, which is work focused on the individual and a capacity for change. Everybody has the capacity for positive change if they are given the opportunities.”

While participants indicated they practice with an awareness of socio-cultural dynamics, responses indicate they had not reflected on this aspect of the work through a socio-cultural lens from the client population perspective, nor had they considered the client’s ability to articulate specifically on socio-cultural factors. While not constitutionally required to explore this aspect of a client’s identity, practitioner’s consciously or unconsciously, did not explore the client or their family member perspectives on socio-cultural influences. Therefore, participant responses indicating the population does not reflect on socio-cultural factors may not be reliable or generalizable.

The ability to narrate is different from the ability to reflect. There is value in examining the defendant’s and family members’ perspectives on socio-cultural influences. It is possible a lack of exploration expresses a practitioner assumption from a position of privilege. It would appear that absent these perspectives and without a thoughtful inquiry, there is a risk of reinforcing prior client experiences with a dominant culture.

## Summary of Findings

A summary of the findings follows:

A finding is practitioners experienced the accused and their family members as poor historians. A second finding is practitioners experienced race as a factor in the death penalty process. A third finding is participants experienced differing demographic presentations between practitioners and the accused and their family members as influential in the professional relationship and sentence mitigation investigation process. The fourth finding indicates practitioners did not experience defendants or their family members as reflecting on or articulating socio-cultural factors influencing their life choices, opportunities or direction. This finding has a contradictory interface with the third finding in that while the participants report defendants and their family members are not reflective in a socio-cultural context, 100% of the sample identified differing demographic presentations between practitioners and their family members as factoring into the professional relationship and addressing differences in demographic presentations between practitioners and the defendants and their family members as critical to the relationship building process in the professional relationship.

Synthesizing participant responses indicates a fifth finding that the sentence mitigation investigation and process and the development of the professional relationship has potential therapeutic capacity and can provide therapeutic interventions.

## **Chapter V**

### **Discussion**

The purpose of this study was to gain insight and an understanding of sentence mitigation practitioners' experience of defendants and their family members as historians in the development of life history presentations in death penalty work.

Through the study an understanding of practitioner's experience of the accused and their family members as historians emerged, particularly in the framework of socio-cultural factors.

#### **Findings**

The major findings of this study are:

1. Practitioners experienced the accused and their family members as poor historians and oppressing socio-cultural factors influence their capacity as historians.
2. Practitioners experienced race as a factor in the death penalty process and as influencing the interviewing process.
3. Practitioners experienced differing demographic presentations between practitioners and the accused and their family members as factoring into the professional relationship and sentence mitigation investigation process.
4. Practitioners did not experience defendants or their family members as reflecting on socio-cultural factors as influencing life choices, opportunities or direction.
5. Practitioners experienced the process of preparing the defendant and sharing the mitigation information and mitigation themes as an opportunity in which the

defendant can begin to reflect on his or her own life experiences and social identity in a manner that supports the process of realizing an external reality and begin to reflect on their place in a socially constructed world. Practitioners generally experienced the presentation of the sentence mitigation investigation evidence and the narrating process as a transformative experience for defendants as they begin to reflect on socio-cultural factors influencing their life choices, opportunities and direction and these factors as contributors to their place in the criminal justice system and begin the process of assimilating the death penalty process into his or her life.

The following section will discuss the nexus of the study findings and the relevant literature. Narrative theory will be applied to examine the implications of the study findings and the process of interviewing and investigating the accused and their family members in death penalty cases for the purpose of presenting mitigating evidence through the presentation of a life history. Strengths and limitations of the study will be examined. This will be followed by a discussion of the implications of the study findings for social work research, practice, education and social welfare policy.

### **The Findings and the Literature**

**Practitioner experiences of the population as historians.** Practitioners generally experience defendants and family members as poor historians. Practitioners identified multiple factors influencing the population's ability to report their story including experiences of oppression, impaired mental health, cognitive and neurological function, emotional discomfort, and trauma experiences. An underlying matter appeared to be prior experiences of this vulnerable population with the criminal justice system and other government agencies which had generated feelings of mistrust. Mistrust created a gap which required bridging in order to

accomplish the critical mission of investigating mitigating experiences in the defendant's life in order to carry out the critical task of presenting a life history presentation that offers an understanding of how and why an accumulation of factors may have influenced the defendant arriving at this juncture in his or her life and in order to save his or her life.

Ninety-two percent (92%) of participants reported defendants and their family members did not reflect on socio-cultural factors as influencing life choices, opportunities, or direction. The experience of the sentence mitigation investigation and presentations are often the first opportunity for these individuals to reflect on the socio-cultural factors that have influenced and driven various aspects of their lives. Engagement in the narrating experience and constructive aspects of narrative therapy can be fundamental in the shift for these individuals to begin a reflective process of their personal and socio-cultural experiences as they begin the process of assimilating the death penalty process into their lives and adjusting to changes in their life, including grieving the loss of their life as it had been.

#### Race and Socio-Cultural Influences

All participants reported that their own race, ethnicity, gender, socioeconomic status, and level of education had an impact on the client and collateral relationships. The participants in this study largely reflect the race and social status of many working in the criminal justice system, while the demographics of the accused and their family members largely reflect the poverty and racism that pervades the criminal justice system and mirrors the larger incarcerated population.

There appears to be a participatory expectation about class and racism by the capital defendant population, likely born out of prior experiences with a socially, economically, culturally stark demographic presentation of those working within the system. Participants

articulated the need to address these factors in the working relationship and relationship building process.

Relationship building and establishing trust were underpinnings to defendants' and family members' abilities as historians. This suggests that regardless of the population articulating on socio-cultural influences, there is at least an unconscious awareness of oppression born out of socio-cultural influences which manifests as distrust of those of the dominant population operating in a systems capacity. Successful engagement and retention of the population can offer a therapeutic shift by empowering the individual and reworking experiences of oppression with a dominant population in a hierarchical structure.

Multiple participants noted that participating in this study and the interview process offered an occasion to consider and reflect for the first time on defendants narrating their own experiences through a socio-cultural lens.

#### Sentence Mitigation Practitioner and Population Relationship

While participants were consistent and frequent in stating their role is not a therapeutic role, their examples of multiple clients indicate a significant therapeutic role.

Practitioners considered the skills necessary to building relationships critical to accomplishing the mission of the sentence mitigation investigation. Practitioners were divided in perspectives as to necessity and value of clinical skills to perform assessment aspect of sentence mitigation work.

While participant responses to inquiries about specific approaches in the mitigation investigation were consistent with effective clinical skills, the researcher ponders what has not been shared as the researcher was informed of the practice community expectation of confidentiality, including confidentiality agreements at educational conferences. The researcher



is also reminded of the concern of a practitioner during the recruitment phase questioning the potential of the study to jeopardize clients. The researcher's sensitivity and concern for this potential has been heightened by the experience of this study.

A strong alliance offering a therapeutic venue and an advocacy role appears critical to engaging the accused and their family members in the information sharing process. The mitigation investigator and the attenuated process was often for defendants and their families a first experience of speaking about life events and feeling listened too and validated. The process of the mitigation investigation and narrating of the life experiences and internal processing of the mitigation presentation as presented by the mitigation specialist has the possibility of helping the client to consider an external reality and begin to reflect on their place in a socially constructed world.

### **Narrative Theory**

Keddell (2008) discussed the effects of environment on personal development and human rights, stating "environments promote or hinder personal development and human rights. People form their identities out of the crucible of social interactions." Narratives create meaning and self-narratives are stories communicating our individual experience of ourselves and our histories and sense of identity. As listeners in the practitioner role it must be remembered that the story is not a factual reflection of the past as it occurred or was experienced; it is a contextualized narrative offering an understanding of the historian's views and sense of identity in the history.

For a population that has long endured oppression, the narrative can often be negative and may or may not have an awareness of the influence of the dominant population on the population. Rappaport (2006) states "particularly those who lack social, political, or economic

power, the community, neighborhood, or cultural narratives that are available are either negative, narrow, “written” by others for them, or all of the above.”

The application of narrative theory in the sentence mitigation investigation can aid the sentence mitigation practitioner in discerning the inner meaning of an individual’s life and their sense of identity. Examining and discerning the inner meaning of a person’s life and sense of identity can support the sentence mitigation practitioner’s efforts to contextualize the culture, ecology, and events in the accused and their family members’ lives. McAdams (2006) states “the most important individual differences between people are thematic differences in the stories that comprise their narrative identities.”

Keddell (2008) states “Narrative-based research recognizes that the way people explain and construct their life history and identity through language is unstable, particular and subject to change.” The experience of narrating has the potential to shift thinking and create meaning about who a person can be moving forward. McAdams (2006) emphasized “the integrative power of personal narrative – how it is that stories put things together for the person, how they lend coherence to a life by organizing its many discordant features into the synchronic and diachronic structures.” Keddell (2008) states “social work is about promoting a “good fit” between people and their environments through a process of personal and environmental change processes.”

Participants identified socio-cultural themes in working with a population that experience oppression and disadvantage related to poverty, class, race and ethnicity. Participants commented on their experiences of the accused not recognizing their lives in a socio-cultural context. Keddell (2008) states “People are influenced by these relationships of power so as particular ways of viewing the world come to be accepted as the “right” or common-sense” way

of viewing the world.” Keddell’s view can be applied to both the population of defendants and practitioners in emphasizing the need for cultural competence in social work. Cultural competence has a component of reflecting on one’s own cultural and social background and identity. Self-reflection should illuminate awareness of one’s own biases and prejudices. This awareness can increase sensitivity and raise awareness of the importance of empowering oppressed individuals through attending to their voice in narrative practice. Rappaport (2006) states “the metacommunications that follow from listening to and giving respect to the stories of people’s lives tends in itself to be an experience that changes the role relationship...”

Our sense of identity is fluid. Bradbury & Miller (2010) write “experience does not automatically assume narrative form. Rather, it is in reflecting on experience that we construct stories. The stories we make are accounts, attempts to explain and understand experiences”

Undoubtedly, all individual meaning, identity construction and understanding of this personal facet, through an internal or external experience, is contextual. One participant’s reflection focused on “choice” in the lives of individuals. Keddell (2008) states “people’s “choices” are circumscribed by a wide range of social constraints” and “these constraints are often the persistence of “race” as an imposed category; access to material resources; and family discourses about identity.”

Keddell (2008) writes “Narrative practice holds a sophisticated analysis of powerful discourses and attempts to assist people to resist those that are less helpful to them and create alternative meanings using the personal agency of both client and worker to do so.” Applying this approach in working with this population has the potential to validate the experiences of the accused and their family members while deconstructing negatively internalized identity

experiences and socio-cultural influences in the process of recognizing an external identity in a socially constructed world.

### **Practice and Sentence Mitigation Investigations**

The practitioner and the accused engage in developing a relationship within the confines of a secure prison environment. In this environment the client's sense of self and empowerment can be anticipated to be greatly impaired. The mitigation investigation is an information gathering process which has the possibility of aligning itself with a psychotherapeutic process. When the sentence mitigation practitioner is skilled in applying a theoretically grounded practice technique in the interviewing and advocacy process, the practitioner has an opportunity to engage with the client to empower him or her not only in coping with existing conditions but through the process of reflecting on their life experiences and developing an external reality and recognition of their place in a socially constructed world.

This can benefit the client in their personal growth and in the adjustment process in assimilating the death penalty experience into their life. The study findings viewed through the lens of narrative theory suggest the sentence mitigation investigation process has the capacity to shift this population to a more reflective process.

### **Mitigation Investigation**

Participants indicate socio-cultural factors are most often not recognized or communicated by clients and their family members. It is important to consider whether the investigator perspective and experience of clients' and family members' relative communications and interactions are considered in the context of the dominant culture.

Participants indicated they practice with an awareness of socio-cultural dynamics, however, twenty-three percent (23%) of participants specifically indicated they had not reflected

on this aspect of the work through a socio-cultural lens from the client population perspective, nor had they considered the client's ability to articulate specifically on socio-cultural factors. A finding is that participants, while not constitutionally required to explore this aspect of a client's identity, consciously or unconsciously did not explore the client or their family member perspectives on socio-cultural influences. Therefore, participant responses indicating the population does not reflect on socio-cultural factors may not be reliable or generalizable. The individuals ability to narrate is different from the ability to reflect, and should be considered. It is possible this interaction expresses an assumption from a position of privilege. It would appear that absent this perspective and without a thoughtful inquiry, there is a risk of reinforcing prior client experiences with a dominant culture.

While the majority of participants indicated their professional role was not a therapeutic role, an equal majority indicated engagement in relationship building through the professional role and investigation process provided a therapeutic component. Multiple participants discussed the unique role the mitigation investigation process provided for clients to begin a narrating and reflective process. This author was mindful of the social work adage that all persons have the capacity for change and the intersection of these individuals potentially facing imposition of death and the beginning process of reflection, particularly in lives that may not have been afforded interventions as a vehicle to utilizing the reflective capacity prior to the constitutionally required sentence mitigation investigation.

Through this research the author gained insight into the potential power of the sentence mitigation investigation process and the practitioner relationship and the potential capacity to empower and engage clients in a reflective capacity as to how socio-cultural factors influenced their lives.

### **Study Strengths**

The researcher notes the individual and collective skills and qualifications of the participants as strength of the study. The participants have in-depth knowledge and experience in the field of sentence mitigation practice enabling them to individually and collectively contribute to the literature addressing sentence mitigation practice. This author did not find any existing empirical studies on sentence mitigation practitioners experiences of the accused and their family members as historians reflecting on socio-cultural factors. Therefore, a strength of this study is data collection reflecting perceptions of sentence mitigation practitioners of the accused and their family members as historians in a socio-cultural contexts. The study findings and data collection can be utilized as a base of knowledge to begin researching this unexamined and valuable area of practice.

### **Study Limitations**

It is noted this was a non-random sample, of limited size, with a sample originating from varying disciplines, and lacking racial and cultural diversity in the sample, and the findings cannot be generalized beyond this sample.

Considering the data collection method, a weakness of the study is that the inquiries were overly broad. At times it appeared the interviewee was not clear what the question was asking. The researcher also notes that the interviews tended to skip around – occasionally resulting in more emphasis on particular areas and failing at times to probe other subject areas.

The demographics of the study participants also limit the study. The sample is comprised of all Caucasian participants. Also, of the thirteen participants, only two participants identified as male. In contrast, the demographics of the accused and their family members represent a primarily male, non-Caucasian group. Additionally, while the participants represent significant

experience in sentence mitigation practice, the various educational disciplines and theoretical grounding of the participants likely influence their perspectives. It may be valuable to continue an examination with a more consistent sample, if possible. Also, the demographic composition of the sample can be interpreted to influence responses. Participants' perceptions, and therefore their responses, are constructed and influenced by the dominant culture.

With respect to researcher bias, the researcher has experience working in both a prosecuting office, which did not engage in capital level prosecution, and longer term experience with a public defender agency engaged in sentence advocacy including representing capitally charged defendants. A bias of the researcher may be the researcher's education in social work practice.

### **Study Implications**

The following section will discuss the study findings for social work research, practice, education, and policy.

#### **Study Implications for Research**

The study findings have prompted the development of several questions with value for future research. There is a need for future examination of not only sentence mitigation practice, and how the field of social work can be engaged in this work, and to consider how the process has the possibility of engaging clients in a reflective process and how the process can help to validate life experiences. The study revealed the potential for the constitutionally required sentence mitigation investigation in death penalty work to serve as an intersection with a therapeutic intervention. Researching the therapeutic potential of this legally mandated work, including the how the effects of legal interventions can potentially re-enact aspects of social and

cultural biases and trauma or provide a therapeutic intervention, would contribute to the social work base of knowledge and practice skills knowledge.

This area of research could benefit from a larger analysis of the various components of the therapeutic value of the client-practitioner relationship and practitioners originating from various disciplines in order to further ascertain the value of social worker practitioners in this role. Further examination of the issues around practitioner and client identification around race and socio-cultural factors has the potential to illuminate practitioners understanding of these issues in the process and practitioners failing to consider a client's lack of reflection on these issues as an act of reinforcing the significant disparities present between the individuals in these respective roles. An examination of these issues from the perspective of the population served would bring valuable insight and understanding to this area of practice.

It may be important to contrast the experiences of practitioners engaged in sentencing advocacy at a non-capital level with those practicing in this starkly different and critical area of practice.

Specifically, there is a need to explore the following questions:

What is the experience of the accused and their family members in the relationship with the sentence mitigation practitioner?

What is the experience of the accused and their family members with respect to the demographic disparity represented in the sentence mitigation investigation?

How do the accused and their family members experience the presentation and interpretation of mitigation themes and mitigating facts?

How might the advocacy efforts of the sentence mitigation practitioner shift to an empowerment effort in the legally mandated process?



Finally, the findings indicate participants' perception of socio-cultural factors and cultural competence in practice has potential influence on not only the mitigation work product, but in the potentials of the professional relationship between practitioner and the accused and their family members.

### **Implications for Social Work Practice**

This study has the potential to increase and challenge a dialogue on relevant practice and social justice issues. The study has the potential to increase awareness and foster dialogue with respect to critical necessity for race and cultural competence in practice. Social work has a responsibility to continuing understanding the impact of multi-generational and socio-cultural factors contributing to how an individual can arrive at the point of being capitally charged. There is also a need to increase understanding of the impact of the underlying violence of the charged event, the process of the legal intervention and how this will affect future family generations and potentially enhance negative socio-cultural factors. Social work as a profession has a responsibility to consider how this area of practice can serve as a change opportunity.

### **Implications for Social Work Education**

It is important to consider the lack of educational programs specifically including and addressing the needs of this population or this specific area of practice areas and education for future and current practitioners on the impact of the defendant and family experience within the criminal justice system and the collateral social experiences and implications. The findings of this study endorse the necessity for social work training and education programs to address cultural diversity and competence. The study sample was recruited from all geographic areas within the United States. The study sample ultimately revealed a racially homogenous group of

practitioners. The study sample itself may suggest the need to recruit demographically diverse students in order to provide a more diverse group of practitioners.

### **Implications for Social Work Policy**

The study has implications for macro and micro-level social work practice. In the context of macro-level practice, practitioner concerns suggest value in examining the interdisciplinary relationship of social work practitioners as sentence mitigation practitioners with prison staff. Further, the study implications confirm and emphasize the need to continue social work efforts to address issues of racism, and in this vein of practice as a component in the criminal justice system.

Implications for micro-level practice indicate that while practitioners expressed awareness of the value of cultural competency in practice, there may be unintended gaps in provision of culturally sensitive practice. Practitioners identified specific vulnerabilities in this population and specific oppressions arising from socio-cultural structures and experiences. A continuing need for development of culturally competent practice skills is confirmed by this finding. Another implication of this finding is the need to examine the social work value of client empowerment versus a strict adherence to practitioner advocacy.

### **Conclusion**

This study was planned to explore sentence mitigation practitioner experience of the accused and their family members as historians, specifically in a socio-cultural context. The sample represented a non-diverse group of seasoned sentence mitigation practitioners. The participants in the study articulated a deep commitment to social advocacy and social justice. Impeding their ability as practitioners was at times noted to be the deep-rooted mistrust of the accused and their family members of engaging with any representative of the criminal justice

system, even in the role of defense advocacy. Clients and their families' long histories of oppression and experience of prejudice and bias were noted to be significant in the relationship building and investigatory process. However, the salient finding of this study is that the role of the sentence mitigation investigation and the sentence mitigation practitioner experience and skill can facilitate deep findings of mitigation themes and present an opportunity to empower clients through a beginning reflective process of socio-cultural influences in their life histories.

There is existing literature addressing socio-cultural factors as contributing to high-risk and deviant behaviors. There is a body of literature describing the role of sentence mitigation practitioners in the death penalty process however, there is an absence of literature examining the role of the sentence mitigation practitioners experience of the accused and their family members as historians, specifically in a socio-cultural context. This study offers a glimpse into sentence mitigation practitioners of the accused and their family members as historians, specifically in a socio-cultural context and the capacity for change in the sentence mitigation process.

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## Appendix A

### Research Project Approval Letter



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Smith College  
Northampton, Massachusetts 01063  
T (413) 585-7950  
F (413) 585-7994

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February 10, 2010

Lisa Kelly,

Dear Lisa,

Your revised materials have been reviewed and they are fine. Two things we ask. Please add to the Consent that you will be asking some demographic questions. Also, we see that you really don't seem to want to use the boilerplate at the end of Appendix 3. If you feel strongly about adding that extra, it's all right but we do think it isn't necessary.

We are glad to approve your study with the understanding that you will add the demographic statement and at least consider revising the boilerplate. Please send the corrected version to Laurie Wyman for your permanent record.

*Please note the following requirements:*

**Consent Maintaining Data:** You must retain all data and other documents for at least three (3) years past completion of the research activity.

*In addition, these requirements may also be applicable:*

**Amendments:** If you wish to change any aspect of the study (such as design, procedures, consent forms or subject population), please submit these changes to the Committee.

**Renewal:** You are required to apply for renewal of approval every year for as long as the study is active.

**Completion:** You are required to notify the Chair of the Human Subjects Review Committee when your study is completed (data collection finished). This requirement is met by completion of the thesis project during the Third Summer.

Good luck with your very interesting and unique project.

Sincerely,

A handwritten signature in black ink that reads 'Ann Hartman | DSW'.

Ann Hartman, D.S.W.  
Chair, Human Subjects Review Committee

CC: Caroline Hall, Research Advisor



## **Appendix B**

### **Recruitment Posting**

I am a graduate student at Smith College School for Social Work and am conducting an exploratory research study for the purpose of my thesis. The focus of my study is discerning what can be learned from seasoned sentence mitigation practitioners and their experiences of the accused and their family members as historians.

Inclusion in the study requires that you speak fluent English, and that you have experience in sentence mitigation in death penalty cases the United States. If you are willing to participate in this study, it will require being interviewed for 30 to 60 minutes via telephone. I plan to conclude interviews by April 15, 2011.

If you are interested in participating and believe you meet the inclusion criteria, please email me at lkellysw@gmail.com. If you think you may know of another potential participant please forward this posting. Thank you in advance and thank you to those who responded to the earlier posting.

Best,  
Lisa

## Appendix C

### Amended Informed Consent Form

SUBJECT: Research Study

Dear Participant:

My name is Lisa Kelly, and I am a graduate student at Smith College School for Social Work. I am writing to ask your participation in the exploratory research study I am conducting for the purpose of my thesis, presentation and publication. The focus of my study is discerning what we can learn from seasoned sentence mitigation practitioners about their specific approaches, practice wisdom, and experience of the accused and their family members as historians in the development of sentence mitigation evidence and life history presentation.

Participating in the study would require a telephone interview answering asked questions related to your experience and practice with death penalty clients, their families, and within the legal system. Interviews will be for no more than one-hour of time. Inclusion in the study requires that you speak fluent English, and that you have experience in developing life history presentations for the purpose of sentence mitigation in the United States. The interview will be audio-recorded and later transcribed by me. The interview will consist of a brief set of demographic questions followed by more open-ended questions encouraging you to reflect on specific experiences of the accused and their family members, as well as the judicial system and your practice.

Benefits you might experience in relation to participating in this study may be knowing that you are contributing to the knowledge base of forensic social work. Participation may offer the opportunity for personal and professional reflection on the topic of developing life history presentations in capital cases. Participation has the potential risk of irritating or raising ethical tensions and/or professional dilemmas you may be struggling with, had not considered, or denied. No personal risk is anticipated. There is no financial benefit to participating in this study.

Your participation in the study will be kept confidential. My advisor will have access to study data only after all identifying information is redacted. Participation in the study is voluntary. All information from the your interview will be kept locked for a period of three-years, after all identifying information is removed, and in accordance with federal guidelines. You may refuse to answer any question in the interview proces. You may also withdraw from the study up until the date of April 15, 2011. No explanation of a decision to withdraw is necessary. Should you decide to withdraw from the study, all materials related to your participation will be destroyed.

Questions regarding this research project or your rights as a participant may be directed to me at any during and/or after the research is completed.

Your signature indicates that you have read and understand the above information and that you have had the opportunity to ask questions about the study, your participation, your rights, and that you agree to participate in the study. Your signature below verifies that you are volunteering to participate in this study and that you agree that I may use and interpret information you provide through your experiences as prescribed above.

Participant signature \_\_\_\_\_ Date

Thank you for your willingness to share your experiences.

Researcher signature \_\_\_\_\_ Date

Questions regarding any aspect of this study should be directed to:

Lisa Kelly  
Smith College School for Social Work

You may also contact:  
Chair of the Human Subjects Review Committee  
Smith College School for Social Work  
Northampton, MA

Please keep a copy of this informed consent for your records.

## Appendix D

### Interview Guide

How do you identify your race?

How do you identify your ethnicity?

How many years of experience do you have working in sentence mitigation in the United States?

What is your level of education?

Do you have work experience in sentence mitigation prior to your most recent formal education?

In what geographical area do you practice?

Are you employed by an agency that permits you to work in practice other than sentence mitigation work?

If you are an independent social worker, how do you decide which teams you will contract with for the purposes of sentence mitigation?

Please describe your average caseload.

What theoretical frameworks do you utilize in sentence mitigation practice?

Please describe your experiences of the accused as a historian in the development of life history presentations.

Please describe your experiences of the accused's family members as historians in the development of life history presentations.

What specific approaches do you use in working with the accused and their family members in development of life history presentations?

Please describe your experiences of the accused and their family members as historians in the context of socio-cultural factors and socio-cultural traumas. Please relate these to the process of the death penalty.

Please describe the experience of the accused and their family members in context of socio-cultural factors and/or socio-cultural traumas, as communicated by the accused and/or their family member. And as communicated in relation to the death penalty process.

How do you experience racism in the death penalty process, including in the capital defense team?

Please describe any situations encountered in the mitigation investigation in which you experienced concerns surrounding emotional impact for the interviewee in the information gathering process.

How did you attend to this concern?

Please describe any situations in which a client's voluntariness to death over life was encountered.

If any, please describe how this factored into the development of the work product, and specifically, how the accused was experienced as a historian.

What practice wisdom do you have to share with respect to sentence mitigation work?

Is there anything else you would like to share?