



New York State Office of
Indigent Legal Services

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Storytelling for Mitigation

PRACTICAL GUIDANCE ON ELEVATING THE CLIENT'S
STORY FOR THE MITIGATION FUNCTION OF PUBLIC
DEFENSE TEAMS





New York State Office of
Indigent Legal Services

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The Golden Buddha^{i, ii}

In Bangkok, a golden statue of the Buddha stands 9'8" tall, weighs 5.5 tons, and is worth approximately \$250 million.

Scholars believe monks built the statue in the 1400's, and Buddhist pilgrims revered the icon for centuries. In 1757, the Burmese Army invaded Thailand, brutalizing villages, and looting valuables. Facing destruction, the Buddhist monks at the monastery hastily began covering their Golden Buddha with plaster. They then painted it and inlaid bits of colored glass to make it look of little or no value to the invading army. During the invasion, all the Buddhist monks perished, but the Golden Buddha was left undiscovered, considered worthless and too large to move.

In the 19050's, Buddhist monks once again inhabited the area, and a planned relocation spurred them to prepare their ancient clay Buddha for transport. One of the monks noticed a large crack in the clay. On closer investigation, he saw a golden light emanating from a crack. The monk used a hammer and a chisel to chip away at the clay exterior until he revealed that the statue was made of solid gold.



Golden Buddha Wat Traimit, Bangkok

The story of the Golden Buddha offers an allegory for mitigation work. It reminds us that we are all born with inherent worth and resilience. The plaster, paint, and glass that protected the Buddha statue from marauders symbolize the psychic barriers (behaviors, attitudes) we erect to protect us from life's traumas. Some people have built many layers of protection.

The goal of mitigation work is to carefully examine the layers and expose the Golden Buddha within our clients so that they are understood as whole people.

Storytelling as a Narrative Advocacy Tool

“Storytelling reveals meaning without committing the error of defining it.”
— Hannah Arendt

Whether the end-product takes form as a written report or another creative presentation, the life history investigation for mitigation is a defense advocacy tool. It is meant to persuade. Mitigation advocacy does not excuse bad acts but contextualizes behavior and makes a case for individualized, strengths-promoting treatment in legal decision-making. Like all stories, the life history presented as mitigation advocacy should have a beginning, middle, and an end. The client plays the role of the protagonist, their environment offers the setting, and their life’s arc reveals the theme of the story.

The client’s personal narrative will undoubtedly run counter to the impersonal, socially constructed narrative about crime and deviance that the decision-maker may hold and that the prosecution will surely exploit. Craig Haney, in his seminal article about developing the counternarrative in capital mitigation advocacy, describes as the “master-narrative” the widely accepted social constructs about crime and criminality that erase the human client in favor of an aberration.ⁱⁱⁱ This narrative is so pervasive that in capital trials (and all criminal trials) jurors “have been elaborately prepared - and systematically miseducated - long before a single question is asked on voir dire or any evidence has been presented,” (p. 837). It is much easier to remove an aberration from their family and community than a complex human being with value to the community. The job of mitigation advocacy is to elevate the whole humanity of the defense client to counter and discredit the narrow (and destructive) master narrative.

Understanding the Goal of the Advocacy

Whether or not the defense team includes a mitigation specialist, it is the defense team’s duty to tell the client’s story. Doing so requires the team to effectively pursue mitigation. Throughout this guide, the storyteller will be referred as the “mitigation advocate.” It is important that the defense team conference prior to developing the mitigation narrative advocacy product. This conference can help the advocate ensure that the mitigation narrative supports the defense’s theory of the case. Additionally, the defense team must be clear about the goal of the advocacy product prior to developing it.

***Interdisciplinary Practice Tip:** As a full member of the defense team, the mitigation specialist must keep lines of communication open with team members throughout the course of the case since the mitigation theme will likely evolve and further develop as the case investigation and the life history investigation reveal new information.*

Whatever mitigation advocacy is developed at the trial level will continue to serve the client in post-conviction proceedings. The appellate and post-conviction defense team can use

the mitigation product to argue on direct appeal that the sentence was harsh and excessive, in parole advocacy to argue for release, and, if applicable, during SORA proceedings. The mitigation advocacy may also be highly beneficial during other post-conviction proceedings, including CPL 440 motions and post-conviction negotiations with prosecutors and in Department of Corrections decision-making contexts. Because these products have such a long life and can be used in so many different contexts, it's important that everyone on the defense team is familiar with and speaks consistently about its contents, including the client (who will have an opportunity to speak at sentencing). A thoughtful mitigation report can shave years off a client's sentence by enhancing access to early release programs, positive parole board decision-making, or both.

In addition to informing trial and negotiation defense strategy, narrative mitigation advocacy products are commonly offered at two distinct points in the life of a case: as pre-pleading memorandums and as pre-sentence memorandums. The different advocacy goals have important implications for the mitigation product.

Pre-Plea Advocacy	Pre-Sentence Advocacy
<ul style="list-style-type: none"> • Before any finding of guilt • Often submitted directly to prosecution • Purpose is to assist in plea negotiations • Advocacy product should not reference alleged crime (unless as an attorney coordinated effort for a specific goal) 	<ul style="list-style-type: none"> • After finding of guilt • Submitted to court to assist with the sentencing decision • Themes of remorse or contextualization of crime may be appropriate and beneficial

Knowing the Audience

It benefits the mitigation advocate to be mindful of positions and perspectives of the target audience and attend to existing misconceptions.^{iv} Evidence derived from Harvard's Implicit Association Test shows that regions of the country where implicit race biases are strongest also have the highest disparities in socially significant outcomes in employment, health care, education, and law enforcement.^v It is important for mitigation advocacy to successfully counter implicit bias for better case outcomes and to increase equity in the criminal legal system. The counternarrative offered by the defense advocate must be more logical and more plausible than the narrative that is informed by biased social schemas. The mitigation advocate should be mindful of the basic principles of persuasion and persuasive writing when developing the mitigation advocacy product.^{vi}

***Interdisciplinary Practice Tip:** Learn what you can about the audience for your narrative advocacy. Consider asking the attorney or colleagues what they know about the judge or prosecutor and how they express their perspectives and positions. Knowing your audience enables you to craft responsive and inclusive work products.*

Building Blocks of Persuasion	
Ethos	Advocate's credibility & audience's values
Pathos	Emotional impact of the presentation
Logos	The appeal to logic/reason

Beginning

In the introductory section of the mitigation presentation, the advocate states the purpose of the report, introduces themselves and their qualifications, and outlines the sources of information they consulted in developing the presentation. These components are important for conveying the credibility of the advocacy product. Consider the example below:

Please accept the following Pre-Sentencing Memorandum to assist in considering an appropriate sentence for Christopher Flomo. I was retained by Christopher's defense attorney, Mr. Raymond Holden, to assess Christopher and develop this report. This report is based on:

- *several hours of interviews with Christopher at the Tornick Road Secure Treatment Center and an hour-long zoom call;*
- *interviews with his mother, Ms. Mattie Flomo, and his uncle, Mr. Matthew Flomo;*
- *conversations with the Clinical Director of the Tornick Road facility, Ms. Karen Lewis, his caseworker, Mr. Omar Thomas, and his attorney, Mr. Raymond Holden; and*
- *a review of records from the Department of Youth Services, Palmer School District, and the Office of Children and Family Services and Probation, including the recent Pre-Sentencing Report.*

All records can be made available to the Court if requested. Specifically significant records are attached to this report. Additionally, relevant resources on refugee mental health were consulted and are cited throughout this report.

I am an independently licensed clinical social worker and have worked in forensic mental health for over 15 years.

Additionally, the introduction can be a vehicle to introduce the client and to foreshadow the theme of the narrative and the recommendation to the court (or other decision-maker). Depending on the needs of the client and the defense case, the mitigation investigation may or may not benefit from a clinician's narrative perspective.

Client Presentation

It is good practice to make space in the introduction for the advocate's reflection on how the client presented during interviews in preparation for the report. The reflection on the client's presentation can include elements that help to illustrate the character of the

protagonist that the narrative develops. A holistic reflection on the client's presentation can include:

- Depth of engagement
- Physical appearance
- Attitude toward collaboration
- Ability to reflect on life history
- Descriptors of language and nonverbal communication style
- Current functioning (i.e. participating in programs, going to school/work, caring for family, etc.)

Sometimes a brief anecdote serves to empathetically introduce the client to the audience. Consider the example below:

Christopher, who will turn 18 in June and has grown markedly and matured in the six months I have worked with him, presented in our interviews as respectful and thoughtful. He spoke openly and at length when asked about his life experiences and how he understands them. He became guarded only when he perceived a negative perception of his mother. For example, Christopher reflected on his early childhood and his mother's frequent tears but quickly demurred when asked how he navigated her sadness: "I mean she cried appropriately, like not in a bad way."

Foreshadowing Theme and Conclusion

The goal of narrative advocacy is for the decision-maker (i.e. judge, prosecutor, or both) to agree that the defense's recommendation for the case disposition is the most logical and fairest case outcome. Therefore, the narrative serves to present the client's life history, contextualize the events of the case, and to provide the roadmap for the audience to reach a specific conclusion. By foreshadowing the theme of the narrative and the recommended conclusion (i.e., recommended plea and disposition) in the introduction of the narrative advocacy product, the decision-maker is primed to follow the thread of the narrative to the desired outcome.^{vii}

Consider the example below. This section of the introduction immediately follows the reflection on the client's presentation:

An environmental perspective is necessary for assessing Christopher. He is a 17-year-old adolescent who was born in a Liberian refugee camp to a young mother who emigrated alone with her child to the United States. The small family first landed in Georgia, and then, having heard that there are strong special education resources in New York, to Palmer. Dramatic physical, cultural, and social transplantations have punctuated his young life: he was born in Guinea, Africa; he emigrated to Georgia; he attended early school in Palmer; he was sent for four years to live and attend grade school in rural Guinea; and then he was returned to Palmer in late middle school. A review of child welfare and juvenile justice records shows that the family's system involvement goes back to when Christopher was five years old. Christopher is an intelligent and reflective young man; he is also navigating

tremendous trauma and needs resources and support to settle and thrive. A Youthful Offender adjudication will afford him the opportunity to pursue treatment, education, and independence without the additional obstacle of a felony record.

Within the first few paragraphs of the mitigation narrative, the reader understands that the client's life is rife with instability, familial and historical trauma, and system-involvement. The reader is primed to identify stability, treatment, and independence as necessary next steps for the client's well-being. These goals are best supported by the recommended disposition.

Elements to Include in the Introduction
<ul style="list-style-type: none"> <input type="checkbox"/> Introduction of advocate <input type="checkbox"/> Outline of the resources that inform the narrative (interviewees, records reviewed, research incorporated, etc.) <input type="checkbox"/> Holistic reflection on the client's presentation <input type="checkbox"/> Summary of the theme and recommendation that will be developed throughout the narrative

Middle

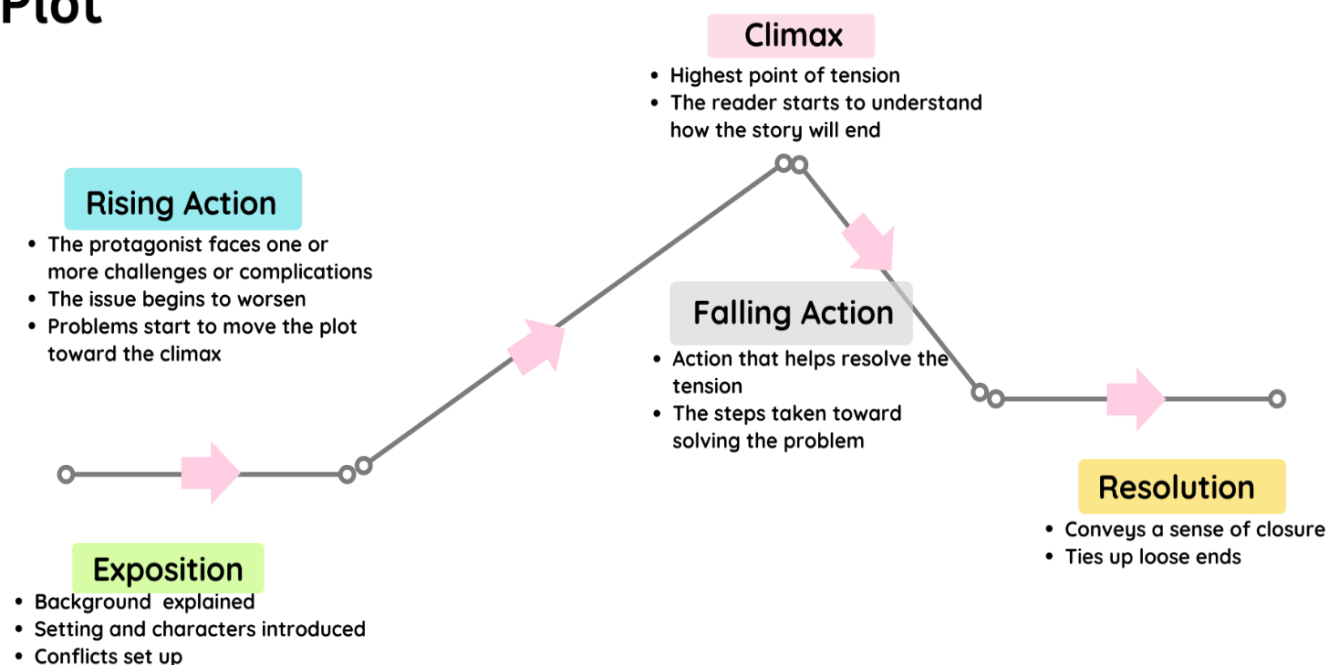
The bulk of the mitigation advocacy presentation will unfurl as a life-history narrative. Within this section, it is valuable to consider the conventions of storytelling that are outlined in the table below. The narrative also presents the best opportunity to develop the “pathos” elements of the persuasive argument and support the audience's emotional investment in the client and their story.

***Interdisciplinary Practice Tip:** As much as possible, share the mitigation process with your client. Explain the goal and what we know about persuasive narratives. Ask for collaboration in developing the arc. Close collaboration with clients produces authentic and credible narratives.*

Storytelling conventions to develop	Examples of elements to include
Character (protagonist and supporting characters)	Speech (direct quotes) Thoughts (what they were thinking or feeling at time) Appearance (now, at points-in-time in the story) Actions & behaviors Impact (how others feel about character)
Setting (physical and cultural)	Home, Neighborhood, Building, School, Environment, Cultural schemas & values
Plot (storyline and central conflict)	Exposition (background info) Rising action (challenges that worsen situation) Climax (highest point of tension) Falling action (what helps deal with problem) Resolution (closure because the conflict/challenge is addressed)
Themes & Throughlines	Cumulative challenges The resolution matches the challenge

After extensive interviews with the client, their loved ones, and others who have known them throughout their lives, and a thorough review of the records and supplemental materials, a theme for the life history narrative will take shape. The section below titled “Themes in Mitigation” explores various themes that can be applied to effective mitigation advocacy. It is a good rule of thumb to balance illustrations of adversity from the client’s life with illustrations of strength and resilience. When the decision maker is faced with considering community safety and the client’s potential for good citizenship as part of their deliberations, examples of how the client has contributed positively to the lives of those around them are critical narrative elements. Consider the classic story arc below and how the narrative you develop with the client fits along the arc:

Plot



Perspectives

A goal of mitigation is to elevate the perspective and the experience of the client for advocacy purposes. Good stories inspire the reader/listener to take the perspective of the protagonist and the supporting characters. Whether they agree with the decisions the protagonist makes is less important. Including direct quotes from interviewees and details about the environment in which your client lived invites your audience to empathize with your client. Consider the passage below:

Ms. Flomo remembers being unable to leave Christopher in daycare because he would become too upset and wait by the door crying. She reports that the toddler's behavior grew more extreme with each daycare center she tried until she eventually gave up and kept him home. Christopher does not report remembering very much about his life in Georgia. He remembers his mother's frequent crying spells. He reports that he felt like he always wanted to be with her. He remembers feeling terrified by the stories she would tell him about her own childhood living as a slave in Liberia and then escaping war.

The narrative could accurately and simply state: *Christopher lives with generational trauma.* However, the firsthand memories of mother and son illustrate this fact in a way that brings the reader into the experience of living with generational trauma. The research that supports our understanding of generational trauma, and its impact on behavior, is more likely to resonate because of the narrative exposition.

Headings

When submitting a written advocacy product, the intentional use of headings can reinforce the theme of the narrative and make the product more readable and accessible. Commonly, age or time periods are header titles that break the narrative into distinct sections. Adding a snippet of personalization can attract the reader to the narrative and make the narrative feel less clinical, for example:

- *Ages 4-8: The Apartment on Bradford Street*
- *September 2012 to December 2013: Sobriety and Family*
- *Emigrating to the U.S.*

Practice Tips:

- Use first-person quotes
 - Paint a picture of the environment with words
 - Refer to age and relationships throughout narrative to maintain clarity
 - Use social science research to make connections between life experiences and outcomes/behaviors
-

Interdisciplinary Practice Tip: *Be mindful of any ambiguities in the mitigation advocacy product, or things that are contradicted by other aspects of the client's record. It's important that the mitigation product be consistent with those facts or clarified to reflect them.*

However you decide to title the sections of the narrative, it is a good idea to be consistent. If you divide the narrative by age at the beginning, continue to use ages to break up the story. Allowing the theme of the narrative to dictate how you divide and title the sections supports strong narrative coherence.

Themes in Mitigation

The goal of mitigation is to individualize the client. Each mitigation report (or mitigation product) will consider the unique biological, psychological, social, structural, and spiritual factors that have shaped the client's life. There are various lists of mitigating factors derived from policy, case law, and practice that can inform your mitigation approach, though because mitigation is individualized, there is no definitive list of mitigating factors. It is equally important to illustrate the negative and positive influences in the client's story. While stories of hardship and trauma may be essential to understanding the client's life context, mitigation reports that display positive qualities and relationships and that demonstrate the client's capacity for resilience and positive citizenship are most effective. The table on the following page offers possible themes for mitigation:^{viii}

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

Empirical research conducted within the Federal Court system reveals the effectiveness of specific themes in mitigation advocacy. The Sentencing Commission surveyed 942 federal judges about the weight they give to a long list of mitigating factors; over 60% of respondents endorsed the following list of factors as relevant for deviating down from standard sentencing guidelines (factors ranked most relevant are at the top):^{ix}

- Diminished capacity (inability to have formed intent)
- Mental/physical condition
- Remorse
- Good Character
- Age
- Family Responsibilities

The 2019 Domestic Violence Survivors Justice Act (DVSJA) gives discretion to judges to give reduced sentences to survivors of domestic violence. Trial-level defenders have an obligation to explore relevant life experiences with their clients and potential connections to any charges they are facing from the beginning of the case. For more information about the DVSJA, see: <https://www.ils.ny.gov/node/268/dvsja-resources>

Considered alone, the individual's trauma history and factors related to a disadvantaged childhood were not deemed persuasive as mitigating factors by most respondents in the Sentencing

Commission's 2012 judges' survey. It can be assumed that trauma histories alone, without accompanying evidence of good character, community support, remorse, resilience, and other strengths-based narrative strands, are not especially effective for sentencing advocacy and do little to persuade the reader that rehabilitation and good citizenship are likely.

Beyond trial-level sentencing outcomes, mitigation reports serve an important function in post-conviction and on direct appeal. Relevant mitigating factors for successful appellate arguments that claim harsh or excessive sentences can guide our arguments in trial-level written advocacy. Many factors that New York appellate courts have held warrant the reduction of a sentence in the interest of justice are:^x

- Circumstances prior to the offense that worsened existing mental health issues and contributed to the commission of the offense
- Crime out of character for the defendant
- Family background
- Family obligations
- Mental health and substance abuse problems
- Client's mental illness
- Physical condition/health/disability
- Youth
- Employment history and vocational skills
- History as a victim of domestic violence
- Good reputation in school and community

- Lack of, or minimal, criminal history
- Nature of a defendant's prior convictions
- Acceptance of responsibility and expression of remorse
- Cooperation with authorities
- Efforts towards rehabilitation

Elements to Consider in the Narrative
<input type="checkbox"/> Themes & Throughlines <input type="checkbox"/> Developing character and setting through first-person accounts, quotes, and sensory descriptions <input type="checkbox"/> The story arc: background, rising action, crisis, resolution <input type="checkbox"/> Breaking up the narrative and thoughtfully titling sections <input type="checkbox"/> Setting up the conclusion

End

The conclusion of the narrative advocacy product is where the narrative comes together to offer a logical path forward for the client that both supports public safety and promotes the well-being of the client and their community. Describing how the client has a history of being in loving relationships and being a positive member of the community inspires hope and also serves to demonstrate the collateral consequences of a jail or prison sentence, particularly a lengthy one. The conclusion of the narrative advocacy generally recommends a disposition. The recommendation may be for an alternative plea or disposition (i.e., the opportunity to plea to a lower charge or case transfer to treatment court) or a specific sentence, or both. This is the same recommendation that is previewed in the introduction. The recommendation should always be directed by the defense counsel to ensure its appropriateness, legality, and credibility.

The Recommendation

In some cases, the recommendation is straightforward and clearly reflects what is in the best interest of the court, client, and the community; other times it may be necessary to substantiate the sentencing/plea recommendation with a recommended treatment plan. If the mitigation advocate is not a clinician, it may be a good idea to contract with a clinician to offer practical guidance for developing a proposed treatment plan.

The defense's recommendation should be the most logical conclusion to the story presented in the mitigation advocacy product.

Remember, major hurdles in the client's life that contextualize the client's criminal or maladaptive behavior should be addressed in the summary and recommendation. For example, if early experiences of abuse or neglect are explored to help provide an understanding of why the client may have behaved in a certain harmful way, the narrative or recommendation can also offer an appropriate plan for healing and growth so that the client

is equipped to avoid similar patterns going forward. This strategy supports the credibility of the advocacy product and offers the decision-maker a good reason to agree with the defense's recommendation. Consider the example below:

Christopher deserves an opportunity to heal and grow. If the Court finds a placement with OCFS appropriate, it is my recommendation that he be supported in accessing effective treatment. West State Medical Center houses a well-respected child trauma clinic with several therapists certified in Trauma-Focused Cognitive Behavioral Therapy. I have been in touch with Dr. Joan Wozniak, Clinical Research and Development Manager at West State, and, if the Court finds it appropriate, can assist in arranging for Christopher's treatment while in custody.

Whether or not a treatment plan is warranted, the sentencing recommendation is an opportunity for the advocate to list the mitigating factors as a weighty counterbalance for the decision-maker's scale of justice. An advocate generally phrases the recommendation in a manner that defers to the judgement of the court. Consider the example of another youthful client below:

Several people interviewed for this report expressed their belief in Curtis's potential to overcome the negativity he is currently embroiled in and also their belief in the limitlessness of his potential. One mentor reported that she was in school for her doctorate degree when she was working with Curtis, and he enjoyed asking her about her schoolwork and engaging in critical discussions about social and behavioral theories and how they relate to his life. Before his arrest on the instant case, he attended Haverford Community College on a STEM scholarship. He works at a local banquet hall and looks forward to progressing toward independence. He is a huge help to his sister in raising his three nieces, who lovingly call him Peanut, as his deceased mother did. He is a smart and sensitive young man. Born into any other circumstance, at 19 years old, he would be excelling in college and sports. Given where he is, the support of the ROCA mentors, the opportunity to engage in therapy, and the structure provided by probation could be exactly what he needs to realize his potential. I respectfully recommend that the Court grant Curtis the opportunity to be adjudicated a Youthful Offender with a sentence of probation that is conditioned on his completion of the ROCA program.

Elements to Consider in the Conclusion	
<input type="checkbox"/>	A summary of the major life points
<input type="checkbox"/>	The weight of the mitigating factors
<input type="checkbox"/>	Collateral impacts of punishment (personal, family, community)
<input type="checkbox"/>	A path forward for the client and their community
<input type="checkbox"/>	A logical and practical recommendation
<input type="checkbox"/>	The plan for healing/rehabilitation

Creative Approaches in Mitigation Advocacy

There is no limit to the creativity the client and defense teams can employ when crafting mitigation advocacy. Client artwork, family photos, poetry, and other creative expressions can be woven throughout the narrative or attached as appendices with other supporting documentation like records or letters of support.

Video Mitigation

Video is a powerful vehicle for storytelling. Video can bring the voice, image, and story of the client and their loved ones into the room with the decision-maker. Defense teams in New York have been increasingly partnering with filmmakers, and developing in-house talent, to produce brief mitigation projects that change hearts and minds. Video mitigation projects are often submitted in conjunction with written mitigation advocacy products to amplify the impact. Time, videography skill, and resources are needed to produce quality video mitigation. The resources below offer further information about video mitigation and organizations partnering with public defenders to create quality video mitigation products in New York:

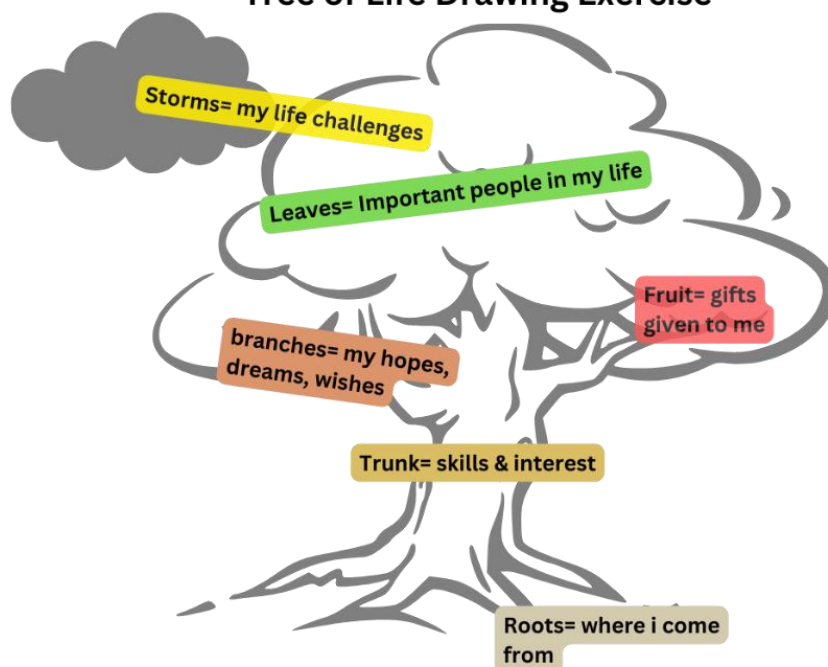
- **Witness Media Lab:** <https://blog.witness.org/2022/11/video-mitigation-usa/>
- **Legal Aid Society NYC, Video Mitigation Project:** <https://legalaidnyc.org/programs-projects-units/the-video-mitigation-project/>
- **Participatory Defense:** <https://www.participatorydefense.org/>
- **Fordham Law School:** <https://digital.law.fordham.edu/issue/winter-spring-2023/freeing-their-stories/>

Client Writing & Artwork

Narratives have long been employed in healing spaces to empower survivors of trauma to take control of their life stories, past, present, and future. Mitigation advocacy that reflects the client's potential and hopes and dreams for the future can inspire hope and investment in the decision-maker as well.

Your client's contribution of personal writing and/or artwork to the mitigation advocacy product can contribute to the authenticity and impact of the submission while

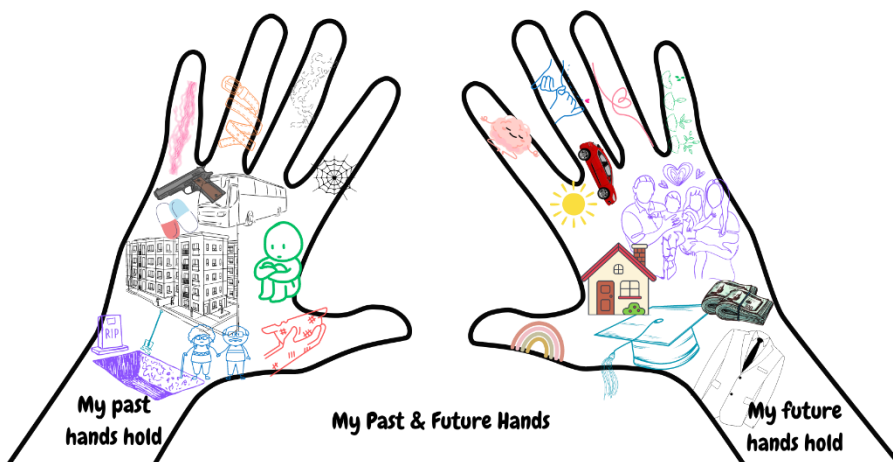
Tree of Life Drawing Exercise



also empowering the client to meaningfully participate in their defense.

Client writing can take the form of a letter to the court, a plan for the future, poetry, or other personal reflections that enable the reader to understand the client better and feel invested in their well-being. Client artwork can be a powerful tool in demonstrating the client's depth of reflection and multiple dimensions of their life.

If needed, some possible prompts for client writing or artwork are listed below:



The highest point in your life so far	A letter to your younger self	My Past & Future Hands art exercise^{xi}
A painful experience or event written in the third person	A letter to your child about your dreams for them	A letter to a parent or caregiver who is no longer alive
What you hope your legacy will be	A letter to your future self	Tree of Life art exercise^{xii}

List of Appendices

- A. Understanding the Role of Trauma, Treatment, Hope, & Resilience
- B. How Physical and Social Sciences Support Storytelling

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APPENDIX A

Understanding the Role of Trauma, Treatment, Hope, & Resilience

Understanding the Role of Trauma

Trauma is pervasive. Like the monks who protected the Golden Buddha, most of us have built layers of protection in response to trauma. Post-traumatic stress symptomology can be understood as coping mechanisms for dealing with overwhelming experiences. For people who have experienced prolonged exposure to trauma and/or whose experiences of survival have interrupted childhood development, the neural network of the brain becomes hardwired for protection. Unlike plaster that can be chipped away, maladaptive schemas that are developed in early childhood can have lifelong impacts on personality development and negativistic beliefs about self and others, as well as the ability to regulate one's emotions, attentional capacity, abstract reasoning skills, sense of identity and self-worth.^{i ii}

Not all bad experiences result in prolonged pathology; an individual's protective factors can mitigate the lasting impact of trauma.

The Dimensional Model of Adversity and Psychopathology (DMAP) suggests that there are two primary dimensions of adversity: threat and deprivation.ⁱⁱⁱ Threat refers to experiences of harm or potential harm (such as exposure to community violence), while deprivation refers to experiences where crucial environmental factors are lacking (such as emotional neglect, housing instability). Co-occurring, cumulative adversities in early childhood increase the risk of developing trauma-related psychopathologies like anxiety, depression, aggression, and conduct problems.^{iv}

A common response to trauma is dissociation, "making [experiences] less personal, less real."^v Childhood neglect and maltreatment can induce a dissociative trauma response; as the child learns that crying for comfort does not work, the brain learns to shut down in response to distress and arousal. It should be expected and accepted that client memories, and thus the advocate's ability to relay the story, are often muddled and nonlinear. Including research about trauma and the brain can assist the mitigation advocate in explaining inconsistencies in the client's story.

Threats to Healthy Childhood Development

- Biological Factors
 - Genetic syndromes, in utero exposure, prematurity/low birth weight, birth injury, exposure to environmental toxins (i.e. lead), chronic illness
- Insecure caregiver attachment in first years
- High parental conflict, family disruption
- Corporal punishment, coercive family processes
- Childhood maltreatment: neglect and abuse
- Trauma
- Foster care
- Witnessing violence
- Death of a parent/caregiver
- Parental psychopathology
- Parental substance dependence
- Poverty
- Racism & minoritized status: structural and interpersonal
- Exposure to community violence

Source: Davies, D. & Troy, M (2020). *Child Development: A Practitioner's Guide*. Guilford Press.

Treatment, hope, & resilience

Just as it is important to outline the potential devastating impact of complex trauma, it is also important to present the person's potential for healing. Trauma treatment is a vast field of research and practice and offers guideposts for hope and recovery to include in mitigation. A basic assumption of treating trauma is that the survivor must learn how to "make new meanings out of utter destruction."^{vi} Many survivors employ splitting to manage distressing feelings associated with trauma; treatment works to integrate experiences and knowledge so that a new, more complete self-narrative prevails. Popular trauma therapies employ individual and group modalities and include, among others:

- Eye Movement Desensitization & Reprocessing Therapy (EMDR)
- Internal Family Systems Therapy (IFS)
- Cognitive Behavioral Therapy (CBT)
- Cognitive Processing (CPT)
- Prolong Exposure Therapy (PE)
- Trauma-Focused CBT (TF-CBT)
- Narrative Exposure Therapy (NET)
- Somatic Experiencing Therapy^{vii}

With treatment, survivors of trauma can and do heal and live happy and healthy lives. A 2022 broad systemic review of the efficacy of trauma-specific treatment with adolescents caught up in the legal system concluded that "treatments significantly reduced PTSD symptoms, co-occurring mental health symptoms, and justice-related outcomes."^{viii}

Although access to healthcare while incarcerated is a constitutional right in the U.S., access to quality trauma-treatment while incarcerated is limited. Additionally, studies have found that structural barriers, like segregated housing and fear of punitive measures, impede people who are incarcerated from accessing services when they are available.^{ix} As one coordinator of mental health services in a Massachusetts prison reported to the Boston Globe, "To provide good mental health treatment in prison, in an environment riddled with anxiety — you just can't do it. It's the antithesis of the environment they need."^x The client's ability to engage in high quality trauma treatment is an argument for a community-based or treatment-based sentence.

Further Resources on Trauma

- The National Child Traumatic Stress Networks (NCTSN): <https://www.nctsn.org/>
- US Department of Veteran Affairs, National Center for PTSD: <https://www.ptsd.va.gov/>
- National Domestic Violence Hotline: <https://www.thehotline.org>

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APPENDIX B

How Physical & Social Sciences Support Storytelling

How Physical & Social Sciences Support Storytelling

“If a story is not about the hearer he [or she] will not listen . . . The strange and foreign is not interesting--only the deeply personal and familiar.”

— John Steinbeck, *East of Eden*

Development Theory

Widely accepted theories about human development offer a normative road map for all human stories. As we grow, we learn to interact with the world and with ourselves, achieving developmental milestones as we age. Common developmental milestones in early childhood are familiar to those who have ever taken a child to the pediatrician or reviewed childhood medical records:

AGE	Social/Cognitive	Gross Motor	Fine Motor	Language
2 months	Social smile	Lifts head 45°	Eyes follow object to midline	Coos
4 months	Laughs, aware of caregiver, localize sound	Lifts head 90°	Eyes follow object past midline	
6 months	Differentiates between people, stranger anxiety	Rolls Over, sits w/o support	Grasps, attempts to feed self	Babbles
9 months	Interactive games, separation anxiety	Crawls, pulls to stand	Grasps with thumb	First words
12 months	Separation anxiety	Walks with help	Makes 2-block tower	~5-10 words
18 months	Parallel play	Walks well, walks backward	Makes 4-block tower, uses cup/spoon	10-50 words, 2-word sentences
2 years	Dresses self with help	Runs, climbs stairs	Makes 6-block tower	50-75 words. 3-word sentences

Table 1 Pediatric Developmental Milestones¹

This largely linear normative development process extends to social relationships and behaviors throughout childhood, adolescence, into young adulthood and as we age. Erikson's psychosocial developmental tasks provide a skeleton for understanding how normative human growth unfolds and how/when, if healthy development is not supported, maladaptive behaviors, self-conceptions, and worldviews can take hold. Review the chart below to inform an understanding of human development and to help frame your life-history report.

Age (years)	Milestone	Major Question	Basic Support Needed
0-1.5: Infancy	Trust vs. Mistrust	Can I rely on the people around me?	Feeding, attending, comforting
1.5-3: Early childhood	Self-sufficiency vs. Shame/Doubt	Can I do things for myself or do I need others to do it for me?	Toilet-training, opportunity for independent choices
3-5: Play age	Initiative vs. Guilt	Can I try new things without being afraid?	Play, imagination, supportive
6-11: School age	Productivity vs. Inferiority	Can I be good/successful?	Setting reasonable expectations, praising accomplishments
12-18: Adolescence	Identity vs. Confusion	Who am I?	Prosocial relationships, values generation
18-40: Young adult	Intimacy vs. Isolation	Will I be loved or will I be alone?	Closeness, intimate relationships
40-65: Adult	Constructive vs. Stagnation	How do I contribute to the world?	Work, family, community
65-Death: Old age	Integrity vs. Despair	Did I live a meaningful life?	Reflection

Table 2 Erikson's Stages of Psychosocial Developmentⁱⁱ

Consider your own life...

As an exercise in identifying how to develop a story that is relatable to a broad audience (and is research-informed!), consider your own memoir. Reflect on the periods of growth and development in your own life. How did your experiences shape how you see the world? Think about specific memories and anecdotes that illustrate your life experience at a specific stage in your development. Try to think of a specific memory from each of Erikson's psychosocial developmental stages that illustrates how you navigated corresponding developmental tasks or milestones. By offering illustrations of your life experiences, you invite the reader to inhabit your point of view and evoke a more complete understanding of the story. Consider the comparison below:

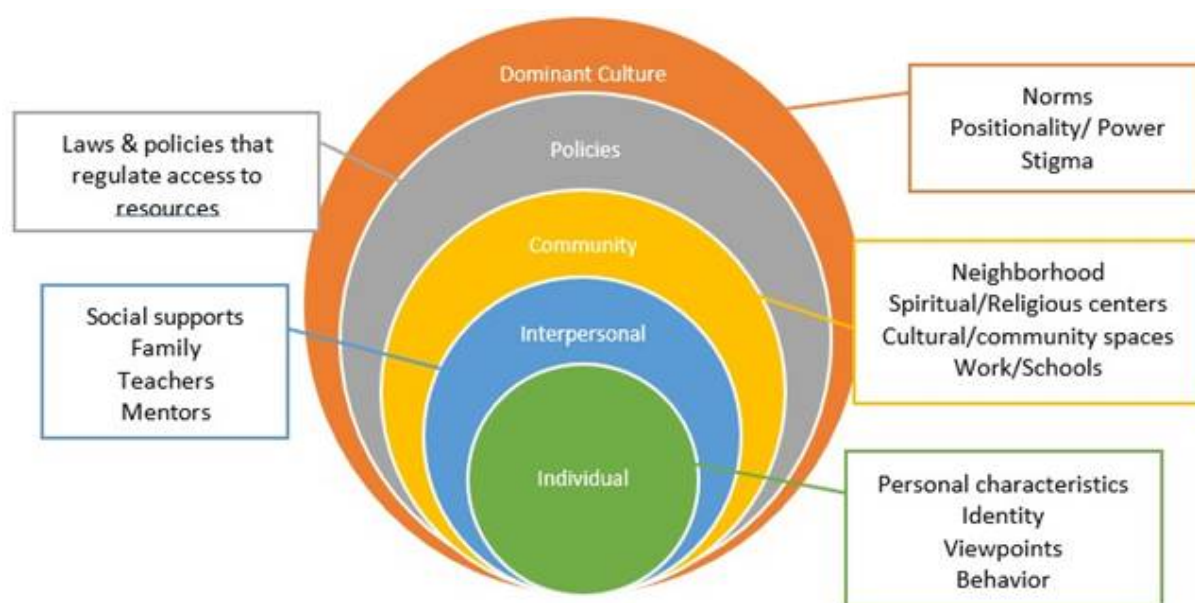
Statement of Fact	Illustration of Fact
<i>From birth to 5 years old, Beth had a fairly normal and healthy childhood.</i>	<i>Beth's earliest memories are of spending time playing with her sister on the carpet in her family's living room while her mother exercised with a Jane Fonda home video. Beth's older sister, Catherine, remembers her as an adventurous and curious child who spent hours in the narrow patch of woods behind the family home in a neat close suburb of Lyon, France.</i>

The more descriptive statement explains that Beth spent the years that she was developing the ability to trust, individuate, and explore (the first three psychosocial development stages), feeling safe within familial relationships in a consistent home environment. The reader understands more about Beth because of glimpsing those snippets of memory (setting and character) and becomes relationally closer and more invested in the story.

Person-In-Environment

Narrative advocacy contextualizes behavior within the complex and intersectional experiences of the client's life. A reader without a clinical background should be able to empathetically follow the thread from early childhood experiences to the patterns of thinking and behavior the client uses to navigate the world. This approach narrows the relational distance between the client and the decision-maker, resulting in fairer, more empathetic case dispositions and sentencing. The ability to contextualize and understand human behavior is helpful to developing a successful mitigation strategy.

Consider the person in their environment:ⁱⁱⁱ



Intersectionality^{iv}

Intersectionality theory was developed by legal scholars to describe the ways in which systemic inequalities based on gender, race, ethnicity, sexual orientation, gender identity, disability, class, and other forms of discrimination “intersect” to create unique dynamics and effects on an individual. Intersectionality understands no one personal identity defines a person, and multiple identities can compound to make an individual especially vulnerable to oppression and marginalization.

Experiences of racial and gender bias are established mitigating factors in New York. In reversing a decision that denied Youthful Offender adjudication for an adolescent female, the Appellate Division, Fourth Department specifically instructed “future courts to consider whether a defendant may be facing discrimination based on protected characteristics such as race or gender and to take an intersectional approach by considering the combined effect of the defendant’s specific characteristics and any bias that may arise therefrom.”^[v] It

is important to reflect on the client's intersectional identities and the associated structural and cultural barriers to achieving well-being, basic rights, and opportunity. It is useful to incorporate a critical analysis of such factors into the mitigation product.

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