

TELL THE CLIENT'S STORY:

Mitigation in Criminal and Death Penalty Cases

Edited by Edward C. Monahan and James J. Clark

Reviewed by Daniel T. Goyette

It is not often that a legal resource book is at once an authoritative, scholarly text; a useful, reliable practice manual; and an interesting, highly readable collection of instructive tutorials on best practices in advocacy for clients facing the loss of life and liberty. However, the 14 chapters that editors (and contributing authors) Edward C. Monahan and James J. Clark have compiled in *Tell the Client's Story: Mitigation in Criminal and Death Penalty Cases* comprise such a book.

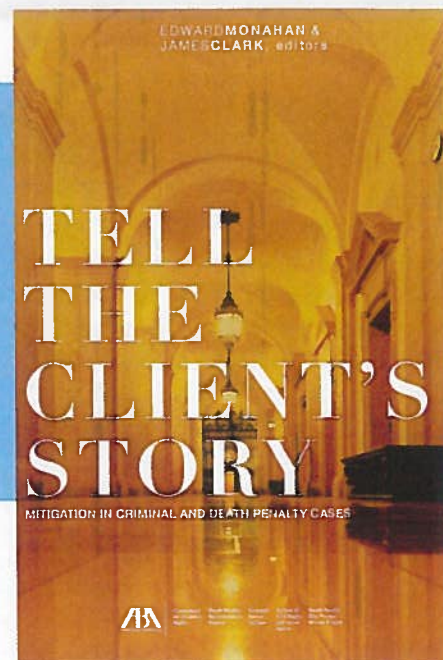
The importance of persuasively communicating a client's story is fundamental to criminal defense practice, not only in death penalty cases but in all criminal matters. In a justice system in which the vast majority of criminal prosecutions result in a conviction of some kind, mitigation of punishment is arguably the most significant aspect of a defendant's representation. Thus, *Tell the Client's Story* is essential reading for every criminal defense lawyer and a worthy addition to any professional library.

As noted in Steve Bright's foreword to the book, death sentences have dropped significantly in the past 20 years, primarily because of the improved representation provided by interdisciplinary defense teams that focus on mitigating circumstances and the presentation of the defendant's case in full context. Many of us in the field have long

maintained that the approach and techniques employed in the defense of capital cases should be applied to every criminal case, and serve as the model for effective representation of all defendants, regardless of the nature or degree of the offense charged. That ideal is trumpeted from the beginning of Chapter 1 in this book, which starts and ends with the exhortation that "mitigation matters" and then convincingly demonstrates that "it works."

The book's introduction does a fine job of setting the table for what the reader is about to digest. First, the book's purpose: understanding and communicating the client's life story. Second, its content: chapters devoted to "discerning" the theory of mitigation, followed by chapters "translating to practice" that mitigation theory by means of very specific steps and strategies. Third, its organizational themes and its ultimate goal: attaining positive outcomes for clients, i.e., "those sentences where 'mercy seasons justice.'" The authors and editors endeavor to present the book's subject matter in a systematic, accessible way for lawyers and members of the defense team. By book's end, readers will conclude that their effort clearly succeeds.

The defense approach at the heart of the book concentrates on humanizing the client and contextualizing the crime. This requires establishing



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a relationship of trust and confidence with the client from the outset that enables the defense team to discover and develop all of the information necessary to formulate a compelling mitigation theory. Chapters deal with every aspect in the process of accomplishing that task, ranging from the initial client interview to assembling and managing the defense team, implementing the defense strategy, and persuading the sentencing authority.

Among other useful information and advice, the book provides a primer on the use of mental health and neuroscience evidence and discusses the productive use of experts. It suggests successful methods of framing the narrative of the case and dealing with the media. Throughout, its instruction is grounded in best practices, national standards

Daniel T. Goyette is the chief public defender and the executive director of the Louisville-Jefferson County Public Defender Corp. He was the 1997 recipient of the ABA's Dorsey Award.

and prevailing professional norms, including the Model Rules of Professional Conduct and the ABA Guidelines for the Appointment and Performance of Defense Counsel in Death Penalty Cases (2003). It also contains a number of user-friendly appendices that facilitate the practices described in the book, along with a table of relevant cases and cited authorities.

The book ends, appropriately, with an inspiring conclusion entitled, "Resiliently Practicing Hope," reminiscent of the theme of hope expressed in Stephen King's novella *Rita Hayworth and the Shawshank Redemption* ("Remember that hope is a good thing, maybe the best of things, and no good thing ever dies.").

After reading this book, there can be little doubt that the approach it encourages and the principles it enumerates will significantly increase the likelihood of a fair sentence in any criminal case. That opinion is supported by the views of notable advocates who have told their clients' stories to good effect for many years. Judy Clarke, Bryan Stevenson, Sister Helen Prejean and Carol Steiker all praised the book as a vital resource for representing criminal defendants. It's hard, if not downright foolish, to disagree with the assessments of these legal luminaries. My recommendation is to follow their advice and promptly add this volume to your library. Start turning its pages as soon as possible to improve the quality of your practice and the outcome of your clients' cases. ■

Endnotes

1. TELL THE CLIENT'S STORY: MITIGATION IN CRIMINAL AND DEATH PENALTY CASES 15 (Edward C. Monahan & James J. Clark eds., 2017).