

# **The Family As a Resource**

National Legal Aid & Defender Association's 2016 Life in the Balance Conference  
*\*This handout was developed with the assistance of James Green, Mitigation Specialist & Investigator.*

## **Guilty Pleas: Getting Started\***

### **Part A: Background**

Getting your client to plead is a serious undertaking. Consider what you are proposing. You are actually asking someone to stand before his/her family, friends and, in these days, an increasingly hostile community and admit committing a horrible crime and perhaps get a life sentence for his/her trouble. You are, in effect, telling this person you think he/she is guilty.

To your client, a plea is not necessarily a bargain. You are asking if he/she will agree to stay behind bars until he/she is ten, twenty or more years older or in some cases, until he/she dies. Sometimes, on the street, our clients may never expect to live that long anyway. Death is a constant companion in their lives. So what's to fear from a death sentence?

That is where you must begin. You can change the focus from death, which he/she knows about, to life. Sometimes this is a little hard for very young clients because they have not really begun to live.

### **Part B: Getting Started**

The client must have someone to talk to other than the attorney. Many times there is tension between the client and the attorney. Often times this is because of poor and/or infrequent communication.

Preparations for a plea offer should start early in the case. A thorough mitigation investigation should be launched immediately. The family should be alerted to the fact that there are several options in your client's case----a plea being one of them. This also helps to ensure that mitigation is an integral part of the entire case. Indeed, when your client's guilt seems clear, it becomes the most important part of your efforts and a plea offer becomes even more necessary.

Build a good working relationship with the client from the very beginning. Visit frequently. Visits can be done by different members of the defense team. Ask the client what he/she wants done in the case. Make a list of questions he/she wants answered. Explain the different roles of the members of the defense team.

\*Explain to your client that the attorney has a responsibility to discuss a plea offer with him/her and that it should not be viewed as the attorney "selling them out".

Remember, your client may be embarrassed and will certainly be apprehensive. He/she may be alienated from family and usually is disappointed or even angry with his/her attorney.

## **Part C: Talk About the Plea Process**

- Explain the plea process with your client.
- Your client may feel more comfortable if it is likely a smaller group of spectators that will be at the plea hearing than at a trial.
- This is important because he/she may have reservations about admitting guilt in front of his/her family and friends.
- Sometimes a client may only want to accept a plea if family or friends are not in the courtroom.

*Caution: At this point you are giving your client information about court room procedures. There may be times when this is a disadvantage. For example, if a competency claim is contemplated, does the attorney want your client to be knowledgeable about the system?*

- Let your client know that a plea puts him/her in control of his/her own destiny---totally unlike a trial situation where everything is uncertain.
- Let your client know that a plea will allow him/her to be a continued influence in the lives of his/her children, family, etc.
- Talk about his/her education, skills and most importantly what talents he/she may have: art, singing, writing, etc. let him/her know that he/she can get more access to continue and/or further these things if he/she is not on death row. *Most death rows in prisons are maximum security and usually solitary confinement.*
- Talk to your client about the difference between death row and general prison population conditions.

## **Part D: Potential Obstacle**

### **Defense Attorney**

- The first obstacle may very well be the relationship or lack thereof between the attorney and the client
- Poor or infrequent communication
- Unanswered questions
- Inadequate investigation

## **Part E: Who Can Help. . . .**

### *1. Client's family*

- When your client is considering a plea offer, his/her family can influence him/her either negatively or positively.
- It is important to know: who is the powerbroker in the family? Who has the most influence? Who has had prior involvement with the criminal justice system? What is the chain of command? Finally, who in the family can/will give your client permission to admit guilt? If you do not have this information, the family may not be much help to your client either for plea or for trial.

## 2. *Victim's family*

- Undoubtedly, this is the most sensitive aspect of negotiating a plea. Hopefully, you will never have to do this. If you do, considerable thought must be given to:
- Who is the best person(s) to approach the family? When is the best time, if any? Who is the powerbroker in the family? How much is too much? Should they be contacted at all?
- The best person to approach the family may not be a member of the defense team. Usually, a family friend, minister, defense friendly victim advocate or someone who knew the victim can be beneficial in opening the lines of communication.
- If the family does agree to meet with you, be prepared to discuss things other than your client's situation.
- Finally, know when to say what. If you push too hard the entire process could backfire and make the family even more adamant about seeing your client put to death.

## 3. *District Attorney*

- What does the DA need in order to make an offer?
- What mitigating factors about your client's life are most persuasive?
- Remember, in many cases, the DA will be making a political decision and may not be persuaded by the facts of your client's unfortunate life. Know who and what influences his/her decisions give the defense team a distinct advantage in plea negotiations.

### **Part F: Resources**

- Client's family
- Victim's family
- Publicity
- Community organizations
- Community leaders
- Community attitudes
- Racial considerations

### **Part G: Science or Art?**

In the final analysis, what we have done is to try and take what is essentially an art and reduce it to a science. A lot depends on your client's perception of you. If you are diligent in developing a rapport with him/her, if you are diligent in your investigation of the facts in his/her case, if you are unrelenting in your search for meaningful mitigation, your client will be more likely to see a guilty plea as a viable option.

And that is the essence of our efforts to save his/her life. Basically, we do two things:

1. We define the reality of our client's life and its relation to his/her present condition.
2. We help to give our client permission to admit guilt and get on, literally, with his/her life.