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THE ROLE OF THE DEFENSE ATTORNEY IN MITIGATING THE NONVIOLENT YOUTHFUL OFFENDER AND LOCATING THE APPROPRIATE ALTERNATIVE SENTENCE*

*Vicki L. Gilliam***

I. INTRODUCTION: WHY SHOULD WE MITIGATE THE NONVIOLENT YOUTHFUL OFFENDER? (OR MITIGATION IS NOT JUST FOR CAPITAL MURDER)

There are dozens of articles, manuals and texts on investigating and presenting mitigation for the client facing the death penalty. But, there is virtually very little work that encourages defense attorneys to take the time to interview, investigate, and use mitigating circumstances to locate the proper alternative sentence for their young, nonviolent client. These young people, ages seventeen to twenty-one, are society's forgotten group, left too often to incarceration with more violent offenders who educate them even more quickly as to sophisticated crimes and deplete their possibilities for rehabilitation. Society and the criminal justice system, in general, either ignore the possibility of change or label these youthful offenders as criminals after their first foray into deviant or unacceptable behavior.

As of September 21, 1999, there were 1736 youthful offenders (under age twenty-one) who were inmates with the Mississippi Department of Corrections (MDOC).¹ There were another 1491 of these young people on probation in the adult system, which means that a total of 3230 youthful offenders, ages fourteen to twenty, were in the custody of MDOC.² Of those considered inmates, only 235 were in the Regimented Inmate Discipline Program, seventy-nine were in the Intensive Supervision (House Arrest) Program, and the remaining inmates were serving sentences in one of the other facilities of MDOC.³ The average length of sentence by age group was as follows:⁴

* The information contained in the Article was originally presented at the Mississippi Public Defenders Association Conference October 29, 1999. Many of the views and suggestions contained in the Article represent the Author's personal experiences as an attorney and public defender.

** B.A. 1987, M.A. 1990, Northeast Louisiana University; J.D. 1992, University of Mississippi; Associate, Kirkland, Barfield & Moore, Jackson, Mississippi, 1992-1994; Hinds County Assistant Public Defender, 1994-1997; Assistant Professor of Administration of Justice, Mississippi College, Clinton, Mississippi, 1997-present; private criminal appellate practice, 1997-present. I would like to thank my graduate assistant, Detective Thomas R. Ruffin, Clinton Police Department, for his help in gathering statistics for this Article.

1. Interview by Detective Thomas R. Ruffin with Bill Greenleaf, Planning & Production, Mississippi Dep't of Corrections, Jackson, Miss. (Sept. 21, 1999).

2. *Id.*

3. *Id.*

4. *Id.*

AGE	AVERAGE SENTENCE
14	6.5 YEARS
15	5.9 YEARS
16	7.9 YEARS
17	9.9 YEARS
18	7.7 YEARS
19	6.85 YEARS
20	7.64 YEARS

Most youthful offenders were incarcerated for committing burglary. In fact, 237 of these young people were incarcerated for burglary of a dwelling, while 265 young offenders committed other types of burglary.⁵ Following closely behind burglary, the most frequently committed crime was armed robbery, with 208 youthful offenders “serving time” for this offense.⁶ One hundred fifty-eight of these young people were incarcerated for sale of cocaine, 117 for robbery, 110 for grand larceny, 106 for aggravated assault, and 91 for possession of cocaine.⁷ These young people were most frequently sent to prison from Harrison (117), Hinds (117) and Lowndes (99) counties.⁸

The majority of youthful offenders on probation were from Hinds (127), Harrison (116) and Lauderdale (75) counties.⁹ Of those young people on probation, ninety-three were living in a restitution center, while only sixteen were on non-adjudicated status.¹⁰ The most frequently committed crimes of those on probation were burglary (residential (153) and non-residential (149)) and grand larceny (183).¹¹

Nationally, sixty-eight percent of those youthful offenders in the adult court system were sentenced to incarceration in a state prison or local jail.¹² About one-third of the juveniles in criminal courts sentenced to state prisons received a sentence of four years or less.¹³ The average prison sentence for juveniles convicted of violent offenses in the criminal courts was about nine years.¹⁴ Sixty-six percent of the juvenile felony defendants in the seventy-five largest counties in

5. *Id.*

6. *Id.*

7. *Id.*

8. *Id.*

9. *Id.*

10. *Id.*

11. *Id.*

12. Kevin J. Strom, U.S. Dep’t of Justice, *Juvenile Felony Defendants in Criminal Courts, 1990-1994*, (last modified Sept. 14, 1998) <<http://www.ojp.usdoj.gov/bjs/pub/ascii/jfdcc.txt>>.

13. *Id.*

14. *Id.*

the country in 1990, 1992, and 1994, were convicted of violent crimes, seventeen percent were convicted of property crimes, and fourteen percent were convicted of drug crimes.¹⁵

These numbers do not reflect the true number of inmates, now over the age of twenty-one, who were actually sentenced as juveniles. These numbers do, however, demonstrate the severity of sentences given to those who were actually incarcerated. In addition, it is also important to remember that truth-in-sentencing laws in Mississippi require defendants to serve at least eighty-five percent of their total sentenced term.¹⁶

Defense attorneys have a duty to humanize these young people to the criminal justice system. It is the attorney's role to identify a client's problems and to attempt to find the most appropriate means available to correct or solve them. Attorneys must take on this responsibility with representation because if done correctly, the client receives the best result. This Article will outline the defense attorney's responsibility of interviewing, investigating and ascertaining the appropriate alternatives for these young people.

This theory of responsibility is based on the premise that defense attorneys subscribe to the belief that an individual commits a crime because of some influence in his life. This view, as discussed below, opposes the popular view held today in most aspects of the criminal justice system. Nevertheless, it is still valid and may be used to help mitigate the sentences of our young clients.

II. TWO COMPETING VIEWS AS TO WHY PEOPLE COMMIT CRIME

A. The Classical View

The classical view of the world is that humans have free will and are responsible for their own actions. A Positivist's view of the world, however, is that humans are shaped by their society and are the product of environmental and cultural influences.¹⁷ Because the classical theorists believe that criminals commit crime as a choice, these theorists advocate harsh and immediate punishment, expecting that the person will be unwilling to commit the crime again, and others, who care to notice, will not choose to commit the same type of crime. Deterrence, revenge, and retribution—or "just deserts"—are the bases for all punishments.¹⁸

Proponents of the Positivist view believe that delinquent behavior is the result of a young person's biological makeup and/or life experiences. The Positivists stress community-based corrections and rehabilitation rather than incarceration of the youthful offender.¹⁹

Since the 1970s, the classical view has been the increasingly dominant view in the criminal justice system. Sentencing guidelines and truth-in-sentencing laws

15. *Id.*

16. MISS. CODE ANN. § 47-5-138 (1977 & Supp. 1999).

17. ROBERT W. DROWNS & KAREN M. HESS, JUVENILE JUSTICE 80 (2d ed. 1995).

18. *Id.* at 81.

19. *Id.*

are examples of the deterrence and “just deserts” theories at their best. “Get tough on crime” proponents have discouraged rehabilitation and encouraged incarceration as punishment for felons. Even pre-sentence investigation reports have begun to change from focusing on the “offender” to focusing on the “offense.”²⁰ Still, there is a call for rehabilitation as community-based corrections, including probation, “house arrest,” boot camps, and restitution centers continue to grow and diversify. Thus, room remains for the Positivist view in criminal corrections, especially in the situation of the young, nonviolent offender.

B. The Modern Positivist Views

There are as many different opinions as to why a person commits crime as there are crimes. There are, however, general categories that can help determine the reasons behind the actions of a young person.

1. Biological Theories

Early biological theorists believed that there were links between criminality and physical characteristics of the criminal. Modern biological theorists tend to focus on biochemical relationships, endocrine imbalances, chromosomal complements, and brain wave activity.²¹ Although defense attorneys are not trained to recognize or determine these sophisticated causes, there are some common biological causes that an attorney can notice himself. Mental retardation, a condition that is common among defendants, can be suspected upon interview and confirmed with IQ testing. If the client shows a lack of understanding or judgment, has difficulty in explaining or providing accurate information, or desires to please authoritative figures, the attorney should investigate the possible existence of mental retardation.²² Even learning disabilities, when untreated or unrecognized, may lead to problems with self-esteem or embarrassment that may later be demonstrated by criminal behavior.

In addition, one particular form of mental retardation, Fetal Alcohol Syndrome (FAS), has distinct and recognizable physical characteristics, including a small head size, narrow eye slits, flat mid-face, low nasal ridge, and loss of the groove between nose and upper lip. Although not all FAS adolescents are mentally retarded, in a recent study, fifty-eight percent had an IQ score of seventy or below.²³

Some physically challenged young people may, because of their frustration with their own problems, turn to criminal behavior. For example, an adolescent with a severe speech impediment may attempt to boost his self-esteem by performing some bad act in order to fit in or be accepted by his peers.

20. PAUL F. CROMWELL & ROLANDO V. DEL CARMEN, *COMMUNITY-BASED CORRECTIONS* 53 (4th ed. 1998).

21. DROWNS & HESS, *supra* note 17, at 220-21.

22. TIMOTHY DERNING & WILLIAM J. EDWARDS, *HOW TO IDENTIFY MENTAL RETARDATION: THE USE OF DOCUMENTATION*, (photo. reprint presented at Mississippi Public Defenders Seminar, Diamondhead, Miss. (May 15-16, 1997) (on file with author)).

23. The Arc, *Facts About Alcohol Use During Pregnancy*, (last modified Feb. 1992) <<http://www.thearc.org/faqs/fas.html>>.

2. Behavioral Theories

Behavioral theorists believe that wrongdoing or mischief reflects that which has been learned by the young person. The focus of behavioral theories is on the family life and the amount of attention given the child in teaching him to conform to the rules of society. During the years of early development, children learn a sense of right or wrong from their environment that includes not only their family, but may also encompass conditioning from neighbors, peers, teachers, and the media.²⁴

An attorney may be able to determine the lack of proper behavioral conditioning in the client interview by eliciting information regarding the young delinquent's early childhood, his caretakers, and other influences on his life. In today's climate, often there is a distinct lack of discipline or training toward self-discipline. There are programs designed to provide training in this area that will be discussed later.

3. Sociological Theories

Sociological theorists believe that antisocial values may have conditioned a young offender's behavior.²⁵ Although socialization begins with the family, peers, and other elements of society may also condition inappropriate behavior. The neighborhood gang may have more influence on a young person than his parents and could counteract all of the positive conditioning of the family. When the attorney familiarizes himself with the society from which the young offender comes, progress can be made to determine the possible influences that may have caused the offender to reject the upbringing of a good or neutral family environment.

4. Psychological or Socio-Psychological Approaches

Psychological or socio-psychological theorists believe that criminal behavior may be symptomatic of an underlying emotional or personality disorder. Many young people have had to deal with poor home lives and destructive relationships, which have led to disturbed personalities and negative, antisocial behavior.²⁶ Schizophrenia, paranoia, and antisocial personality disorder are a few psychological problems that are diagnosed in mental evaluations of the criminal. Surprisingly, diagnosing individuals who are psychopaths and sociopaths is less frequent. Although an attorney may sense a psychological problem, a mental examination by a trained professional is required. Courts should either pay for a mental exam of the indigent client, or order that the client be transferred to Whitfield State Hospital for evaluation upon request of the attorney. However, there may already be a suitable existing psychological evaluation that can be uncovered with a good investigation.²⁷

24. DROWNS & HESS, *supra* note 17, at 222.

25. *Id.* at 223.

26. *Id.* at 224.

27. For information on how to locate these evaluations, see *infra*, Part III.

5. Drugs

The relationship between criminal behavior and drugs is well known. A young person abusing or addicted to drugs is influenced by his drug use to commit acts that he may never have otherwise considered committing, including stealing, robbing, and/or killing to support his habit. Although experts can properly diagnose an underlying drug problem, an attorney can sometimes uncover this problem himself through interviews with the client and his family. In fact, because of the common-place use of drugs by young offenders, the attorney should always ask the client about drug use, the types of drugs used, the frequency of the use, and what the client has done to get drugs in the past. After getting answers to these and other questions, the attorney can take this information to a drug-treatment facilitator and locate proper help.

III. INTERVIEWING AND INVESTIGATING TO DETERMINE THE "CAUSE" OF THE CLIENT'S BEHAVIOR

After the defense attorney has become familiar with the generally accepted causes of the offender's behavior, he can then look for "clues" from the client as to the underlying "causes" of the individual's situation. These clues can be gathered first by a good initial interview questionnaire that combines not only questions about the crime itself, but also questions regarding the possible causes for criminal behavior.²⁸ After obtaining answers to the interview questions, the attorney can then start his investigation. This investigation may include some of the sources discussed below.

A. Interviewing Family Members, Guardians, and Close Friends

By locating and questioning the people who are closest to the client, the defense attorney gets a broader view of the client and his background. Some of the same questions asked of the client in the initial interview may be used when interviewing family members, guardians, and close friends. Additionally, asking the parent or guardian, "Why do *you* think your child acted this way?" may elicit explanations that previously had been ignored. Family members may also give more in-depth explanations of events that may have occurred prior to the client's birth (damaging behavior by his mother while pregnant) or events the client may not remember from the early years of his life which may have significantly influenced his behavior. These contact persons should also be used to verify information gathered from the client.

In addition, the attorney should, whenever possible, get written statements from these family members, friends, and others regarding the young client's character, unusual circumstances, or special problems. The authors of such state-

28. Appendix A is an example of a typical set of interview questions an attorney should use to lead him down the right trail toward eventually finding the appropriate alternative sentence.

ments should be reminded to be truthful and should be made fully aware of the charges facing the youth. These character summations may be used later when negotiating with the district attorney or in presenting mitigation to the judge.

B. School Records

After getting the names of schools attended by the client and any type of special classes to which the client may have been assigned, the lawyer can then get a release signed by the client and/or his parent or guardian for his school records. Many school districts require the use of their own release form or a court order or subpoena duces tecum to access this information.

School records should include grades, standardized test scores, IQ examinations, behavioral/discipline records, and any personal comments by teachers that may be helpful in determining the client's problems. Teachers and counselors may also make good witnesses during sentencing.

C. Employment Records

Most companies maintain personnel files that may include discipline records, drug testing results, and skills testing, if applicable. Records may be obtained by request with a client's release or with a court order or subpoena duces tecum. In some situations, employers may make good sentencing witnesses, especially if they desire to continue employing the defendant after conviction. If this is the case, it is a good idea to get a written statement on company stationary for use in mitigation.

D. Prior Treatment Records

All records should be obtained for any mental or drug treatment the client may have received in the past. Such records are invaluable for current diagnosis, and needed by most professionals to make accurate predictions for rehabilitation. They may be obtained by use of a client's release, court order, or subpoena duces tecum. As with school records, many facilities require that their own release form be used.²⁹

E. Juvenile Court Records

The Mississippi Youth Court Act³⁰ provides that a juvenile's attorney can obtain his client's records with a court order signed by the youth court judge.³¹ Youth court records are invaluable and often paint a very clear picture of the problems and personal tragedies in a young offender's life. The documentation is usually

29. For example, the Mississippi State Hospital, Charter Hospital of Jackson, and Jackson Mental Health Center provide their own authority to release/obtain information forms as well as instructions for their completion.

30. MISS. CODE ANN. § 43-21-101 (1993).

31. *See id.* § 43-21-261(g)(4) (1991 & Supp. 1999).

very detailed in the form of intake reports, social summaries, probation officer's notes and reports, and physical and mental handicaps or weaknesses. There are often family statements included that may provide the defense attorney information or insight on the family members he has met, and give a measure by which truthfulness can be determined. In addition, various forms of treatment and attempts at rehabilitation will be recorded which will help the defense attorney understand what has been tried, what has worked, or what has failed with his client.

F. Social Security Records

If the client is receiving social security benefits, there will be a ready, detailed report conducted by the United States Government as to the reasons that the client receives benefits. These may be obtained through a signed release form from the client and a letter to the Social Security Administration requesting the material. If applicable, psychological interviews, and testing and diagnoses may be present, as well as reports by family members of incidents of erratic or abnormal behavior.

G. Police Reports and Prior Arrests/Records

Police reports and/or conviction records should be provided through discovery from the prosecutor for the case at hand. Located in the reports and supplemental reports may be clues to help identify the young offender's problems. The manner in which the client responded to arrest or questioning may indicate mental instability or retardation. The neighborhood in which the crime occurred, often different from that of the youth's dwelling, could give other clues regarding the social environment that the young person has been frequenting. Police "rap sheets" contain personal information that can be helpful in determining possible patterns of problems or drug related offenses. After "rap sheets" are reviewed, it may be necessary to obtain copies of other offense reports.³²

H. Probation Officer or Pre-sentence Investigation Report

In some situations a probation officer, either in the youth court or in the adult system, may have previously supervised the client. Although probation officers in the juvenile system play a different role than officers in the adult system, both may have gathered information about the client or may have documented their own experiences in supervising the client that may be useful to the attorney searching for mitigation and/or sentencing alternatives. The probation officer may know what alternative sentences have been attempted in the past (treatment facilities, boot camp, training school, etc.) and may have an opinion as to whether or not that seemed to help in rehabilitation.

32. Offense reports may be obtained using a court order. For an example of a court order for Hinds County, Mississippi, see Appendix C.

If the situation is one in which the court has ordered a pre-sentence investigation report, the defense attorney should be involved with the probation officer as much as possible in preparing this report. The attorney's presence during his client's interview for the report is strongly encouraged. Also, the attorney can offer the probation officer background or other sources of information about his client.

In Mississippi state courts, the pre-sentence investigation report still focuses on the offender, whereas in federal courts the pre-sentence report focuses on the offense and the sentencing guidelines. The pre-sentence report may contain:

1. A description of the offense and the circumstances surrounding it, not limited to aspects developed for the record as part of the determination of guilt;
2. Any prior criminal convictions of the defendant, or juvenile adjudications of delinquency;
3. The defendant's financial condition;
4. The defendant's educational background;
5. A description of the employment background of the offender, including any military record and including present employment status and capabilities;
6. The social history of the defendant, including family relationships, marital status and residence history;
7. Information about environments to which the offender might return or to which the offender could be sent should probation be granted;
8. Information about special resources which might be available to assist the defendant such as treatment centers, rehabilitative programs or vocational training centers; and
9. A physical and mental examination of the defendant if it is ordered by the court.³³

If there is no court-ordered pre-sentence investigation report, these items still offer a good guideline as to the information with which the defense attorney should be adequately "armed" before negotiating sentencing with the district attorney or presenting mitigation to the judge upon sentencing.

I. Drug/Alcohol Assessment

Experts in drug/alcohol addiction can perform tests on the offender to determine the level of addiction or abuse and then recommend appropriate treatment.

33. MISS. UNIF. R. CIR. & COUNTY CT. PRAC. 11.02 (1999).

The defense attorney should try to locate a facility that will conduct this testing free of charge with a recommendation for their program. As an alternative, a candidate for Court Watch, Inc., a privately operated firm in Jackson, Mississippi, that provides alternative sentencing solutions, can have these assessments conducted as part of its fee.

J. Jail Records

Behavior in jail can provide additional symptoms or clues of the causes of a young offender's conduct. These records should contain both physical and mental evaluations, as well as discipline or behavior problems while incarcerated. Jail records should be obtained by court order.³⁴

IV. ASCERTAINING THE APPROPRIATE ALTERNATIVE SENTENCE

Upon completion of a thorough investigation, it is then the defense attorney's job to use this information to ascertain the appropriate alternative sentence. This sentence should be acceptable to both the State and the court, and should maximize rehabilitation of the young client.

A. Diversion to a Private or Public Treatment Program

There are many sources of private and public treatment for mental handicaps, and/or retardation, and alcohol and/or drug abuse. Diversion allows the client to be "diverted" out of the "system" and placed in one of these facilities; and have charges against him dropped on this condition. An example would be to have the young drug addict enter into a full-time, in-house treatment program and, after successful completion, have the State remand the charges against him. Another example is to arrange for the client with psychological problems to be committed to a mental treatment facility such as Whitfield State Hospital, but not before having the pending charges remanded. These types of diversionary intervention treatment alternatives require early action by the defense attorney and cooperation by the district attorney. But, by obtaining the necessary documentation as described in the sections above, the attorney may be able to persuade the State that these diversionary programs would be the best solution for both the State and the client.

B. Alternative Sentencing Offered by the Mississippi Department of Corrections

There are several community-based options offered to young, nonviolent offenders by MDOC. The defense counsel should have a good understanding of these programs so he can determine what will best suit the individual needs of his client. The attorney should also be aware of the manner in which these programs can be used in combination with others to provide additional alternatives.

34. For an example of a court order to obtain jail records for Hinds County, Mississippi, see Appendix D.

*C. Regimented Inmate Discipline Program*³⁵

The Regimented Inmate Discipline (RID) program is a "boot camp" program lasting 180 days. It is designed for young (under age thirty), physically and mentally healthy felons, who have not been previously confined for a felony and their current crime does not involve the use of a deadly weapon or carry a mandatory sentence. The program allows young offenders (both male and female) the opportunity to learn discipline. RID inmates are also given psychological examinations along with alcohol and drug treatment. After completion of the RID program, offenders may be placed on probation. This allows continued supervision of the individual problems ascertained during the RID program such as anger management, lack of self-control, and alcohol/drug dependency. If the client fails to complete RID, he will have to serve the rest of the ordered sentence incarcerated in a jail's general population.

*D. Restitution Center*³⁶

Three restitution centers for male offenders are operated by MDOC and located in Hinds, Leflore, and Jackson counties. The female restitution center is located in Rankin County. In these facilities, offenders maintain employment, and pay restitution and fines from their wages. Although alcohol and drug treatment programs are available, officers in charge of these programs advise that offenders get thorough drug/alcohol rehabilitation before coming to the restitution center. Thorough drug/alcohol rehabilitation is encouraged because there is a great deal of freedom with employment that might encourage relapse if the requisite treatment has not been provided.

A sentence to the restitution center is a form of intensive probation and those who violate the rules of the center will have a revocation hearing before a judge. If the client has self-discipline problems, another program may be preferred before entering the restitution center.

*E. Non-Adjudication of Guilt*³⁷

For those young offenders not previously convicted of a felony and who are charged with a nonviolent offense, a "non-adjudication of guilt" offers an opportunity for the offender to be free of a felony conviction. Under this statute, the offender pleads guilty, but the guilty plea is not accepted by the judge. Instead, the offender is placed on probation with the standard probation conditions, plus any special conditions the judge may impose, including alcohol and drug treatment, obtaining a GED, etc.

If the probationer completes the probation, then the guilty plea will not be accepted, which means that the offender does not have a felony conviction. If,

35. MISS CODE ANN. § 47-7-47 (1993 & Supp. 1999).

36. *See id.* §§ 99-37-19 (1978), 47-5-110 (1993 & Supp. 1999).

37. *See id.* §§ 99-15-26 (1983 & Supp. 1999), 41-29-150(d)(1) (1972).

however, the probationer violates the terms and conditions of his probation, he will then be adjudicated guilty, and the sentencing judge may order that the offender serve up to the maximum penalty by law.

*F. Shock Probation (Earned Probation)*³⁸

Inmates who do not qualify for the RID program, who have not been convicted of a previous felony, and who are not charged with a felony involving a deadly weapon or requiring a mandatory sentence, may be eligible for shock probation. Under this program, the offender is to be "shocked" by his observation of what incarceration entails. Shock probation includes alcohol and drug treatment without the military-style demands of RID. Upon completion of shock probation, the offender is brought back before the judge to be placed on some type of probation. Failure to complete the program results in a transfer to general jail population.

G. Intensive Supervision Program (House Arrest)

House arrest in Mississippi is designed for the nonviolent offender who has not served more than one year in the penitentiary, and is not charged with a sex crime, or the sale or manufacture of a controlled substance. Each prospective offender must be screened and recommended by the screening officer for house arrest. The offender must have a telephone and pay an additional fifty dollars per month supervision fee. All absences from the residence, including employment, must be approved. Drug tests and home visits by the officer are part of the program. Guns, drugs, or alcohol may not be possessed by any resident in the home. The program is usually for six months but can be extended for up to one year. A violation of the house arrest program results in the inmate's being transferred immediately to the Central Mississippi Correctional Facility (CMCF) in Rankin County for inmate classification.³⁹

H. Other Private/Public Alternative Sentencing

Private organizations may offer other alternative sentencing. One private organization is Court Watch, Inc., which monitors offenders on misdemeanor probation, non-adjudication, and misdemeanor house arrest for a fee. This group may benefit the client as it will prepare a detailed report to the judge regarding the appropriate sentence recommended in its program fitting the individual needs of the offender. This "prescription" can often convince a district attorney or judge to choose reduction to a misdemeanor or non-adjudication for a previously charged nonviolent felony charge.

38. *See id.* § 47-7-47 (1993 & Supp. 1999).

39. *See id.* § 47-5-1001 (1993 & Supp. 1999). Offenders on house arrest are considered to be on inmate status.

V. FORMULATING THE SENTENCING PLAN AND "SELLING" IT TO THE STATE OR JUDGE

Armed with the information and investigation that help determine the unique problems of the offender and the wide variety of alternative sentences available, the attorney can now, after speaking with his client, devise a sentence plan that he believes would be appropriate for the client. Attorneys should be creative, using a combination of programs to fit the needs of the client and hopefully satisfy the State's desire to both protect society and rehabilitate the offender.

For a young person from a social environment that has led to a lack of discipline and self-esteem, for example, the RID program may be a perfect choice. If the crime is one in which property was destroyed and the client needs self-discipline and employment, the restitution center may be in order. Offenders with mild retardation may fit well into probation programs with a special condition to include participating in programs at Boswell Retardation Center. Psychological problems may mandate diversion to Whitfield State Hospital or other private institutions. Drug and alcohol problems may be dealt with in either a diversionary program, shock probation, or RID, followed by house arrest or placement in a restitution center to maintain the progress made in treatment.

After the attorney has devised a sentencing scheme or formula, the negotiations with the State must begin. Convincing a prosecutor to accept the suggested sentence will not always be easy or possible. But, if the defense attorney has done his homework in investigating the problems of the client, and is equipped with knowledge of the most appropriate "matching" sentence alternative for rehabilitation, the chances of getting that sentence will be better. Written statements or letters, combined with copies of appropriate convincing records (with the client's permission) can be shown to the district attorney, as well as information on the selected sentencing alternative, if necessary. A defense attorney should never assume that all persons involved in the "system" are familiar with the available programs, even those offered by MDOC.

If a judge is going to make the sentencing decision, as in an open plea, the causal investigation and the information gathered on the alternative sentencing can be used to convince him that an appropriate sentence has been designed for the offender that will satisfy the twin goals of protecting society and providing rehabilitation. Humanizing the client and calling attention to the client's individual needs or problems should be the ambition of the defense attorney during a sentencing presentation. Again, recalling the factors in the court rules for the pre-sentence investigation reports, the defense attorney should be sure to include each of these factors in his presentation to the judge. Responses to these factors should include information gathered through the mitigation investigation that is most beneficial to the client and points to the desired sentence. Again, the use of testimony, letters, statements, and records received during investigation should be presented. As with state prosecutors, it should never be assumed that judges have been educated about or are aware of the programs available; consequently, the defense's sentencing presentation should include an explanation of the manner in which the desired program should work to rehabilitate the young offender.

VI. CONCLUSION

If properly conducted, interviewing and investigating the background of a young offender should help identify the cause of the offender's criminal activity and help the informed defense attorney choose an appropriate and desirable sentencing plan for his client. An organized presentation of this information to the State and court will, hopefully, result in a successful rehabilitation for the young client and satisfy society's demand to eliminate future criminal conduct.

APPENDIX A

INITIAL INTERVIEW

DATE _____ (IN OR OUT OF JAIL?) _____

NAME _____

ALIAS _____

CURRENT ADDRESS: _____

HOW LONG AT THAT ADDRESS? _____

DATE OF BIRTH _____ PLACE OF BIRTH _____

SOCIAL SECURITY # _____

CURRENT CHARGE _____

CO-DEFENDANTS _____

CHARGING AGENCY _____

INITIAL APPEARANCE DATE AND COURT: _____

PRELIMINARY HEARING? _____ DATE AND COURT: _____

INDICTED? _____ TERM? _____ CAUSE NO. _____

ARRAIGNED? _____ ASSIGNED CIRCUIT JUDGE: _____

MOTION FOR DISCOVERY: FILED? _____ DATE REQUESTED _____

DATE RECEIVED _____

BOND: _____ BONDING AGENCY: _____

PRIOR CHARGES (Indicate if felony, misdemeanor, or juvenile and, if convicted, the sentence, time served, and probation success): _____

FAMILY MEMBERS, GUARDIANS, OR CLOSE FRIENDS FOR BOND HEARINGS/SENTENCING/LOCATING, IF OUT ON BOND (Name, address, telephone numbers, relationship): _____

DEPENDANTS (names and ages): _____

EDUCATION: _____

High school grade completed: _____ College: _____

Read and write? _____

Special Ed. or other learning difficulties: _____

EMPLOYMENT: _____

Name, address, and phone # of last employer: _____

Last date worked: _____

Specialized job skills: _____

Reason for termination of last job: _____

PHYSICAL PROBLEMS (head injuries, physical handicaps, etc.): _____

MENTAL/EMOTIONAL PROBLEMS: _____

Treatment facilities (date, address, diagnosis, medication): _____

Family history of mental/emotional problems: _____

SOCIAL SECURITY(reason for receiving, where first received approval, any doctors seen): _____

JAIL BEHAVIOR (discipline problems, lock-down, psychologist or physician seen): _____

DRUG/ALCOHOL USAGE:

What type? _____ How often? _____ How much? _____

Treatment? _____

Ever stolen or robbed to buy drugs? _____

Any relative with addiction? _____

STATEMENTS TO THE POLICE:

Where? _____ When? _____ Mirandized? _____

Your condition upon questioning? _____

Content: _____

DEFENDANT'S VERSION OF WHY INCARCERATED(What happened?):

DEFENDANT'S EXPLANATION OF ACTIONS:

APPENDIX B

IN THE COUNTY COURT OF HINDS COUNTY, MISSISSIPPI

JUVENILE DIVISION

IN THE MATTER OF

[CLIENT'S NAME]

ORDER

THIS DAY, this cause having come before this court on Motion *ore tenus* by counsel for CLIENT [*insert date of birth, social security number*], to have his juvenile records copied and given to his counsel, John Doe, appointed by Hinds County to represent him in a pending indicted CHARGE cause [*insert cause number*], and this court having considered said Motion does hereby grant it.

IT IS therefore ORDERED that the Juvenile Division of the Hinds County Court release copies of any and all juvenile records involving CLIENT, as well as any and all records pertaining to his stay at [*insert hospital/mental health/rehabilitation facility*] or at [*insert places of education*]. And further, any employees or officials who counseled or worked with CLIENT during his encounters by the Youth or Juvenile Division are permitted to communicate with and/or respond to questions by CLIENT'S counsel, John Doe, concerning his Youth Division records. And further, this order also shall be interpreted to mean the records in the custody of [*insert hospital/mental health/rehabilitation facility*] or [*insert places of education*] and those records shall also be copied and released to John Doe.

SO ORDERED AND ADJUDGED, this the ____ day of ____, 20__.

COUNTY COURT JUDGE

PRESENTED BY:

JOHN DOE
Attorney at Law

APPENDIX C

IN THE CIRCUIT COURT OF THE FIRST JUDICIAL DISTRICT
HINDS COUNTY, MISSISSIPPI

STATE OF MISSISSIPPI

PLAINTIFF

VS.

NO. _____

CLIENT

DEFENDANT

ORDER

This day this cause came on for consideration by Motion of the Defendant, for a true and exact copy of Defendant's criminal history.

The Court after consideration finds that said motion is well taken and should be granted.

It is therefore ordered that the appropriate Law Enforcement Agency shall be and is hereby authorized and directed to furnish unto the Office of Hinds County Public Defender a complete copy of Defendant's criminal history.

So ordered, the _____ day of _____, 20__.

CIRCUIT COURT JUDGE

PRESENTED BY:

OFFICE OF THE
HINDS COUNTY PUBLIC DEFENDER
429 Tombigbee St.
Jackson, MS 39225
(601) 948-2683

APPENDIX D

IN THE CIRCUIT COURT OF THE FIRST JUDICIAL DISTRICT
HINDS COUNTY, MISSISSIPPI

STATE OF MISSISSIPPI

PLAINTIFF

VS.

NO. _____

CLIENT

DEFENDANT

ORDER

The Hinds County Sheriff's Office is hereby ORDERED to provide to John Doe, Attorney for Defendant, all behavioral, medical, and psychiatric and psychological records within its custody concerning the Defendant. It is further ordered that all personnel of the Hinds County Sheriff's Office with any knowledge of the Defendant and/or the above-described records cooperate fully with John Doe, Attorney for the Defendant, in providing said information to said attorneys.

SO ORDERED AND ADJUDGED, this the ____ day of _____, 20__.

CIRCUIT COURT JUDGE

PRESENTED BY:

John Doe
Attorney at Law

