INVESTIGATING AND SUPPORTING YOUR HABEAS CLAIM

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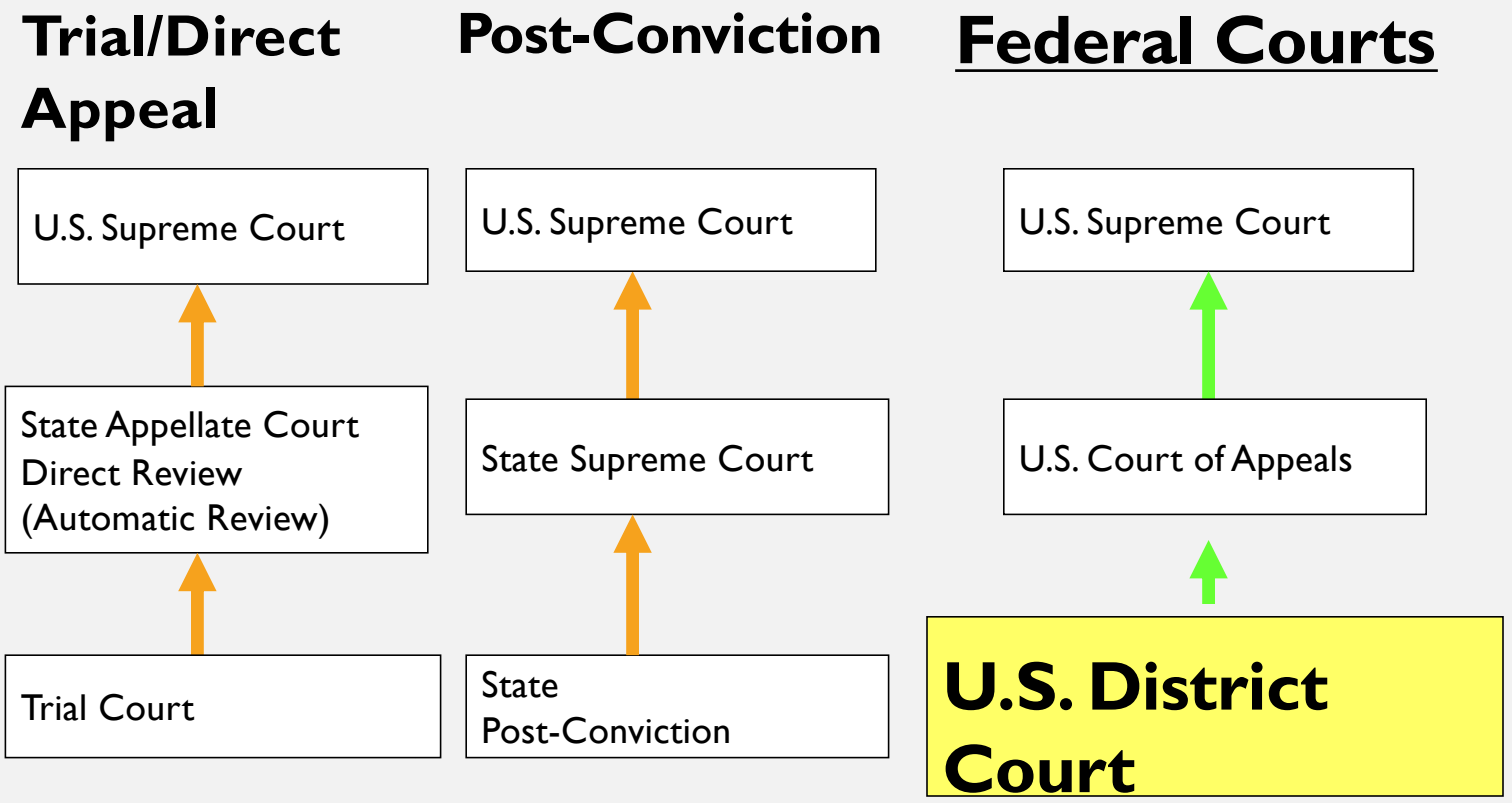
AGENDA

- Investigation strategy for federal habeas litigation
- Client communication to support your claims
- Records collection for federal habeas litigation
- Q&A

FEDERAL HABEAS CORPUS



EVIDENTIARY DEVELOPMENT

- Barriers to evidentiary development
  - 28 U.S.C. § 2254(e)
  - *Shinn v. Ramirez*, 142 S. Ct. 1718 (2022)
- Special considerations for development in federal court
  - Equitable tolling
  - Actual innocence
  - D.P.R. example: *Cruz-Berríos v. Borrero*, No. 14-cv-1232 (ADC/SCC), 2020 WL 12814753
- Possible return to state court
  - *Rhines v. Weber*, 544 U.S. 269 (2005)

CHANGING THE NARRATIVE

THE PICTURE ON DIRECT APPEAL

Barber told the defendant that he (Barber) "did it and it was done." The defendant responded, "all right." Then the defendant gave Barber "like a pound and a half hug." The defendant "ordered a round of drinks" for himself, Barber, and Martin. The defendant commented that "we got to have a made cake now- or like a rack of cake," a slang expression that means "we made a lot of money." The purpose of the toast was to celebrate their "rack of money."

In return for his act of killing Petrole, the defendant told Barber that he did not have to pay for four pounds of marijuana that the defendant had previously sold him. Additionally, the defendant gave Barber a half pound of "chronic" marijuana, forgave Barber's $3,000 debt for past drug transactions, and promised to pay Barber $10,000 in cash.

Wolfe v. Commonwealth, 265 Va. 193, 203–04, 576 S.E.2d 471, 477 (2003)

THE PICTURE AFTER INVESTIGATION

After filing his initial § 2254 petition, Appellant obtained an affidavit executed by Barber (the "Barber Affidavit") wherein Barber "repudiated his trial testimony and exculpated Wolfe from the murder-for-hire scheme." *Wolfe I*, 565 F.3d at 144. Appellant also secured affidavits from two people who had previously resided with Barber. In his affidavit, Barber's former roommate, Jason Coleman, averred that he "told prosecutors that [ ] Barber had confessed to [him] that [Barber] acted alone in the murder of [ ] Petrole." *Wolfe I*, 565 F.3d at 153. Likewise, Barber's former cellmate, Carl Huff, averred that Barber had admitted that "[Appellant] was in no way involved in the shooting of Petrole" and that Barber had testified falsely at Appellant's trial. *Id.* Both of these affidavits corroborated the allegations in the Barber Affidavit.

Wolfe v. Dotson, 144 F.4th 218, 222 (4th Cir. 2025)

WHAT DO WE NEED FOR HABEAS INVESTIGATION?

- Strong client relationship
- Investigation strategy
- System of organization
- Dogged records collection
- Records review strategy

Our case strategy must include relationship with clients

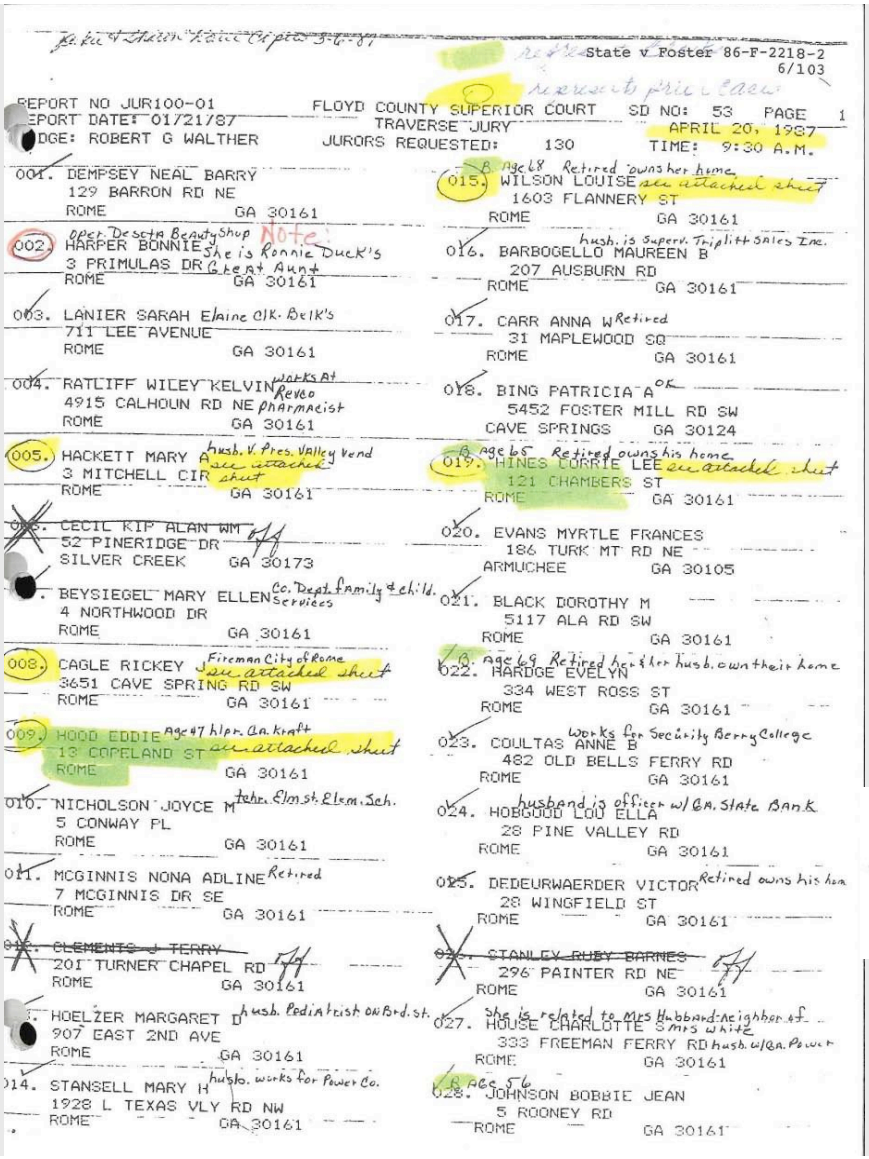
We can learn facts from clients that can develop claims

BUILDING TRUST

- When we don't understand words being used by client, ask for clarity. Don't give up. Don't make assumptions about what client is saying.
- Don't just take notes. Engage with client by listening.
- Open ended questions : "Tell me…", "What do you mean when you say…?"
- Leave space for client to ask more questions later.
- Be yourself.

Observations & Assessing appearance: SYMPTOMS?

Self care habits
Ticks?
Visible scars?
Does client understand what's happening/what you are saying?



State v. Foster 86-F-2218-2
6/103

REPORT NO JUR100-01 FLOYD COUNTY SUPERIOR COURT SD NO: 53 PAGE 1
REPORT DATE: 01/21/87 TRAVERSE JURY APRIL 20, 1987
JUDGE: ROBERT G WALTHER JURORS REQUESTED: 130 TIME: 9:30 A.M.

001. DEMPSEY NEAL BARRY
129 BARRON RD NE
ROME GA 30161

002. HARPER BONNIE Ownr Desota Beauty Shop Note She is Ronnie Duck's Great Aunt
3 PRIMULAS DR
ROME GA 30161

003. LANIER SARAH Elaine Clk. Belk's
711 LEE AVENUE
ROME GA 30161

004. RATLIFF WILEY KELVIN Works At Revco Pharmacist
4915 CALHOUN RD NE
ROME GA 30161

005. HACKETT MARY A husb. V. Pres. Valley Vend see attached sheet
3 MITCHELL CIR
ROME GA 30161

006. CECIL KIP ALAN WM
52 PINERIDGE DR
SILVER CREEK GA 30173

007. BEYSIEGEL MARY ELLEN Co. Dept. Family & Child. Services
4 NORTHWOOD DR
ROME GA 30161

008. CAGLE RICKEY Fireman City of Rome see attached sheet
3651 CAVE SPRING RD SW
ROME GA 30161

009. HOOD EDDIE Age 47 Hlpr. Am. Kraft see attached sheet
13 COPELAND ST
ROME GA 30161

010. NICHOLSON JOYCE M Tchr. Elm St. Elem. Sch.
5 CONWAY PL
ROME GA 30161

011. MCGINNIS NONA ADLINE Retired
7 MCGINNIS DR SE
ROME GA 30161

012. CLEMENTS J TERRY
201 TURNER CHAPEL RD
ROME GA 30161

013. HOELZER MARGARET D husb. Pediatrist on Bd. of St.
907 EAST 2ND AVE
ROME GA 30161

014. STANSELL MARY H husb. works for Power Co.
1928 L TEXAS VLY RD NW
ROME GA 30161

015. WILSON LOUISE B Age 68 Retired owns her home see attached sheet
1603 FLANNERY ST
ROME GA 30161

016. BARBOGELLO MAUREEN B husb. is Superv. Thiplitt Sales Inc.
207 AUSBURN RD
ROME GA 30161

017. CARR ANNA W Retired
31 MAPLEWOOD SQ
ROME GA 30161

018. BING PATRICIA A OK
5452 FOSTER MILL RD SW
CAVE SPRINGS GA 30124

019. HINES CORRIE LEE B Age 65 Retired owns his home see attached sheet
121 CHAMBERS ST
ROME GA 30161

020. EVANS MYRTLE FRANCES
186 TURK MT RD NE
ARMUCHEE GA 30105

021. BLACK DOROTHY M
5117 ALA RD SW
ROME GA 30161

022. HARDGE EVELYN B Age 69 Retired h & her husb. own their home
334 WEST ROSS ST
ROME GA 30161

023. COULTAS ANNE B Works for Security Berry College
482 OLD BELLS FERRY RD
ROME GA 30161

024. HOBGOOD LOU ELLA husband is officer w/ GA. State Bank
28 PINE VALLEY RD
ROME GA 30161

025. DEDEURWAERDER VICTOR Retired owns his hom
28 WINGFIELD ST
ROME GA 30161

026. STANLEY RUBY BARNES
296 PAINTER RD NE
ROME GA 30161

027. HOUSE CHARLOTTE S Mrs White She is related to Mrs Hubbard-neighbor of husb. w/GA. Power
333 FREEMAN FERRY RD
ROME GA 30161

028. JOHNSON BOBBIE JEAN B Age 56
5 ROONEY RD
ROME GA 30161

JUROR NUMBER: 009

THE FOLLOWING LIST OF QUESTIONS HAVE BEEN PROPOUNDED BY THE COURT TO FACILITATE THE JURY SELECTION PROCESS. THE QUESTIONS ARE NOT INTENDED TO PRY INTO YOUR PRIVATE AFFAIRS NOR TO EMBARRASS YOU, BUT TO ASSURE ALL PARTIES THE BEST POSSIBLE JURY FOR THIS CASE.

NOTE: SHOULD YOU REQUIRE ADDITIONAL SPACE FOR YOUR ANSWERS, ATTACHED HERETO IS A BLANK SHEET OF PAPER FOR YOUR USE. PLEASE INDICATE THE QUESTION NUMBER IN WHICH YOU ARE ANSWERING. THERE IS NO NEED TO WRITE THE QUESTION IF YOU WILL INDICATE THE QUESTION NUMBER ONLY.

1. NAME: Eddie Hood
2. ADDRESS: 13 Copeland St. Rome, GA
   What area of Floyd County?
   North [X] South [ ] East [ ] West [ ]
3. PLACE OF BIRTH: Piedmont Ala.
4. DATE OF BIRTH: 5-26-40 RACE BLACK
5. LENGTH OF TIME IN FLOYD COUNTY: 39 yrs.
6. PARENTS: FATHER'S NAME OCTAVIS Hood
   Living [ ] Deceased [X]
   If living, where
   Place of Birth Piedmont Ala.
   MOTHER'S NAME LAURA NEAL
   Living [X] Deceased [ ]
   If living, where CAVE SPRING, GA
   Place of Birth INDEPLOIS TENNESSEE

B#1
Eddie Hood

B#2 — Batson issue
Louise Wilson

B#3
Corrie Hines

Notes in Foster v. Chatman

Notes of prosecution investigator

MARILYN GARRETT

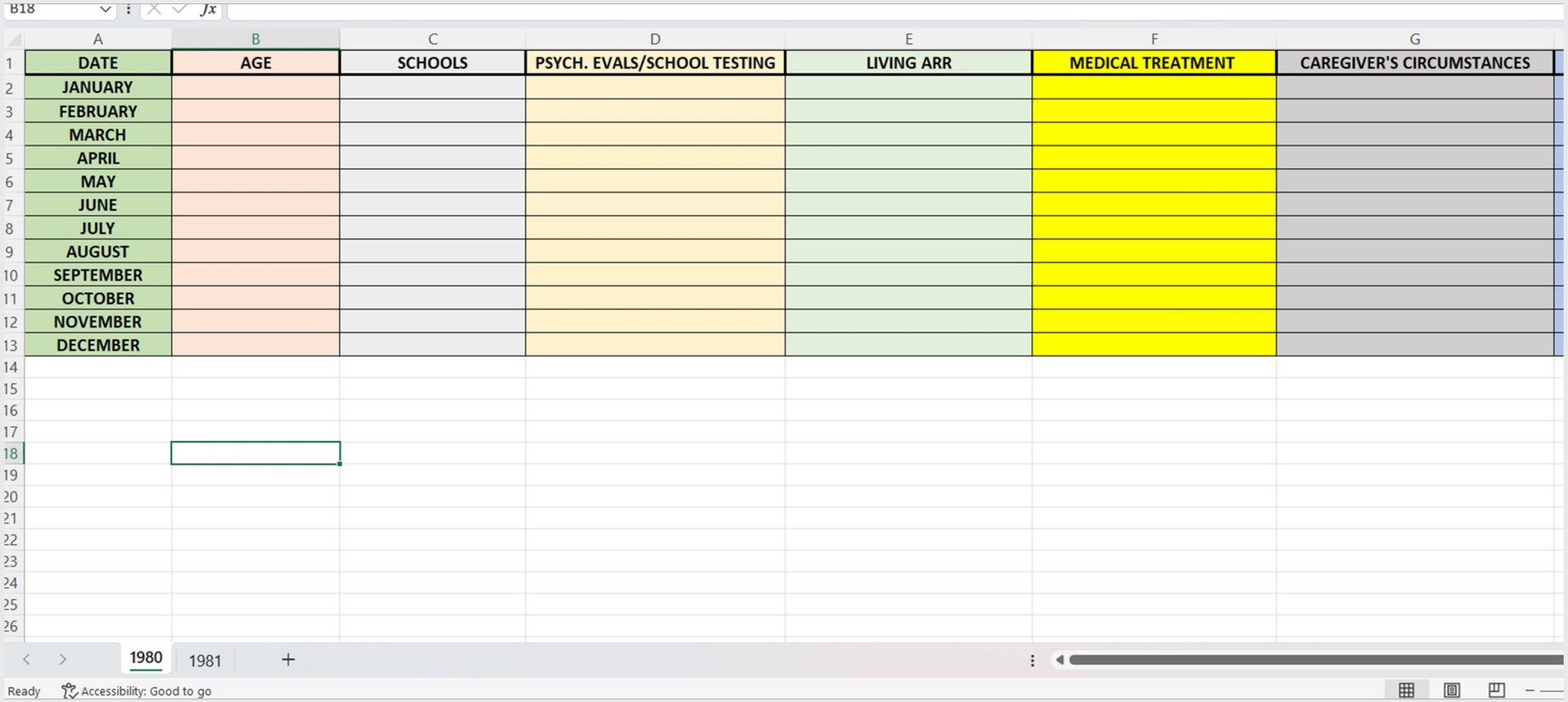
Ms. Garrett lives at 306 East 18th Street, which is a low to middle income range. She lives in a possible duplex apartment. Mrs. Garrett comes from a neighborhood called Morton Bend, a community near Coosa, Georgia. The community is possibly all related. Ms. Garrett works possibly two jobs. One job, is at Pepperell and the other is at Headstart. Ms. Garrett deals everyday with low income parents and children that live in the projects close to where Tim Foster ~~possibly~~ lived. Be very careful in picking Ms. Garrett for a juror in this case due to the case we have on Angela Garrett who lost a teaching and coaching job due to a ~~drug violation~~. ~~If it comes down to having to pick one of the black jurors, Ms. Garrett, might be okay.~~ This is solely my opinion.

During jury selection I observed Ms. Garrett, that she was nervous and short with her answers. I was shocked when Ms. Garrett said that she was not familiar with the North Rome area when she worked in this area, possibly two to three blocks away from the area where Mrs. White was killed.

I still in my mind have to say no to Ms. Garrett, the relationship with Anglea Garrett whom we have warrants on for Violation of Georgia Controlled Substance Act.

~~Upon picking of the jury after listening to all of the jurors we had to pick, if we had to pick a black juror I recommend that Ms. Garrett be one of the jurors; with a big doubt still remaining.~~

AGENCY/DEPT.	CUSTODIAN/CONTACT INFO	RECORD/NOTES	DETAILS RE: SUBPOENA OR COURT ORDER REQUIRED
Agency	Custodian	Record	Details



DATE	AGE	SCHOOLS	PSYCH. EVALS/SCHOOL TESTING	LIVING ARR	MEDICAL TREATMENT	CAREGIVER'S CIRCUMSTANCES
JANUARY						
FEBRUARY						
MARCH						
APRIL						
MAY						
JUNE						
JULY						
AUGUST						
SEPTEMBER						
OCTOBER						
NOVEMBER						
DECEMBER						

	A	B	C	D	E	F	G
1	DATE	DOCUMENT	CONTENT	MEDICATION LIST	CARE PROVIDER	PAGE #	Source
2	06/17/91	Screening notice of acute medical care	Chief complaint: twisted ankle. Duration: three days. Patient residence: barracks. 23 year old male complains of twisted ankle, fell from table on Saturday.			3-5	Files from Roger Tool - Enlisted Medical Records
3	08/05/91	Screening notice of acute medical care	Complaint: left foot			7-8	Files from Roger Tool - Enlisted Medical Records
4	09/01/91	Screening notice of acute medical care	Campus Ray. Chief Complain: foot. Duration: 7 days. Patient residence: barracks. Sore foot twisted from playing basketball.			1	Files from Roger Tool - Enlisted Medical Records
5	09/06/91	Health Clearance for Soldiers Under PCS Orders	Grade: E-4. Organization: B 8/8th FA. From: 8th BN 8th FA, BN Aid Station APO SE 96524. Camp Kite. To: Personnel Officer. 509 PSC APO SF96224. Medically Cleared.			2	Files from Roger Tool - Enlisted Medical Records
6	04/09/12	Washington Surgery Center	EGD Report. 2 p.m. Referring Physician: VA Clinic. 25 year old male. Abdominal bloating and gas since 1991. Reporting having EGD by VA Clinic in Washington and was told he had gastric ulcer. No relief from Zantac or Omeprazole. Some relief with Pantoprazole. Pathology specimens: Jar #1: biopsy in the antrum. Findings: ulcer. test requested: histology. Jar #2: biopsy in the middle third of the esophagus. test request: histology. Pathology: specimens were submitted for routine histopathologic evaluation.		Jack F. Jackson, MD Holly Loop, CRNA Jeffrey Smith, MD Melody Harry, RN Chasity James, LPN	14-16	Files from Roger Tool - Digestive Health Specialist
7	10/1/2015-10/1/2016	Medication list		**Clotrimazole 1% top cream**. Apply small amount externally twice a day for fungal infection. Expired. Refills remaining: 1. Days supply: 30. Quantity: 30		19	Central Washington, VA

- **Guideline 10.11.B**: The defense team must conduct an ongoing, exhaustive and independent investigation of every aspect of the client's character, history, record and any circumstances of the offense, or other factors, which may provide a basis for a sentence less than death. The investigation into a client's life history must survey a broad set of sources and includes, but is not limited to: medical history; complete prenatal, pediatric and adult health information; exposure to harmful substances in utero and in the environment; substance abuse history; mental health history; history of maltreatment and neglect; trauma history; educational history; employment and training history; military experience; multi-generational family history, genetic disorders and vulnerabilities, as well as multi-generational patterns of behavior; prior adult and juvenile correctional experience; religious, gender, sexual orientation, ethnic, racial, cultural and community influences; socio-economic, historical, and political factors.

2008 ABA Supplementary Guidelines

- **Court (criminal, municipal, traffic, civil, probate, family, domestic relations, bankruptcy, federal)**
- **Sheriff & Police Departments, Task Forces, Federal Bureau of Investigation, (FBI) Drug Enforcement Administration (DEA) & Statewide Agencies, such as, Department of Forensic Science, Department of Finance**
- **Crimestoppers**
- **Governor's Office & Secretary of State for state voter rolls.**
- **Incarceration Records**

WITNESS LAST	WITNESS FIRST	WITNESS MIDDLE	ALIAS	KEY INFORMATION	DOB	SSN	ADDRESS	CITY
Azure	AD			Admitting physician when Client was 32 years and she arrived at Anywhere County Hospital because of an ankle injury.	3/1953 or 3/1963	4444-84-xxxx	1111Race Street. (October 2005-August 2023)	Acworth
Bailey	Rod			Client's ex-girlfriend			2222 Clements Drive	Turner
Ballenger	Janie			Client's Nowhere County 4th grade homeroom teacher			9999 Race Track Blvd.	Todd

STATE	ZIP	PHONE	EMAIL	SOCIAL MEDIA	INTERVIEW HISTORY	RELATED RECORDS
OH	30101				Accurint reports tha he is a physician and has worked in Macon and lived in Winder, GA. Also worked as a phycisian in the Prison Health Care System	[redacted]
PA		229-212-9346			Interviewed by OH. Tee met with her as well.	
PA		229-315-9691			Interviewed by OH	Client's Nowhere r County Board of Ed. Records from 2022

INVESTIGATING

- ABA GUIDELINES
- Investigate ALL aspects of client's case
- Sources: People & Records
- The investigation is massive & in-person
- Requires diligence
- Requires organization

MINING YOUR RECORDS FOR CLUES: TRANSCRIPTS

- Transcripts are often one of the first things reviewed
- Though record-based claims are the focus of the direct appeal, the transcripts can provide important information about extra-record claims
- Consider
  - What's missing? What motions, objections, witnesses are absent?
  - What else is going on in the courtroom? Are there indications of courtroom disruptions? Tension between parties (the client and their lawyer, the lawyers and the judge, etc.).
  - What outside events are seeping into the courtroom? COVID19, major news events, natural disasters.
- Relevant claims include
  - Decision-maker bias
  - Other due process violations
  - Ineffective assistance of counsel

MINING YOUR RECORDS FOR CLUES: PRIOR COUNSEL FILES

- Requesting prior counsel's files is a necessary early step
- Files can provide information about
  - The extent of counsel's investigation
  - Discovery received from the government
  - Potential lay and expert witnesses
  - Jury selection and composition
- Relevant claims include
  - Ineffective assistance of counsel
  - Withholding favorable evidence
  - Jury discrimination

MINING YOUR RECORDS FOR CLUES: POLICE RECORDS

- Police records requested after trial can often uncover issues not explored earlier, even if prior attorneys have already requested these records
- Consider
  - Comparing the records received with those received in prior requests and discovery
  - Records about incidents related to government witnesses
  - Unexplored leads
- Relevant claims include
  - Withholding favorable evidence
  - False testimony by government witnesses
  - Jailhouse informants acting as government agents