



PEER NAVIGATORS

A Tool for Effective Representation

BY ANTHONY GRAVES

This article will explain why criminal defense attorneys should consider working with persons who have previously been through the criminal legal system. They can help build a relationship with clients and their families and relay information among all of those who support the client. The premise is not that lawyers are incapable of relating to clients, but that persons who were previously accused and incarcerated have two aspects to offer. First, they have experience with what defendants are going through. Second, because of that experience, defendants tend to relate to them more easily, building trust that will also benefit the attorney-client relationship.

Origins

Peer navigation in criminal cases comes from two established concepts. In modern capital cases, the bifurcation of guilt/innocence and punishment phases of trials led to specialized preparation to prevent potential death sentences. This is known as mitigation. Often the goal is to settle the case without a trial in order to secure a sentence less than death.

ANTHONY GRAVES is the Director of Community Outreach for the Harris County (Houston, TX) Public Defender's Office. His autobiography is *Infinite Hope: The Story of One Man's Wrongful Conviction, Solitary Confinement and Survival on Death Row* (Beacon Press 2018).

Part of that process involves working with the client to explain the benefit of accepting such a resolution should the opportunity arise. That can be difficult when the disposition will require the person to spend the rest of their life incarcerated. Some capital attorneys have turned to assistance from persons formerly on death row who were released after legal relief was granted or they were exonerated. They can explain to clients how persons can still have hopes and goals even if they are unlikely to return to lives outside of incarceration. The author is one of those exonerees who has counseled others facing a possible capital sentence. See Brian W. Stolarz, *Grace and Justice on Death Row: The Race Against Time and Texas to Free an Innocent Man* 137–38 (Skyhorse Publ'g 2016).

The second origin is where the term “peer navigator” comes from. In addressing substance abuse and mental illness, it has become accepted practice to help those afflicted by providing assistance from persons who have life experience with those circumstances and are trained to deal with those issues. In Texas, they are identified by statute as “peer specialists.” Tex. Gov. Code § 531.0999. Texas Health and Human Services defines a peer as “a person with lived experience of recovery from mental illness or addiction.” Their work is “to support recovery.” Similarly, peer navigators have life experience in the criminal legal system and work under instruction of attorneys to support clients.

Importance of Life Experience

Only a very few formerly incarcerated persons have gone on to become lawyers. Reginald Dewayne Betts received a Yale law degree and became a MacArthur Fellow for his poetry and activism after serving eight years in prison. *Freedom Begins with a Book*, <https://www.dwaynebetts.com>. Anthony Robinson is a Houston lawyer who was previously exonerated of rape after 10 years of incarceration. Melissa Fletcher Stoeltje, *Fight for Freedom; His Story Moves from Prison to Redemption*, San Antonio Express News (Feb. 15, 2004), <https://bit.ly/3l3oRGm>. These are exceptions. The average practicing lawyer has only spent time in jails or prisons as a visitor.

The more serious the accusation, the more likely the client is facing a significant prison sentence, and yet attorneys who must help clients decide whether to accept such outcomes have only an outsider’s perspective of what that entails. Clients are more likely to accept an attorney’s advice if they feel the lawyer

understands what is at stake for their client. Attorneys often reduce that choice solely to the potential for success at trial versus the possible result of plea bargaining. Clients are considering many other effects such as access to their families, careers, health, immigration consequences, and simply the day-to-day psychological stresses that come with incarceration. See, e.g., Norval Morris & David J. Rothman, *Oxford History of Prison* 227–36 (Oxford Univ. Press 1995).

Life experience and circumstances also shape what is important to the client. A good lawyer is researching the law, investigating the case, securing resources like experts, and working toward the best possible result. A client may not appreciate that if all they know is that their lawyer has visited twice over several months. A regular visitor who understands that the client needs reassurance can keep those attorney-client bonds from fraying.

The need for outside human contact among incarcerated persons is exemplified by the *Prison Show*. Broadcast for over 40 years by Houston’s Pacifica station KPFT, it was founded by the late Ray Hill, who spent years confined in Texas prisons and went on to be called a “citizen provocateur” by the U.S. Supreme Court. See *City of Houston v. Hill*, 482 U.S. 451 (1987). The show allows incarcerated persons to hear news and regards broadcast from friends and family who call the show.

Visits from a peer navigator are not about discussing case strategy but giving comfort and hope. That can be as simple as letting a client know their court date has changed, their family wishes them well, or their attorney will be coming to see them. Nothing replaces the necessity of attorney-client interviews and visits to prepare the case. This is about addressing other client needs. As in the example below, a peer navigator cannot replace necessary work by attorneys and investigators, but it can help keep attorney-client communication open.

A Failure to Communicate

The best way to illustrate that need for peer navigators is to give an example of what can happen in the absence of those resources. A man was facing trial for capital murder. He confronted a potential death sentence. He sat at a courtroom table with his lawyers. A jury had been selected. It had taken years in custody from his arrest to reach this point. An unfamiliar man walked up to his lawyers and exchanged a few words. “Who was that?” the man asked his at-

torneys after the stranger walked away. “That is your investigator,” they told their surprised client.

The investigator had never visited the defendant in jail and his attorneys did not seem to know or care. The attorneys themselves had not visited their client for months at a time and rarely wrote to him. Communications with him were not a high priority for them. They did not feel they were letting their client down because they were working on preparing his case for trial.

The client was going out of his mind and felt alone. He missed his family, his children, and the life he had previously known. There was no one he could confide in and help him get through the crisis of his prosecution for a crime he knew he had not committed. After years of waiting for trial, the client still did not know what to expect.

During the trial, a defense alibi witness failed to show up to testify. This person would have placed the defendant far away from the scene of the crime at the time it occurred. The defense lawyers relied upon a phone number for the witness but had not worked with the client and his family to assure the witness would appear. This missed opportunity for crucial testimony was caused primarily because the lawyers had established no relationship with the witness and those that knew her. She had been scared by threats from the prosecution and there was no one to reassure her.

The client was convicted of murder although no physical evidence put him at the scene of the crime. The sole witness against him had previously changed his story several times, but he testified without contradiction or impeachment by the defense. After a brief hearing, the jury sentenced the client to death.

Many of the key missteps by the defense were caused by a lack of communication with their client, his family, and other persons from his community. Like some lawyers, their investigation and research excluded their client, either because they did not think it was important, they lacked time, or they thought he would be detrimental to the case. The latter often occurs because lawyers believe their client will not be truthful with them or that the client will actively undermine their progress by contacting witnesses or exposing information to others.

Those mistakes are especially costly in a capital case. Communication is essential to presenting mitigation information to save a capital defendant’s life. Only the defendant, his family, and friends know the details explaining his value as a person. Once convicted of a horrendous crime—one that the defendant denied committing—absent a compelling reason to save him, the urge for retribution among a jury can be strong.

Even on appeal, where the client was appointed a new lawyer, that lawyer never spoke to the client or visited him. He wrote the client a letter accompanying his copy of the brief. The client went through the trial and appellate process without any meaningful relationship with his lawyers. He then spent years on death row with little human contact.

Adding Communication

It was only years later when a new lawyer came to visit the client on death row that someone did take an interest in communicating with him. It changed the course of the case. She volunteered her services to represent him. The lawyer brought with her the understanding that if she was going to fight to free her client, she also needed to fight to keep him sane. Communication was essential to achieving both. She started visiting him once a month to make sure he was holding up under the circumstances. She took an interest in his mental health. She would engage in conversations with him that made him feel human, even just discussing his interests such as sports. She would listen to him and allow him to vent frustrations about daily life on death row.

One day she explained to the client her reason for emphasis on communication. She had learned from a seasoned lawyer that sustaining a client’s attitude and mental health were often as important as investigating and researching the case, and that “there would be no need to fight for her client’s freedom if she did not also fight to keep him sane in the process.” Most

“

Sustaining a client’s attitude and mental health were often as important as investigating and researching the case, and that “there would be no need to fight for her client’s freedom if she did not also fight to keep him sane in the process.”

”

lawyers cannot invest that much time in a single client simply tending to their psychological well-being.

Working closely with his new lawyer, the client was ultimately exonerated and set free. It took years, and much work. Their bond was strong. He even rejected a plea offer from the prosecution for a life sentence that would have allowed him to be paroled. Ultimately, post-conviction proceedings revealed the client's innocence. The prosecutor, who threatened the defense witness and withheld exculpatory statements made by the state's witness, was later disbarred. Pamela Colloff, *Time and Punishment: A Powerful Former Prosecutor Finally Gets What He Deserves*, Texas Monthly (Aug. 2016), <https://bit.ly/3XXnU15>.

Applying the Lesson

Dealing with clients and family members can be very stressful for attorneys. These are skills that law schools do not teach and that also get little attention in continuing legal education. Lawyers are encouraged to remain objective and keep their personal feelings in check. They may not be taught the value of spending time with clients in jail or writing to them when they cannot go in person.

Attorneys and criminal defendants may come from very different backgrounds, which can hinder communication between them. Clients may lack understanding about how the criminal legal system functions, even if they have previously faced charges. Laws, rules, and procedures are complex and are supplemented by custom and nuance. Left to themselves, clients get misinformation from others who are unqualified to advise them.

The result is lawyers often lack the kinds of connections to their clients that make communication more fluid. That means if attorneys want to be good communicators with those persons—which is essential to achieving successful outcomes—they may need help. Even some of the best trial lawyers, with excellent courtroom advocacy skills, lack the patience or ability to listen to clients.

Traditionally, in the English system, solicitors dealt with clients and barristers tried cases. *What Is the Difference Between a Barrister and Solicitor?*, Chartlands Chambers, <https://bit.ly/3DA8tnf>. In America, criminal defense lawyers have always been expected to be good at both. They are different skills and lacking one is not a barrier to success as long as the lawyer understands what is needed and gets help.

Aside from the benefit to litigation, lawyers have a



moral and ethical duty to clients to keep them informed and not to harm them by acts of callousness. Model Rules of Pro. Conduct r. 1.4 (Am. Bar Ass'n 1983). The example above is extreme, as the client spent years on death row with little contact, but all defendants need care support and, at a minimum, information. Incarcerated clients deal with the chaos of jail or prison daily. They can be physically restrained, pepper sprayed, placed in isolation, or have property confiscated. They witness violence and self-harm. They miss their friends, family, spouses, and children. See Albert Woodfox, *Solitary 201-05* (Grove Press 2019).

However, an attorney's time is often limited, especially among those doing public defense. Public defenders

and private court-appointed lawyers may be forced into volume work and heavy caseloads. Even when they learn the benefits of communication, they may simply not have enough time to give all clients their due.

It does not take a law degree or a bar card to attain the listening skills clients crave when they are both lost and alone. A person who has empathy and understands the rules about client confidentiality can serve that role. That is where peer navigators come in.

Peer Navigators

A peer navigator is someone who can bridge those communication gaps between lawyer, clients, and their families. Often peer navigators are formerly incarcerated persons who can empathize with clients because they have experienced much of the same. They can educate the client and family about the process and bring valuable information back to the attorney.

Peer navigators are especially helpful when clients remain in custody for a long time. Lawyers may be waiting for various testing and discovery to be completed before the cases can advance. There is little to report to those clients. However, the clients' lives are on hold and they have nobody to talk to except others with their own cases and anxieties. A peer navigator, who allows clients to keep in contact with the outside world, can be the difference between a client's keeping or losing faith in their lawyer. It keeps hope alive and gives clients courage to face their adversity.

An example of what a peer navigator can do is exemplified with young inexperienced clients, particularly ones who have never been in jail before. In one case, a young man was facing a potential sentence of life without parole. He had never been in trouble before and was naïve about the criminal legal system. The evidence against him was overwhelming and the prosecution was offering to settle for a sentence that made him eligible for parole after serving some time in prison.

The young man refused the offer and felt his attorney was not working for his best interest. Their relationship became contentious. The attorney then reached out to a peer navigator so the client could get a different perspective.

The peer navigator began visiting the young man weekly. A relationship of trust was developed. The navigator also explained to the client's mother and stepfather what their son was facing. The parents were grateful and appreciated the magnitude of the decision their son had to make. They wanted him to

return to them even if it meant he had to serve some time in prison. They had many questions and the peer navigator helped them get answers from the lawyer. After two months of visits with the client and his family, the peer navigator was able to help establish their trust in the attorney's advice.

Afterward, the attorney, who had never worked with a peer navigator before, stated that the critical difference was having a third party that his client could trust. He understood the difference in their ages and backgrounds had been a barrier to their communication. The peer navigator had been in a situation similar to the client's and could better relate to him. The lawyer was willing to check his own ego and get help.

An analogous and successful use of peer navigators is in the field of mental illness. Studies there show they build hope through self-disclosure and act as role models. They create relationships based upon trust, acceptance, and empathy. See Larry Davidson et al., *Peer Support Among Persons with Severe Mental Illnesses: A Review of Evidence and Experience*, 11 *World Psychiatry* 123 (June 2012). Similarly, those who have experienced incarceration bring those attributes to relationships with clients in the criminal legal system.

Peer navigators function best in an institutional setting like a public defender's office or a system of managed assigned counsel. They are more akin to social workers, whose expanded use in public defense has also given lawyers access to skills previously unavailable to them. Although these positions require experience, they are less costly than hiring more lawyers for the same responsibilities. They are a cost-effective way to increase the capacity of lawyers to keep clients informed and to learn information from them.

Conclusion

Few offices are currently using peer navigators, but the ones that do have received an immediate benefit. Lawyers know that regardless of the time they can devote to visiting clients and families, there will be someone who can on their behalf and—most importantly—on the client's behalf. When relationships become frayed, there is a third person—trusted by both lawyer and client—who can step in and bridge that divide. As with social workers, convincing funders of the value of peer navigators requires education. However, it will be a valuable addition to effective assistance of counsel.