

Writing for Life:

How narrative law is transforming death penalty cases in Texas.

LESLIE JILL PATTERSON

The first time I viewed crime scene photos for a capital murder case, the mitigator who showed them to me was nervous. She loaded the photos onto her computer monitor and stood behind me, looking over my shoulder, shuffling her feet, while I flipped through the slideshow. Then she came around the front of the desk and fidgeted, all the while scanning my face for signs of panic or anger. Maybe she thought I would run from the room and never look back.

I had already met the defendant, charged with the stabbing deaths of two local bartenders in a small West Texas town—a town not much more than a whirl of dust on Interstate 20. I'll call him Michael Williams. He wouldn't look me in the face. He was missing his teeth, and no matter how hard I tried to tease him—and no matter what they offered to feed him—he was ashamed and rarely opened his mouth.

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Michael had been living in an abandoned gas station at the time of the crime; he was an ex-con, just released from an earlier stint, his parents both dead, his brother refusing to speak to him. When his mitigator drove me past the station, I discovered it was barely what you could call the shell of a gas station: just two walls, one of them a picture window frame missing the glass, the other crumbling and nearly toppled altogether. I'd heard from his attorneys that he'd secretly sent the DA a letter, begging to be executed because he didn't deserve to live after murdering his "two best friends." They were a married couple, whose names he didn't even know, but the wife had offered him a glass of water one day when she saw him shuffling down the street. Michael was so alone he thought an act of charity made this woman his best friend, and he couldn't forgive himself for killing her.

His mitigation specialist, the member of his defense team in charge of researching his childhood and family, his past, had covered her office door with pictures he'd drawn, gifts to her for helping him. The colored-pencil lines were as delicate as the strokes of a paintbrush. His subjects: kitties, waterfalls, flowers, birds, trees.

I liked Michael as soon as I met him.

And now it was my job to convince others to sympathize with him, as well, by writing a case narrative—a piece of nonfiction, replete with fully developed real-life characters, dramatic scenes, and a "plotline," that explains how a defendant moves from birth to the place where he feels compelled to kill—for the Texas Regional Public Defender Office for Capital Cases (RPDO). Michael's was my first case. At the public defender's office, finally studying the photos from the crime scene, which were critical to the conclusion of my narrative, I worried that my facial expression did reveal something dark and ugly.

Some of the photos were taken by medical examiners, who focus on the bodies. When the medical examiner arrives at a crime scene, protocol requires that he circle the room, closing in on the bodies like moths around a flame. He looks for hairs, the smallest of blood

spatters, the angle of the body—all clues as to the method of murder. Other photos are taken by the police, who are typically hunting for details that will help identify the perpetrator. These people are investigating a murder mystery. Discovering who did it is the climactic moment; they're building a story that can be told by the DA and reporters, one that will make sense to a judge and jury.

But pointing a finger and saying, "He did it!"—that's what writers call the surface tale. It's just facts and dates and times. A mere outline, really.

I'm looking for something different. I needed to stare at the photos, maybe for hours, to get a sense of the story. I finally asked the mitigator to leave me alone in the room, and as soon as she left, my mind started working the way a writer's does in solitude.

I saw the sink with freshly washed ashtrays and glasses, and knew it was closing time. I saw the rack of potato chip bags and knew it was the first thing Michael had seen when he walked into the bar that night (because he hadn't eaten in two days). And while the men's room was filthy and I myself wouldn't step a toe in it, I knew Michael had probably craned his neck and pondered its open door for a good while, wondering if it would be possible to go inside, turn the lock, and take

intriguing background information. Writers, like me, know that the end of any tragedy is a direct result of all the events that came before.

The US Supreme Court knows this, too, and has emphasized, in rulings such as *Lockett v. Ohio* and *Tennard v. Dretke*, that no matter how bloody the crime, a defendant's personal life and developmental issues are part of his defense, and the jury is not only allowed to consider these factors when determining punishment, but legally required to do so. And the American Bar Association (ABA) guidelines for capital defense stipulate that counsel must investigate three generations of a defendant's background, because hereditary, developmental, and environmental factors may explain the defendant's actions. On average, Texas executes five times as many people as any other state, each year, while simultaneously suffering from a dearth of lawyers qualified to serve as attorneys in capital defense cases. In order to make sure it was providing adequate representation for indigent men and women charged with capital murder, the state established the RPDO, an office of attorneys, mitigators, and private investigators specializing in capital defense.

The RPDO is supported by those who oppose the death penalty because the

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a bath at the sink unnoticed (because he hadn't used indoor plumbing since his release, two weeks earlier). Would they throw him out if he hogged the men's room for ten minutes or so? The case narrative—the deeper story behind the crime—translates witnesses into round characters; crime scenes and childhood moments into vivid settings and critical incidents in the storyline; and medical, court, and school records into

office's innovative work—partnering with linguists, narrative management specialists, and writers—has, among other factors, significantly decreased the number of death sentences in the state. Ironically, as Maria Sprow reported in a 2008 article for *County Magazine Online*, death penalty proponents also support the RPDO because it helps Texas better defend its stance on the death penalty, as well as its high number of executions,

since defendants are now “guaranteed a top-notch defense.”

Early on, the RPDO collaborated with a professor from Texas Tech University’s Rawls College of Business, a “narrative management specialist” (who knew such a person existed?), who helped them understand the logical progression of their casework, helped

When people ask what *exactly* I do for these attorneys—meaning, I think, “Are you helping murderers go free?”—I usually say, “I’m like those profilers on *Criminal Minds*, only backward.” Backward, because I’m not trying to identify an “unsub,” or unknown subject—I know who the perpetrator is; my case narrative simply explains cause and

reverse, starting with the crime. Assuming I’ve done a good job, a case narrative grips the audience’s attention, explains *why*, and, in doing so, helps team attorneys grant the space—like any good tragedy does—for DAs, judges, jurors, and even the victims’ family members to purge their anger and conclude with forgiveness. In a death penalty story, that means life without parole (LWOP) instead of a needle in the arm.

When writing a narrative for a defendant like Michael, I start with the newspapers. Reporters narrate the story the public (and potential jurors) will follow, and they voice the story law enforcement has fed them (and so they tell us what the DA’s vision of the case is). Every red flag, every monstrous detail the newspaper warns the reading public about, which are the very elements of the crime a defendant and his defense team ought to fear the most, too, is a narrative question my story must answer.

Then I spend hours culling through all the affidavits and testimonies turned over by the DA’s office in disclosure. I

My case narrative simply explains cause and effect, the road that led the defendant to murder.

order each team member’s role, and suggested they needed a writer on staff. In 2009, I became this writer for the office’s Lubbock, Amarillo, Pecos, and Midland branches—their regions 7 and 9—which is how I found myself looking at the photos from Michael’s crime scene.

effect, the road that led the defendant to murder. It follows a plotline, with flashbacks and dramatic scenes. It uses lines of dialogue, which I lift from witness testimonies. Sometimes—usually when an incident in the defendant’s past is far more climactic and tragic than the crime he’s committed—I write the narrative in

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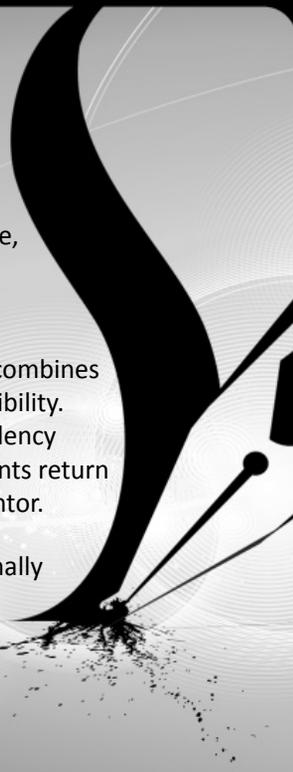
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read the records that mitigators have subpoenaed and, when possible, spend hours in the field with them, interviewing witnesses and the defendant's loved ones, ferreting out the stories that will tell me what went wrong in the defendant's childhood. Always, there are light-bulb discoveries. One of our defendants had murdered twice, both times to gain access to a car, and so I wasn't surprised to learn that his mother had abandoned him at an orphanage on his sixth birthday because she didn't own a car; his age made it illegal for her not to drive him to school, and she couldn't afford truant officers skulking around the house when other criminal activities were going on there. Days before the second murder, the defendant wrote multiple entries in his diary about longing for a car: if only he had an automobile, he could travel to Montana and be a rancher, to Florida and grow oranges, to California and catch a boat somewhere. You need a car to possess a life.

While reading through these thousands of documents and hours of

interview notes, I type all the striking details—what Pam Houston calls “glimmers,” both the positive and the dangerous—into a document. I use headings like *key characters, timeline, flashbacks, cause and effect, climax* as scaffolding. By the time I look at the crime scene photographs, which I always do last, I know as much as it's possible to know about the defendant and his mindset. Then I start the long process of organizing the particulars into dramatic story—a rush of a tale, a river we want to wade into.

The attorneys use my case narrative to obtain a life without parole plea before going to trial when they can. Sometimes, we work together to write a script and then film a case video for the DA's office to watch. In the next eighteen months, as a Soros Justice Fellow, I'll help them organize witness testimony for trial and shape closing and opening arguments, so that a courtroom presentation, when necessary, will also tell a “whole” story, unified and tight, with a beginning,

middle, and end. Our viewpoints joined together, we transform technical legal documents and presentations into the vivid and full lives of defendants, humanizing them until people care about them as much as we do, until it's impossible to dismiss indigent people as the “other” invading the security of our towns, and until, if we're lucky, society, and Texas in particular, feels compelled to have a serious conversation about poverty, racial prejudice, and the difference between true justice and simple revenge.

My first case narrative helped save Michael's life. He took the LWOP plea and resides now inside a Texas penitentiary, where he continues to draw (particularly birthday and holiday cards for other inmates to send home). He has also received teeth and now smiles readily. More importantly, since the RPDO began and introduced the notion of storytelling into their cases, nearly five years ago, none of their clients have been sent to death row. Currently, they are on case number ninety-two. ■

“A man at times so unknowable, he might as well be the man in the moon . . .”

“Science claims it will one day be able to eliminate fathers from the equation by mating bone marrow with ovum. When that day comes I imagine this book, along with a handful of others will become even more necessary. Herein find the blueprints for the mystery, the maps for the uncharted, the keys to the archetype. By pushing up against the unknown each writer that makes up this utterly compelling anthology has brought us back to the source.” —Nick Flynn

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