



## DefenseMap.com and the Expanding Role of Mental Health Professionals (MHPs) in Criminal Cases

March 25, 2020

### **Introduction: The need for mental health professionals' help in criminal defense**

In our view, most criminal defenses requiring basic assistance from a mental health professional (MHP) never receive that assistance. And that basic assistance may include any of the following.

1. Meeting with a client to conduct any necessary evaluation and flesh out any exculpatory or mitigating evidence or explanation.<sup>1</sup>
2. Advising defense counsel regarding the client's mental state, intent, and level of functioning at the time of the alleged offense.
3. Giving information on resources (including, among other things, counseling and addiction treatment) that could support personal change of interest to the client.
4. Offering an expert opinion on any of these important topics.
5. Agreeing to render counseling or addiction services to clients interested in them.

My experience has been that capable social workers and psychologists do not necessarily require a background or formal training in forensic work to be of help in the vast majority of criminal cases. Many capable psychologists and social workers without a concentration in forensic work can offer this assistance.

### **DefenseMap.com as an avenue for MHPs' important involvement**

Probably the premier obstacle to MHPs' engagement in more criminal and juvenile delinquency cases (about 12 million Americans are arrested annually on serious criminal charges, and only a small fraction have a consultation with such a professional) is that ***defense attorneys have had little help in determining which clients should be seen.***

In fact, underlying the problem of missing MHP assistance is perhaps the premier challenge of defense work: defense attorneys are called on to be the voice, often the only voice, for clients whom they can scarcely know. Even for those defense attorneys who try hardest to know their clients well, most of the key facts of their clients' lives

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<sup>1</sup> We use the term "exculpatory" intentionally. While a lot of what we propose about the expanding role of MHPs in criminal cases is directed toward sentencing mitigation, these professionals' assistance can often alert defense attorneys to a client's actual innocence. Seemingly, inculpatory behavior may have an innocent explanation, the intent to commit an offense may be missing, a client's history of abuse or trauma may explain why a circumstance looked remarkably different to him than to persons without such a history, and so on.

are largely unknowable. Attorneys lack the necessary time, and clients lack a safe space to reflect and share.

Even a partial list of the client information necessary to an optimal defense shows how impossible this unearthing is for attorneys in the average criminal case.

- Histories and consequences of any kind of abuse.  
(Who asks—or could ask—a new client if he'd ever been molested?)
- Other childhood and family traumas.
- Constructive and destructive relationships.
- The full range of reasons for the charged events.
- Uninvestigated mental disorders.
- Life experiences affecting the client's view of the facts of the charged offense.
- Health, work, military, and counseling histories.
- Retreats to addictions to cope, suicide attempts, and uninvestigated mental and emotional disorders.
- Stressors and duress from various sources.
- Heroic and giving acts, care and support to others, and other compelling mitigators.
- Character strengths and wishes for personal change.

And much more. Certainly, good defense attorneys have gathered some of this information. But I'm convinced it has been overwhelmingly less than what the client's best interests actually require.

And the absence of inquiry into these factors can be as problematic in juvenile delinquency cases as in adult felony cases. (For some thoughts about the call for *DefenseMap.com* in juvenile cases, see our site's short audio [Defense Maps in Delinquency Cases](#).)

But now [DefenseMap.com](#) gives accused persons—confidentially, on their own time, and at their own pace—the chance to share the circumstances of 22 broad areas of both their cases and their lives. The site screens clients' information, detects and highlights special issues, and organizes the results into an easily read and useable Defense Map, including a crucial Flags page.

And one of the major advantages is the chance to involve MHPs in appropriate cases.

We propose that interested MHPs let their local defense attorneys (private and public defender) know that they would be willing to look over clients' Defense Maps and offer preliminary consultations from doing so. After considering a MHP's reflections on a Defense Map, counsel can make informed decisions about engaging the MHP for any indicated function.

Sample contact letters to private attorneys and public defenders can be found at the end of this paper.

## **6 Suggestions for Attorney-Mental Health Professional (MHP) Collaboration**

***1. Be aware that the best criminal defense attorneys will be grateful for your help, especially as America marches back from its decades-long experiment with mandatory sentencing.***

This crime-centric approach has played a powerful role in the quintupling of America's prison population to 2.2 million between 1974 and 2007, as well as its tolerance of an incarceration rate many multiples of other countries': 4.3 times Saudi Arabia's, 4.7 times England and Wales'; 6.6 times Canada's; 9.2 times Germany's; 9.3 times Netherlands'; 11.6 times Sweden's; and 14.2 times Japan's. (Figures from the International Centre for Prison Studies)

Some good news is this devotion to mass incarceration is waning. See, for example, "[Even in Texas, Mass Imprisonment Is Going Out of Style](#)," *New York Times*, February 14, 2017. As this better approach to crime returns, the best defense attorneys will deeply value the client backstories you can develop and share.

***2. Educate about clients' opportunities for personal change and the resources available to support those opportunities.***

MHPs can pay special attention to the issues identified on the Flags pages of Defense Maps, including the personal changes clients indicate an interest in—and with attorneys and clients' need for information on change resources.

You may find it helpful to see the site's "Clients" and "Family and Friends" links from the homepage for ideas on mitigation evidence available from clients and their supporters.

***3. Help all legal professionals (including, depending on the case, defense attorneys, prosecutors, probation and parole officers, and judges) better understand the shifts in thinking necessary to fairly judge people with different perceptions, thinking patterns, and behaviors because of their underprivileged or traumatic backgrounds.***

America's legal profession, like all its professions, is overwhelmingly populated by people from relatively stable and financially secure backgrounds. It is easy for us to overlook that some of the rest of the world is not like us.

Just one example that I've found alarming, but educational for fellow attorneys, is the survey by Memphis, Tennessee showing that a full 37% of adults in Memphis had, as

children, seen someone shot or stabbed. See, "[To Improve Lifelong Health, Memphis Tries Rooting Out Childhood Trauma](#)," *PBS News Hour* (April 20, 2016).

These life disparities and their implications, day-to-day, are easy to overlook, and MHPs can play a central role in incorporating them into the law's processes.

**4. *Fully consider, yet distill and simplify the information in Defense Maps.***

These Maps obviously contain a world of facts and, much as the Maps are designed to organize that information, there is often a lot to work from. Be an intelligent editor for both the attorney and the client.

Part of that editing function can be to help the attorney and client resist a belief that all issues in the client's life need to be addressed. As the Defense Maps themselves recite at the top of the Flags page, even one positive change can help many cases.

**5. *Do not conduct testing without counsel's explicit understanding and approval.***

In this category I include tests like the MMPI and MCMI.

MHPs will understand (a) that these tests are designed to generate hypotheses, not make diagnoses, and (b) that findings (often computer-generated ones) to the effect that "the subject's answers are similar to the answers of others exhibiting X characteristics" in no way equates with a conclusion that the client has those characteristics. But, and this is the key, those distinctions are almost always lost on people outside the mental health fields.

Your time with a client, clinical expertise, and case advice are far superior to resort to such tests and the hopeless task of trying to explain them and their purpose and limitations to prosecutors and defense attorneys.

**6. *Be open to spending time with defense attorneys, including both private attorneys and public defenders.***

Success leads to success. As an attorney sees success in one case with a MHP, more cases can be helped, from both that attorney and others who learn of your successful work.

Feel free to be in touch with your thoughts and questions.

Charles A. Asher  
[Charlie@DefenseMap.com](mailto:Charlie@DefenseMap.com)

**Attachment A: Draft psychologist letter to local private criminal defense attorney**

**Sharon Petersen, Ph.D.  
690 Marietta St. NW  
Atlanta Georgia 30303  
833-674-7363**

January 25, 2020

Mr. Anthony Connors  
Attorney at Law  
1200 Peachtree Blvd.  
Atlanta, Georgia 30314

Re: Availability to consult on criminal defense cases

Dear Mr. Connors:

I want to take this opportunity to let you know of my interest in collaborating with you on any criminal cases you think appropriate for a psychologist's review.

I've developed an interest in the field of criminal case consultations as a result of [insert].

I've become acquainted with the free intake resource for criminal defense attorneys that you may already know about: *DefenseMap.com*. One of the benefits I see to a Defense Map is that defense attorneys can send them to a psychologist for a preliminary opinion on a client's mental state, intent, stressors, and various defenses and mitigating factors.

From my review of Defense Maps, you could then decide if particular cases call for further consultation, case or client evaluation, client counseling, or other involvement on my part.

Thank you for your consideration. I'm enclosing a copy of my professional résumé. Feel free to call or email me if you wish to speak about this possibility.

Sincerely,

Sharon Peterson, Ph.D.

**Attachment B: Draft social worker letter to local public defender office**

**Jarred Cannon, M.S.W.  
1400 Randolph Way, Suite #600  
South Bend, Indiana 46617  
866-299-9388**

January 25, 2020

Ms. Jessica Lyons  
Director, Bonaventure County Public Defender Office  
1215 County-City Building  
Xavier, Indiana 46601

Re: Availability to consult in criminal defense cases

Dear Ms. Lyons:

I want to take this opportunity to let you know of my interest in collaborating with the public defenders in your office on any cases they think appropriate for a mental health professional's review.

I've developed an interest in the field of criminal case consultations as a result of [insert].

I've become acquainted with the free intake resource for criminal defense attorneys that you may already know about: *DefenseMap.com*. One of the benefits I see to a Defense Map is that defense attorneys can send them to a mental health professional for a preliminary opinion on a client's mental state, intent, stressors, and various defenses and mitigating factors.

From my review of Defense Maps, you could then decide if particular cases call for further consultation, case or client evaluation, client counseling, or other involvement on my part.

Thank you for your consideration. I'm enclosing a copy of my professional résumé. Feel free to call or email me if you wish to speak about this possibility.

Sincerely,

Jarred Cannon

**Attachment C: Draft addiction services letter to criminal defense attorneys**

**Harrold Jennings, Ph.D.  
Tri-County Addictions Services  
190 North Meridian Street  
Indianapolis, Indiana 46204  
888-699-7363**

March 25, 2020

Mr. Carlos Merryman  
Attorney at Law  
1075 Broad Ripple Avenue  
Indianapolis, Indiana 46240

Re: Full service addiction services in criminal defense cases

Dear Mr. Merryman:

I want to take this opportunity to let you know of our office's availability in offering a full range of testing, treatment, and consultation services on addiction and related mental health issues. I'm enclosing an information sheet on the broad spectrum of services we offer, including client evaluation and outpatient and inpatient care.

You will see that the information sheet also includes the extensive credentialing and premier rating of our services. More information is available on our website.

I also wanted to let you know that we have found the free website [DefenseMap.com](http://DefenseMap.com) to be of prompt and effective assistance in determining what clients should be referred for an addiction and mental health evaluation. To assist in clients' recovery and your defense of them, we would be pleased to look over any Defense Maps you provide to advise about what we would consider the optimal evaluation and treatment options in each case.

Thank you for your consideration. Feel free to call or email me if you wish to speak about this possibility.

Sincerely,

Harrold Jennings, Ph.D.