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Anatomy of a murder case

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Practitioners offer their tips on surviving the experience.

Despite the passage of 40 years, Minneapolis attorney Joe Friedberg still remembers his first murder case as yesterday.

The defendant was a juvenile accused of murdering his uncle while under the influence of mescaline, and the boy's family didn't trust the public defender assigned to the case. Friedberg, who had been volunteering as a lawyer for poor families in Minneapolis, agreed to work with the public defender on the family's behalf.

"When the police came, [the boy] was lying on the body of his deceased uncle, holding a still-hot .357," the Minneapolis criminal defense attorney recalled. "I asked the public defender if I could second-chair him, and he said, 'Sure, son.' Well, [the public defender] didn't turn up for the trial. So I argued a defense of involuntary intoxication, saying his uncle had used the mescaline with him. And he sure as hell got convicted."

Friedberg has since gone on to try dozens of other murder cases and has worked on more than 150.

For attorneys who have tried murder cases, the memories remain vivid, probably because trying them remains one of the most intense, and intensive, experiences an attorney can have. Not only is the trial inherently fraught with emotion,

tension and bitter feelings, but the level of preparation be mind-boggling.

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“Anything you do in other cases becomes twice as hard in murder cases,” said St. Paul attorney Mary M. McMahon, who estimates that she’s tried about 30 murder cases. “I worked on an appeal recently in the case of Keith Hapana Crow, and there were 6,000 pages of documents related to the case. And that’s not even an extraordinary amount for a murder case.”

Minneapolis attorney Eric Hawkins, who’s now in private practice after working in the Hennepin and Anok County public defender’s offices, says trying about half a dozen murder cases has taught him to be aware of the major consequences faced on all sides of a murder case.

“It’s different primarily because of what’s at stake,” said Hawkins. “Someone’s looking at life in prison, so everyone’s work on the case becomes more intense, from the state down to the judge and the law enforcement people.”

Lessons learned

An assignment as demanding as a murder case calls for the wisdom of experience. Minnesota Lawyer asked a number of veteran criminal defense lawyers to talk about what they’ve learned from working on murder cases and what advice they would give attorneys whose first such case might be coming up, or who are considering steering their criminal defense practice in that direction.

- Don’t try a murder case until you’re ready. Most criminal defense attorneys agree that the severity and stakes of such cases aren’t for the young or the faint of heart.

“You need some seasoning before you take on a case where the sentencing is this harsh,” said Freidberg. “What I did in [my first murder case], I shouldn’t have done.”

While acknowledging that there's "always a first time," McMahon said some background is necessary. "I'd you'd better have at least done contested omnibus hearings before, and it helps if you've done appeals," stated.

- Turn to the autopsy like it's the Rosetta Stone. Get the autopsy protocol from the coroner's office along with slides, photos and recordings related to it. And believe what's on the documents.

"You absolutely begin with the autopsy," said Friedberg. "The medical examiner looks at the cause of death objectively, so the defense has to comport with the physical evidence, which is unequivocal. If it says the cause of death was a bullet in the heart that entered from the back, you can't say he was shot in the front."

- Interview, interview, interview. Besides your client and all witnesses, take the time to talk to the client's friends, teachers, co-workers, counselors; basically anyone you can find who's ever known your client. That background information can come in handy during the penalty phase, when special circumstances about the client's history can be used to mitigate his sentence.

Also, interview all law enforcement, medical and emergency personnel who responded to the crime, including those who did crime scene security.

"Talk to witnesses, talk to neighbors, talk to everyone," said Hawkins. "Murder cases are different in the amount of resources the state puts into it. That generates more witnesses and more statements, and generally more ground you have to cover."

And don't forget that interviewing everyone especially means the most important person in the process: your client.

"Interview him three or four times, and go over the same ground to see if his story changes," said St. Paul criminal defense lawyer Terry Duggins, who's tried 14 murder cases. "The last thing you want is to put him on the stand and have him lying or being inconsistent."

- Be fanatical about research and recordkeeping. Get copies of all prosecution reports, as well as all photographs, audio and video (including the 911 call and police radio traffic), mug shots and photo line-up. Also, visit the crime scene with an eye toward photographing and videotaping it yourself – and comb the scene for witnesses authorities might have missed, or who were reluctant to talk to police.

“Our job is to look under every stone,” said Hawkins.

- Be ruthless and relentless during the jury selection process. Take advantage of voir dire by interviewing prospective jurors and moving to eliminate those who seem predisposed toward a conviction, even if that extends the process by weeks.

“Some attorneys go into voir dire with the idea of getting the jury to like them,” said Hawkins. “I don’t. To me what’s important is that the jury understands and respects the legal system and their place in it. Can they look my client in the face and promise to be fair? Can they presume his innocence? If they can’t, I don’t want to

“In individual voir dire, you have to be able to strike people for cause,” said McMahon. “I represent a lot of Native [Americans], and so there’s a lot of prejudice. In the Crow trial, I had to request that 75 prospective jurors be struck, because I knew they weren’t going to treat him fairly.”

Sometimes routine questions can reveal biases in prospective jurors, Duggins said.

“They might know somebody who knows somebody who knew the victim,” he said. “They might have personal experience with violent crime that affects their views, or they might have feelings about the police one way or the other.”

- Make sure the state goes by the book, and make the most of instances where they haven’t. Duggins recalled a recent case in Missouri in which a suspect’s Miranda rights weren’t read until he’d already implicated himself.

the state Supreme Court ruled that everything the suspect said, before and after Miranda, was inadmissible.

“Nitpick from Day One,” said Duggins. “Make sure the original stop was constitutionally valid. If mistakes were made, a lot were probably made early on in the process.”

McMahon advised lawyers to “punch holes in the case” any way they can. “There are a lot of questions that seem small, but whose answers can help later. Was there any evidence illegally taken? You have to take it out, and you have to file motions in limine to remove prejudicial evidence. You have to know the state’s case better than they do.”

- Keep a close eye on media coverage of the proceedings, and try to counteract it when you can.

“Your method of preparation in murder cases is different because you’re more acutely aware of the public concern about the event,” said Hawkins. “It doesn’t hurt to Google the case to see what people are writing and saying, and to get an idea of what kind of information the state is getting to the public. What’s provided by agents to the public — allegations made to look like facts — can be staggering.”

- Make an effort to interact with the family of the victim, even if the prospect of explaining to them that you only doing your job might sound unpleasant.

“I try to reach some level of peace with the survivors,” said Friedberg. “They’re going to be present during trial; they’re basically the third lawyer in the courtroom. Before trial, I try to have some interaction with the survivors. In many cases they won’t have it, but I do try.”

- Weigh your plea options carefully, and include your client in the decision process.

“I leave a lot of that up to the client,” said Duggins. “After you get as much discovery as you think you’ll get, that’s when you evaluate the situation and see what might be most beneficial as far as a plea agreement.”

When it comes to accepting a plea, “I go off what the state provides in its discovery,” said Hawkins. “My job is to inform the client of his rights and give him the information he needs to make an informed decision about whether to plead.”

- Don’t expect miracles. In most states, the conviction rate in murder cases hovers around 80 percent.

“Lawyers tend to build their reputations on spectacular acquittals,” said Friedberg. “But that’s not a phenomenon that happens very often in murder cases. The definition of victory should include a better verdict than the one the prosecution was offering. It’s more damage control than victory.”

High anxiety

There was one thing all the criminal defense attorneys interviewed by Minnesota Lawyer agreed on when it came to murder cases: They’re exhausting and nerve-wracking, but also valuable.

“The anxiety never goes away, at least not until the jury comes back with a verdict,” said Duggins. “But I learn a lot from each case. Each one shows me something new and different, and I always learn from my co-counsel as well.”

Despite the stress, the hard work, the slim chance of success, and the likelihood of being seen as the villain, criminal defense lawyers whose skin has had time to thicken have come to see representing murder defendants as a rewarding and even essential part of their careers.

“They’re tough cases, but they’re also the most interesting and complex,” said McMahon. “You end up relating more closely to the client than you do with other cases. They’re the most cooperative clients you’ll ever have because they know how high the stakes are.”

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