

Gideon's Heroes



Honoring Those Who Do Justice To Gideon's Promise

"Mitigation is a work you are called to do. It brings me passion."

— Lori James-Monroe, Capital Mitigation Specialist

THE PROBLEM:

Kevin Gray was charged with 131 counts of federal drug and racketeering offenses, including 22 murders. In a trial that lasted more than two years, he was convicted of most of the charges. Now the jury would consider whether he deserved to be put to death for his crimes.

THE SOLUTION:

Kevin Gray's lawyers asked for Lori James-Monroe's help as soon as they were appointed to the case. They knew that they had a constitutional and ethical obligation to present to the jury every scrap of information about Kevin's life which could possibly mitigate in favor of a life sentence rather than death. And, although the separate phase of a capital trial where the jury chooses between a life or death sentence does not occur until after the arduous process of deciding guilt or innocence, they knew that the process of unearthing mitigating evidence is complex and would take every bit as long as investigating, researching and preparing for the trial itself. They also knew that they didn't have the skills to delve into all the complex psychological, social, mental and biological factors that might have brought Gray to this tragic juncture. But, they knew someone who did.



The need for a "capital mitigation specialist" did not exist before 1976. That's when the U.S. Supreme Court ruled that the death penalty, which it had suspended four years earlier because of the "freakish" unpredictability of how it was being imposed, could resume — but only if there were uniform procedures allowing an individualized determination of whether each defendant ought to live or

die. The complexity of investigating the defendant's entire life is one of the reasons that a 1998 federal report found that the average death penalty case takes more than 1,800 hours to prepare, and more than 1,200 hours even if the defendant pleads guilty without trial.

James-Monroe proceeded to explore every facet of Gray's family, neighborhood and friends. She found that the tragedy of his case had begun long ago. Though Gray was the only kid in his class lucky enough to live with

both parents, the unlucky part was that they were both junkies, always too stoned or comatose to take care of him and his two brothers. His favorite aunt eventually saw that the boys needed help, and moved in to cook and help them with their homework. But, the respite was short-lived. Kevin found his aunt on the bathroom floor with a heroin needle in her arm — dead, as well as the unborn baby inside her. In rapid succession, all other family support structures evaporated, with the deaths of his grandparents and an uncle and another aunt. Both

parents stopped coming home. Kevin, who had been a good student, dropped out of school, but nobody from the school came by to see why — even though he lived only 50 feet away. His older brother, brain damaged from eating lead paint chips as a toddler, began selling drugs to survive, and Gray fell in with him.

James-Monroe prepared a catalogue of 20 witnesses to testify in the mitigation phase. She even found Kevin's preschool bus driver, who remembered him clearly — as the bright enthusiastic little boy who loved sports but whose parents were never home, so the driver would save Gray for last, and deliver him at 7:00 p.m. to a still-empty house. Gray's lawyer, Frank Carter, former director of the Public Defender Service of the District of

Columbia, acknowledges that for lawyers immersed in the legal charges and the facts of a case, “it’s easy to lose sight of how your client got there.” The comprehensive “personal history” that James-Monroe compiled made no excuses for Gray, says Carter, but “put the whole puzzle together” for the jury.

The jury was given a choice — between the prosecutor’s view of Gray as a natural-born predator, and James-Monroe’s explanation of the extraordinary pain of Gray’s youth. He was spared the death penalty and is serving life in prison.

THE HERO:

James-Monroe says she “grew up in a housing project, with a single mom, a father who was in jail for shooting my mother, financial stress, and a mother who at some point would suffer from an addiction of her own.” Knowing that her mother couldn’t afford college tuition and board, she arranged to live with her grandmother for the first year of college. She worked part-time while working on her bachelor’s degree in social work at Morgan State University, a historically black college in Northeast Baltimore. At Morgan, she immediately became involved in prison work, and volunteered at the local city jail. She interned under Cessie Alphonso, one of the country’s first and most prominent mitigation specialists. She graduated at the top of her class, and then obtained a master’s of social work at the University of Maryland at Baltimore.

“As I talked with men in jail,” she recounts, “I realized that they were just like the men who lived in the Baltimore projects I once lived in as a child. Some were smart, creative, talented, but they entered into a system that robbed them of everything that is at the core of their humanity. As I worked with women inmates, I realized I could have been anyone of them.”

How did James-Monroe end up choosing a different path? “A quality education. My mother sheltered me from some of the harsher circumstances, and showed me strength and love. Outside intervention from interested adults, such as instructors and a high school guidance

counselor. And God whispering to me ‘you have not yet reached what is destined for you.’”

James-Monroe is still reaching. She is currently a Ph.D. candidate in public health at Morgan State University.

PROGRESS...

In June 2003, the U.S. Supreme Court issued its strongest statement yet on the constitutional imperative for thorough mitigation work. It threw out the death sentence of Kevin Wiggins because lawyers had failed to investigate and present to the jury evidence of Wiggins’ borderline retardation, or that he had been repeatedly raped, beaten and denied food as a child, and that his mother burned his hands on the stove as punishment. Also in 2003, the American Bar Association (ABA) updated its *Guidelines for the Appointment and Performance of Counsel in Death Penalty Cases* — originally written by the National Legal Aid & Defender Association and adopted by the ABA in 1988, and cited by the Supreme Court in the *Wiggins* ruling — to include a specific requirement not only that complete mitigation work be done, but that it be done by a mitigation specialist.

...BUT A LONG WAY TO GO:

Thousands of people are on death row all across the nation who did not have access to the type of mitigation work that James-Monroe conducted for Gray. And because the inmates’ constitutional right to counsel ended when their convictions became final, their ability to ask for “habeas corpus” review of their lack of access to adequate mitigation services is dependent upon volunteer lawyers — which most death row inmates do not have. And for new cases not yet litigated, the acceptance of the importance of mitigation specialists is still in its infancy. The revised ABA standards requiring the use of a mitigation specialist as a part of every death penalty defense team are just beginning to be read and understood around the states. A recent article in the *Miami Business Review* found that in Florida, with one of the busiest death rows in the country, many judges are still unwilling to approve funding for a mitigation specialist.

GIDEON’S PROMISE:

Still unfulfilled.

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