



PROGRAM MATERIALS

Program #36150

July 8, 2026

Borderline Personality Disorder in Criminal Defense: A Mitigation Framework for Pre-Plea Strategy and Sentencing Advocacy

Copyright ©2026 by

- **Mark Silver, MA, MSV, LCSW, PsyD, JD**

**All Rights Reserved.
Licensed to Celesq®, Inc.**

Celesq® AttorneysEd Center
www.celesq.com

5301 North Federal Highway, Suite 150, Boca Raton, FL 33487
Phone 561-241-1919

Mark S. Silver

Criminal Mitigation Expert

MA, LCSW, PsyD, JD

225 Broadway, Ste. 715

NY NY 10007

917-608-1346

Email: marksilver1@cs.com

Web: MarkSSilver.com

**Borderline Personality Disorder in
Criminal Defense:
A Mitigation Framework for Pre-Plea
Strategy and Sentencing Advocacy**

Free Sample Report

Send an email to marksilver1@cs.com

- Put the word “borderlinesample” report

BOOK RECOMMENDATION

Handbook of Mitigation in Criminal and Immigration Forensics: Humanizing the Client Towards a Better Legal Outcome. SEVENTH EDITION 2021

Psychosocial Evaluations and Consultation in Civil Litigation: Strategies to Understand and Humanize the Client. 2021.

Handbook of Mitigation in Criminal and Immigration Forensics

Humanizing the Client
Towards a Better Legal
Outcome

SEVENTH EDITION

MARK S. SILVER
M.A., LCSW, PhD, JD.

**PSYCHOSOCIAL
EVALUATIONS AND
CONSULTATION IN
CIVIL LITIGATION:**

*Strategies to Understand
and Humanize the Client*

MARK S. SILVER

M.A., L.C.S.W., Ph.D., J.D.

I. Overview of Mitigation

Specialty Areas of Mitigation (with CLE separate programs)

- PSI critique in context of sex crimes
- Complex Trauma
- White Collar Crime
- Domestic Violence
- Adam Walsh Act (for immigration defense)
- Criminal Immigration

Definition of Criminal Mitigation

Mitigation is a bio-psychosocial evaluation of the client's social and psychological history informed by the facts of the criminal case with appropriate recommendations as a means to minimize the negative legal outcome either in court **or with a prosecutor.**

Mitigating circumstances reduces the degree of moral culpability or blame which in fairness, sympathy, or mercy may lead to a more favorable outcome for the defendant.

Purpose of Mitigation

- Humanize client through a sympathetic narrative
- Induce empathy for the reader
- Document client's life history
- Contextualize client's conduct
- Stress family's physical, psychological, and financial hardships
- Illustrate client's community, educational, employment ties
- Express client's remorse & regret

Purpose of Mitigation Con't

- Professional expression can replace self-expression
- Not just a mental health report
- Single document theory
- Disabuse parties of bias and prejudice
- Dispel nonexistent patterns
- Peace offering
- Counter the the government's presentence report
- Conceptual /strategic consult

Legal Basis for Mitigation

Criminal mitigation is not simply an effective tool for the sake of argument but a necessary factual underpinning to support the factors in 18 USC § 3553(a) and other relevant case law.

The Court now has unfettered discretion to consider any and all evidence at sentencing because of *Booker*.

18 USC 3661: No limitation shall be placed on the information concerning the background, character, and conduct of a person convicted of an offense which a court of the United States may receive and consider for the purpose of imposing an appropriate sentence.

When to Use Mitigation

- It's never too early and it's never too late
- The advantage of pre-plea mitigation is that the prosecutor can consider mitigation early before prejudices set in. However, the advantage of utilizing mitigation after the plea in Federal cases is that the mitigation expert can review the PSI.
- Pre-plea for the Prosecutor (two uses for one price)
- Strategic Consult / Informational Use
- Parole Hearings
- Clemency

Trial Penalty

- The criminal justice system has been turned into a guilty plea factory
- So powerful is this penalty that even innocent persons will succumb to the threat of a worse outcome if they dare to risk the fundamental Sixth Amendment right to a trial
- The national Registry of exonerations has now identified 404 of 2200 cases in which individuals later determined to have been innocent had entered a guilty plea rather than face trial.
- www.law.umich.edu/special/exoneration/Pages/about.aspx
- Evidence is no longer important so discovery is unimportant so appeals are less possible

See -Norman L. Reimer. *The Trial Penalty: The Sixth Amendment on the Verge of Extinction and How to Save It*. The Champion. May 2018 Vol. XLII. No. 4, p. 9-10.

See – Andrew St. Laurent. *Anatomy of a Plea*. The Champion. June 2019. Vol XLIII. No 5. p. 42-47.

Obligatory Mitigation?

- Should clients be told and afforded the opportunity for mitigation, especially in felony cases?
- ***Gideon v. Wainwright***, 372 U.S. 335 (1963), the Supreme Court unanimously ruled that states are required under the Fourteenth Amendment to the US Constitution to provide counsel in criminal cases to represent defendants who are unable to afford to pay their own attorneys. The case extended the right to counsel, which had been found under the Fifth and Sixth Amendments to impose requirements on the federal government, by ruling that this right imposed those requirements upon the states as well.

II. Criteria of BPD

What is a Personality Disorder

A personality disorder is an enduring pattern of inner experience and behavior that deviates from the norm of the individual's culture. The pattern is seen in two or more of the following areas: cognition; affect; interpersonal functioning; or impulse control.

The enduring pattern is inflexible and pervasive across a broad range of personal and social situations. It typically leads to significant distress or impairment in social, work or other areas of functioning. The pattern is stable and of long duration, and its onset can be traced back to early adulthood or adolescence.

List of Personality Disorders

- Paranoid
- Schizoid
- Schizotypal
- Antisocial
- **Borderline**
- Histrionic
- Narcissistic
- Avoidant
- Dependent
- Obsessive-compulsive

BPD Overview

- The main feature of borderline personality disorder (BPD) is a pervasive pattern of instability in interpersonal relationships, self-image and emotions. People with borderline personality disorder are also usually very impulsive, oftentimes demonstrating self-injurious behaviors (risky sexual behaviors, cutting, suicide attempts). Borderline personality disorder occurs in most by early adulthood. The unstable pattern of interacting with others has persisted for years and is usually closely related to the person's self-image and early social interactions. The pattern is present in a variety of settings (e.g., not just at work or home) and often is accompanied by a similar *lability* (fluctuating back and forth, sometimes in a quick manner) in a person's emotions and feelings.

BPD Overview

- These individuals are very sensitive to environmental circumstances. The perception of impending separation or rejection, or the loss of external structure, can lead to profound changes in self-image, affect, cognition, and behavior. They experience intense *abandonment fears* and *inappropriate anger*, even when faced with a realistic time-limited separation or when there are unavoidable changes in plans (e.g., sudden despair in reaction to a clinician's announcing the end of the hour; panic or fury when someone important to them is just a few minutes late or must cancel an appointment). They may believe that this "abandonment" implies they are "bad." These abandonment fears are related to an intolerance of being alone and a need to have other people with them. Relationships and the person's emotions may sometimes be seen by others or characterized as being shallow.

Criteria of BPD

Frantic efforts to avoid real or imagined abandonment

- fear of being alone or abandoned
- perceived rejection as fatal
- dramatic or attention-seeking behavior to keep someone around
- deep need to be loved
- “she didn’t know who would leave or stay so she pushed them all away”
- “frantic” / panic-like causes acute destabilizing anxiety

Criteria of BPD Con't

A pattern of unstable and intense interpersonal relationships

- characterized by alternating between extremes of idealization and devaluation
- rely on others to regulate them
- unhealthy /dangerous relationships with family and friends
- often in and out of love / meaningless relationships
- poor ego differentiation / diffuse ego boundaries

Criteria of BPD Con't

Identity disturbance

- significant and persistent unstable self-image
- poor sense of self
- projection identification, ie, vicariously contends with personal issues
- poor ego boundaries
- distorted identity, even seeing distortions in the mirror
- discontinuity / rupture

Criteria of BPD Con't

Impulsivity

- potentially self-damaging e.g., spending, sex, substance abuse, reckless driving, binge eating
- lives on the edge
- knee jerk reactions without thinking things through

Criteria of BPD Con't

Recurrent suicidal behavior

- gestures, threats, or self-mutilating behavior
- would just as soon be dead unless someone can affirm their need to remain alive
- cutting regulates emotions, alleviates feeling empty, and provides relief or diminishes pain
- self-anger or self-hatred
- punishes self for perceived wrong-doing
- manipulative

Criteria of BPD Con't

Emotional instability

- due to significant reactivity of mood (e.g., intense episodic dysphoria, irritability, or anxiety usually lasting a few hours and only rarely more than a few days)
- emotional volatility with rage, strong reaction to stress and responsibilities
- emotional dysregulation
- skewed perceptions due to black and white thinking

Criteria of BPD Con't

Chronic feelings of emptiness

- an internal empty world
- feelings of worthlessness and helplessness
- devalues self
- sense of entitlement and even power bc feels powerless

Criteria of BPD Con't

Inappropriate, intense anger

- difficulty controlling anger (e.g., frequent displays of temper, constant anger, recurrent physical fights)
- hypersensitive to everything
- chronic discontentment due to a lack of security, stability, safety
- at war with the entire world
- responds disproportionately and rapidly, ie, raw skin

Criteria of BPD Con't

Transient, stress-related paranoid thoughts

- severe dissociative symptoms
- paranoia under extreme stress
- suspicious, guarded, low trust in self or others
- this is psychosis

Criteria of BPD Con't

Cognitive Dysregulation

- difficulty processing information
- confusion / doubt
- disorganization in daily life
- inattention / poor focus
- preoccupied thoughts
- cognitive distortions of self (and other)

Criteria of BPD Con't

Communication Dysfunction

- I'm fine = I'm not fine. I need help.
- I'm just tired = I can't take this anymore.
- I already ate = I starve myself.
- Go way = show me you care enough to stay away
- I'm just cold = I don't want you to see my scars.
- I'm better, I promise = I've never been this bad.
- I'm okay = I just want to die.

Criteria of BPD Con't

Poor Self-Preservation

- Tendency to undermine own best interests
- Jeopardize health or safety
- Disorganized in daily life
- Messy / ADHDish

Criteria of BPD Con't

The Quiet Borderline

- Subclinical / Atypical issues?
- the quiet borderline is often not taken seriously enough or heard in time to make a difference.
- May appear depressed or withdrawn (men)

Abandonment Issues

- Frantic efforts to avoid real or imagined abandonment: The perception of impending separation or rejection, or the loss of external structure, can lead to profound changes in self-image, emotion, thinking and behavior. Someone with borderline personality disorder will be very sensitive to things happening around them in their environment. They experience intense abandonment fears and inappropriate anger, even when faced with a realistic separation or when there are unavoidable changes in plans. For instance, becoming very angry with someone for being a few minutes late or having to cancel a lunch date. People with borderline personality disorder may believe that this abandonment implies that they are “bad.” These abandonment fears are related to an intolerance of being alone and a need to have other people with them. Their frantic efforts to avoid abandonment may include impulsive actions such as self-mutilating or suicidal behaviors.

Intense unstable Relationships

- Unstable and intense relationships: People with borderline personality disorder may idealize potential caregivers or lovers at the first or second meeting, demand to spend a lot of time together, and share the most intimate details early in a relationship. However, they may switch quickly from idealizing other people to devaluing them, feeling that the other person does not care enough, does not give enough, is not “there” enough. These individuals can empathize with and nurture other people, but only with the expectation that the other person will “be there” in return to meet their own needs on demand. These individuals are prone to sudden and dramatic shifts in their view of others, who may alternately be seen as beneficent supports or as cruelly punitive. Such shifts often reflect disillusionment with a caregiver whose nurturing qualities had been idealized or whose rejection or abandonment is expected.

Identity Disturbance

- Identity disturbance: There are sudden and dramatic shifts in self-image, characterized by shifting goals, values and vocational aspirations. There may be sudden changes in opinions and plans about career, sexual identity, values and types of friends. These individuals may suddenly change from the role of a needy supplicant for help to a righteous avenger of past mistreatment. Although they usually have a self-image that is based on being bad or evil, individuals with borderline personality disorder may at times have feelings that they do not exist at all. Such experiences usually occur in situations in which the individual feels a lack of a meaningful relationship, nurturing and support. These individuals may show worse performance in unstructured work or school situations.

Non-DSM5 Criteria

- Cognitive Dysregulation
- Behavioral Dysregulation (Poor Functioning)
- Psychic Pain
- Poor Sense of Self-Preservation
- Pity Party Due to Perceived Victimization
- Manipulation and Coercion
- Hypersensitivity

Non-DSM5 Criteria Con't

- Projective Identification
- Splitting
- Weak Ego-Boundary
- Social Awkwardness
- Quietness
- Boredom
- Anhedonia
- Lack of Insight / Alexithymia
- Catastrophic Thinking
- Provocation and Validation

III. Special Considerations

Prognosis

- Research has shown that outcomes can be quite good for people with BPD, particularly if they are engaged in treatment. With specialized therapy, most people with borderline personality disorder find their symptoms are reduced and their lives are improved. Although not all the symptoms may ease, there is often a major decrease in problem behaviors and suffering. Under stress, some symptoms may come back. When this happens, people with BPD should return to therapy and other kinds of support.
- Many individuals with BPD experience a decrease in their impulsive behavior in their 40's.

Demographics: Men

- % 75 females - > males often missed
- between 1.6 and **5.9 percent of population**
- %10 end in death
- Often client has been the victim of abuse
- Often has serious related issues, such as drugs or self-destructive conduct
- Test yourself – when is the last time you had a BPD case for mitigation and / or defense

Concomitant Issues

- Drugs
- Psychopathy / anti-social personality disorder
- Depression
- Anxiety
- Eating Disorders
- Learning Disorders
- ADHD - Constant level of intense distraction
- Developmental Issues
- Family dysfunction

Symptoms Turned Positive

- Sensitivity to emotional and social cues, especially negative ones -> empathy to the moods and thoughts of others, especially the suffering of others
- Impulsivity and reactivity -> spontaneity and excitement
- Lack of boundaries -> ability to merge (easily falls in love, see things in new ways)

Symptoms Turned Positive Con't

- Intensely emotional -> passionate and creative
- Vengeful -> strong sense of right and wrong
- Fear of abandonment -> strong personal attachments
- Neediness -> willingness to please
- Unstable sense of self -> flexibility

BPD: The Difficult or Demanding Client

- Refuses good legal advice -> Undermines strategy
- Never feels satisfied -> Never-ending complaints
- May report lawyer to the bar -> ruin reputations
- Exceedingly needy -> time/energy/thought consuming
- Poor ego differentiation -> lack of boundaries
- All of his problems -> become your problems
- Counter-transference

IV. Mitigation Considerations

BPD Perfect for Mitigation

- BPD truly explains or contextualizes behavior and decision-making
- Concomitant disorders
- Dysfunction / Self-destructive - undermines own best interests
- Poor sense of self-preservation
- Fears, anxieties of various kinds
- Pattern of history of problems
- Emotional dysregulation - turmoil, dysfunction, imbalance
- Poor or neglectful parents / history of abuses

BPD Perfect for Mitigation Con't

- May appear high functioning, but in fact low functioning or extremely fragile and vulnerable -> humanize the pathos
- Many treatment options, such as DBT
- Dispels bias – displaces perception of narcissism
- Ill not bad – reframe behavior
- Manipulative – coercive, drives other people nuts
- Very important where there is more than one defendant

BPD Contrary to Usual Mitigation Strategy

- Aberrant decision
- Misguided behavior
- Error in judgment
- Foolish conduct (dumb mistake, no animus)
- Unthinking moment
- Diminished capacity
- Life stressors
- Poor judgment, but not evil, ie, not bad
- Cumulative considerations

A good conceptual framework in general

- A means to understand behavior, thinking, and feeling

Mitigation Considerations

- What did the client's past look like?
- What role did the client play?
- Will the client likely repeat this behavior?
- Will incarceration promote deterrence?
- What will promote justice and promote respect for the law?
- What will the client's experience be like in prison?
- Does he require educational, vocational, medical, or psychiatric assistance?
- What kind of rehabilitation is needed and has it already started?

Mitigation Considerations Con't

- Has the client accepted responsibility for his wrongdoing (remorse and regret), and what to extent?
- Has restitution already started? Is it possible?
- What is a fit punishment? Has the client already been punished?
- What is the least harsh alternative
- Are there alternatives to jail that would better serve the client, family, or community?
- Who will be harmed or protected by incarceration?
- What are the family's needs?
- What will the client's future look like?
- What are the cumulative Mitigation factors?

The Ten “R’s” of Mitigation

- Reality - facing a full narrative
- Rhea- mens rea / intent / volition
- Recency- when did the crime occur
- Repetition - examine client's overall record
- Rung - what level of seriousness is involved
- Restorative - has the client righted the wrong
- Rehabilitation - client has, can, or will change
- Remorse / Regret - does the client understand and accept his actions
- Roles – community role and behavior in crime
- Recommendations - what can be fixed who can be helped

Thank You !