

THE LINK BETWEEN BORDERLINE PERSONALITY DISORDER AND HOMICIDAL BEHAVIOR

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When someone is murdered, the first question asked is, why? This article will attempt to provide one possible explanation to that question. The authors will also discuss the impact that a defendant's borderline personality disorder has on legal issues such as criminal responsibility, legal strategy, sentencing and the attorney-client relationship.

Matthew Smith was a fifty-year-old divorced male with three children ranging in age from three to sixteen. Although most relationships have their ups and downs, the Smiths' relationship had taken this to the extreme. Despite maintaining that his wife was the love of his life, Mr. Smith constantly accused her of infidelity, made suicidal threats, and complained about her spending. After several trial separations, the couple finally divorced. After having entertained these suicidal thoughts over the course of their relationship, he finally decided to take his own life. On what would have been their twenty-fifth wedding anniversary, Mr. Smith got into his car and drove to his ex-wife's apartment. As he waited for her to come home, he obsessed about what his life had become and how all of his problems were her fault. Wanting to make her suffer, he felt strongly that she needed to witness what she had driven him to do. He then saw her talking on the phone as she got out of her car. He approached her car, taking his gun out of his pocket. He called out to her, causing her to turn around. Upon hearing her laughter, he shot her. He then calmly called the police and confessed to the killing.¹

In approximately 78% of all homicides committed in the United States, the victim was killed by a family member, acquaintance or friend (1). This

¹ As the authors have created a definitive example (with a fictitious name) of catathymic homicide, it must be kept in mind that the "stages" through which a defendant may have progressed leading up to his/her offense, may not be as sequential or as clearly defined as we have implied in our vignette.

frequency is consistent with the homicide cases with which we have been involved. Our experience with these cases has led us to question whether or not there was a particular behavioral pattern that could explain this type of violence and/or a particular mental health diagnosis that was common among those charged with these offenses. We began to notice that the defendant in many of the cases had evidenced intensifying emotional tension to the point that (to him/her) committing either homicide or suicide represented the only conceivable resolution of his/her problems. This type of homicide has been identified by researchers as “catathymic” homicide,² or more broadly described as “rage” killings (2-6). What we postulate here is that there is a connection between homicides that occur during a catathymic crisis and defendants suffering from borderline personality disorder (BPD). Information regarding BPD may be relevant both in formal legal proceedings and in understanding and working with what are typically very difficult clients. This article will briefly describe the characteristics of catathymic homicide and BPD, explore the connection between these two, and describe the possible legal implications including the impact that BPD has on the attorney-client relationship. Finally, we will return to the vignette in order to provide the reader with an example of the connection between BPD and catathymic homicide.

CATATHYMIC HOMICIDE

The term “catathymic crisis” has been used over the years by researchers to describe extremely violent actions believed to be a result of a build-up of psychological tension from an unresolved emotional conflict (7). Frederic Wertham was one of the first researchers to apply this concept to homicide (6). He proposed that an awareness of this psychological phenomenon could assist in the understanding of certain types of violent acts, specifically homicides. Wertham provided a detailed description of eight stages of a catathymic crisis. In the first stage, a psychologically traumatic event generates a significant level of emotional tension in the subject that he/she is unable to resolve. In the second stage, the individual projects blame for his/her inner emotional tension onto another individual. This defense mechanism

² Although researchers have identified two forms of catathymic homicide, chronic and acute, for the purposes of this article, the authors will discuss “catathymic” in a matter consistent with the concept of “chronic” catathymia, the type most relevant to defendants with BPD.

operates to relieve the internal emotional tension he/she is experiencing. In the third stage, the individual's thinking becomes increasingly more self-centered. In the fourth stage, the individual becomes fixated on the idea that there are only two solutions that could relieve the internal tension that is becoming overwhelming—suicide or homicide (6). The fifth stage begins with a lengthy period of conflicting ideas about whether or not to carry out this violent resolution. The end of the fifth stage is marked by an attempted or completed act of violence. In the sixth stage, which generally occurs immediately following the act, the individual experiences immediate and almost entire relief. Most often, these individuals are completely unaware of the reason for their relief. In the seventh stage, with the emotional tension removed, there is an appearance of normalcy lasting up to several months. In the eighth stage, an inner psychological and emotional stability is established, which leads to insight (6).

Approximately thirty years later, Wertham supplemented his theory of catathymia to include a delusional thought process (8). He described a process by which the offender becomes obsessed with resorting to violence without a rational motive or the ability to engage in reality checking. He further posited that the offender no longer sees the victim as a person but, instead, views him/her as a symbolic representation of the source of internal tension (8). Recognition of this dynamic will aid counsel and mental health professionals in their understanding of the defendant's depersonalization of the victim as well as the lack of remorse.

CHARACTERISTIC FEATURES OF BORDERLINE PERSONALITY DISORDER

Along with histrionic, narcissistic and antisocial personality disorders, BPD is considered to be one of the "Cluster B" personality disorders listed in the *Diagnostic and Statistical Manual, Fourth Edition, Text Revision* (DSM-IV-TR) (9). These disorders are referred to as the "dramatic," "emotional," or "erratic" disorders (9). Such disorders are best explained as disorders characterized by dysfunctional emotional regulation, anger dyscontrol, high reactivity to stress, and an inability to control aggression. Of particular relevance to catathymic homicide is the following DSM-IV-TR commentary regarding BPD:

The perception of impending separation or rejection can lead to profound changes in self-image, affect, cognition, and behavior. These individuals are very sensitive to environmental circumstances. They experience intense abandonment fears and inappropriate anger even when faced with a realistic time-limited separation...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...They 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 the relationship. However, they may switch quickly from idealizing the other person to devaluing them, feeling that the other person does not care enough, does not give enough, is not “there” enough. These individuals are prone to sudden and dramatic shifts in their views of others, who may alternately be seen as beneficent supporters 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...Individuals with this 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 meaningful relationship, nurturing and support (9, pp. 706-707).

THE CONNECTION BETWEEN BPD AND CATATHYMIC HOMICIDE

The psychological literature is clear in documenting a strong connection between BPD and violence (10-15). Among the generally recognized emotions that motivate homicide are jealousy, fear, hate, anger/rage, rejection, depression/hopelessness and embarrassment (see Buss [16] for a description of emotions that motivate murder). The research also overwhelmingly recognizes that an individual with BPD has severe deficits in emotional processing and regulation, as well as deficits in controlling his/her emotional responses (17-19). The extent to which BPD may serve to predispose an individual to homicide is underscored by the work of Marsha Linehan. In her book, *Cognitive-Behavioral Treatment of Borderline Personality Disorder* (18), Linehan conceptualized that individuals with BPD often experience severe dysregulation in multiple areas of their lives, including emotions, interper-

sonal relationships, behavior, cognition and the sense of self—all of which could motivate the individual to act out violently.

Our observations from working with this population are consistent with Linehan's formulation, as we have found that the cognitive, emotional and behavioral dysfunctions inherent in BPD have served to predispose those individuals to a catathymic crisis (18). Because individuals with BPD are hypersensitive to rejection, experience trust issues and have fears of abandonment, they are more likely to overreact to perceived rejection, threats to the ego, or psychological insult (9, 17-20). Difficulties in regulating their emotions predispose individuals with BPD to experience an intensification of their internal psychic/emotional tension. Individuals with BPD are also likely to employ various defense mechanisms in order to relieve their internal conflict, such as blaming the victim for their own internal struggle (2-6). As the catathymic crisis continues, individuals with BPD will likely experience emotional instability surrounding their conflicting thoughts about whether or not to carry out this violent resolution.³ Individuals with BPD can experience severe cognitive dysfunction in the form of paranoid ideation, delusions, and dissociation, all of which make them more susceptible to acting out violently (20). This dysfunction sets the stage for poor decisions, resulting in impulsive and self-destructive behaviors, including thoughts and acts of suicide and/or homicide. After the act, even though they are often unable to reconcile/understand their impulsive behaviors, such individuals frequently experience a sense of calm (20).

An attorney presented with a case involving a defendant who demonstrates characteristics of BPD should seek out consultation and/or obtain a comprehensive evaluation of his/her client by a forensic mental health practitioner. The practitioner will be able to assist the attorney in understanding the psychological dynamics and psychopathology that may have contributed to the homicidal act. By the time the practitioner encounters a client facing homicide charges, the defendant would have transitioned through the first five stages and would have entered into the sixth or seventh stage. The earlier stages are identified retroactively through information gained from clinical interviews and through objective evidence, including the discovery materials

³ Brown and Barlow (20) described this emotional instability as dichotomous thinking vacillating between rational and irrational thought.

related to the criminal investigation. The initial encounters with the defendant post-arrest will more than likely take place during the period of relative “normalcy”—as described in the seventh stage (2-6). That characterization would apply directly to the absence of the psychic tension that had been so pervasive throughout the first six stages. During this time period, it is also likely that the defendant will be responding more to the practical and emotional demands of his/her legal situation than to any feelings regarding the decedent. The forensic mental health practitioner might also be utilized as a consultant to the attorney in his/her efforts to manage the challenges inherent in establishing and maintaining an effective attorney-client relationship with a defendant who has BPD. Once determined, the next question that arises is: Of what legal significance are these psychological factors?

LEGAL RELEVANCE OF BPD IN HOMICIDE/ATTEMPTED HOMICIDE CASES

In our experience, violent crimes and homicides committed by subjects with BPD are rarely amenable to a factual defense. The application of the objective facts to the appropriate statute is rarely in doubt. These subjects leave physical evidence of their crimes and often make known their intent before the fact, or through a confession after the fact. The prosecution will likely face few obstacles in overcoming the presumption of innocence and proving the case beyond a reasonable doubt. While a BPD diagnosis may be used to support an affirmative defense or negate an element of the offense, the significance of such a diagnosis most often arises in the determination of penalty.

Criminal Responsibility

In 1984, following John Hinckley’s attempted assassination of Ronald Reagan, the federal government passed the Insanity Defense Reform Act (IDRA) (21) which shifted the burden of proof from the prosecution to the defense and eliminated the volitional prong.⁴ Today, in most jurisdictions, insanity is determined by an examination of the defendant’s *cognitive* ability—his/her ability to appreciate the nature and quality or the wrongfulness of his/her actions (21).

⁴ The IDRA is the governing standard for the federal courts only. Each state establishes its own standards.

For some individuals, the break with reality fueled by BPD-related psychotic or dissociative episodes may rise to the level where the defendant could meet the difficult cognitive standard of an insanity defense. The DSM-IV-TR criteria for a diagnosis of BPD itself, in fact, suggest the possibility of a psychotic and/or dissociative episode, especially during periods of stress.⁵ The concept of BPD was originally proposed to describe individuals who were not quite psychotic and not quite neurotic (22). Initially, the term “borderline” was used interchangeably with the term “pseudoneurotic” to identify personality states “in which schizophrenia features were implied but not overtly manifest in the normal course of events” (23, p. 398). According to Weiner, the two terms most frequently applied to such personality types at that time were “pseudoneurotic schizophrenia” and “borderline schizophrenia” (23).

In addition to psychotic and/or dissociative episodes being a possible component of BPD, BPD is frequently comorbid with other forms of severe mental illness. According to the DSM-IV-TR, as well as the current psychological literature, common Axis I disorders co-occurring with BPD include schizophrenia, mood disorders, substance-related disorders, and posttraumatic stress disorder, among others (9, pp. 24-27). The addition of a co-occurring illness to a diagnosis of BPD could serve to increase the frequency of a psychotic and/or dissociative episode. This factor, by itself, would not be dispositive of that individual meeting the requisite criteria for an affirmative defense.

In jurisdictions where expert testimony may be considered in order to negate an essential element of the prosecution’s case, BPD-related symptoms (e.g., impulsivity, dissociation, psychotic thinking) could serve to underscore the extent to which the defendant was incapable of forming specific intent.⁶

⁵ According to the DSM-IV-TR (9) “During periods of extreme stress, transient paranoid ideation or dissociative symptoms may occur. These episodes occur most frequently in response to a real or imagined abandonment. Symptoms tend to be transient, lasting minutes or hours....Some individuals develop psychotic-like symptoms during times of stress.”

⁶ Specific intent is defined as an act is done knowingly, voluntarily or intentionally by the defendant, and not due to a mistake or accident or other innocent reason. *United States v. Cameron*, 907 F.2d 1051, 1065 (11th Cir. 1990); *U.S. v. Dietz*, 2011 WL 3625704 (C.A.4 (SC))

In addition, the combination of BPD symptomatology and other crime-specific circumstances, such as duress and voluntary intoxication, could also be used to negate an element of the crime. It should be noted that, in some cases, BPD may have limited or no application to these issues. For prosecuting attorneys, this point underscores the importance of consultation with forensic mental health practitioners in an effort to address or rebut any such defense assertions.

One area where mental health testimony regarding BPD may become legally significant is that of voluntary manslaughter. While in many jurisdictions the elements of serious provocation, sudden and intense passion and the lack of a cooling off period must first meet a reasonable man standard (i.e., whether a reasonable man, confronted with the event or series of events, would become impassioned to the extent that he would be incapable of cool reflection), once that threshold is met, subjective psychological evidence may be used to support the source of the defendant's passion (28). With the psychological/psychiatric findings in mind, a jury would address the question: Was the provocation sufficient to cause an individual with BPD to act in such a manner? In jurisdictions without the requirement that a reasonable man standard be reached, the BPD diagnosis and behaviors could be introduced to directly address the issues of provocation, intense passion and the cooling off period.

Whether or not the BPD diagnosis is sufficient to support a viable affirmative mental state defense, it could play a role in plea bargain negotiations with the prosecution. The use of plea bargaining can balance our justice system's multiple goals of retribution, deterrence, incapacitation, and rehabilitation (29). Mental health professionals have long played a role in plea bargaining by presenting psychological information relevant to culpability as well as assisting the Court in matching appropriate sentences with the specific offender's characteristics (30). However, because of the frequency with which the strength of the factual case involving individuals with BPD is so dispositive, this would likely be an uphill battle for the defense as with any affirmative defenses.

Sentencing and/or Death Penalty Mitigation

While an understanding of the role a mental health diagnosis played in the commission of a crime should be essential to any presentation of sentenc-

ing or death penalty mitigation, a diagnosis of BPD could be particularly relevant. The forensic mental health practitioner can assist in these cases by explaining to the court and/or jury how the defendant with BPD differs from the stereotypical defendant as well as any psychological underpinnings that may have contributed to the defendant's inability to control his/her behavior. BPD can be used to assist the court in an understanding of these homicides. From the defense's standpoint, it may underscore the extent to which the defendant's capacity for reasoning and/or judgment was negatively affected at the time of the offense. From the prosecutor's standpoint, there may be psychological information that indicates limited or no impairment in the defendant's capacity for reasoning and/or judgment.

THE IMPACT OF BPD ON THE ATTORNEY-CLIENT RELATIONSHIP AND LEGAL STRATEGY

The diagnosis of BPD has both practical and strategic implications for the defendant's representation. On a practical level, not surprisingly, the symptoms of BPD⁷ are likely to influence the attorney-client relationship, as well as the ability of counsel to effectively represent the defendant at trial. In addition to focusing on the facts and legal issues of the case, counsel would benefit by having an understanding of the dynamics needed to work with an individual with BPD. Atkins et al. (31) underscored the importance of a forensic mental health professional working "with counsel toward a better understanding of all aspects of the defendant, not simply his/her legal problems." Counsel will, in many cases, become an inappropriate target of BPD-generated attitudes and behaviors, such as being threatened verbally and physically, being accused of improper or unethical conduct, getting "fired" and, generally, being manipulated.

The attorney may face several additional challenges when working with a client that has BPD. For example, the attorney will need to communicate the reality of the situation to the client and will need to determine the most effective means of overcoming the client's resistance to realistically evaluating his/her options. We have found that it is quite useful to be able to identify

⁷ Symptoms of BPD include: a pattern of unstable and intense interpersonal relationships characterized by alternating between extremes of idealization and devaluation, impulsivity, affective instability (i.e., irritability) and inappropriate, intense anger or difficulty controlling anger.

the client's *actual* objectives (both conscious and subconscious), which can be at odds with the attorney's efforts to effectively represent the client. An understanding of the client's objectives may assist counsel in arriving at a strategy that serves both those objectives and the client's legal interest.

While this article is not an exhaustive examination of the attorney-client relationship when representing a client with BPD, a few suggestions are offered.

1. Be very consistent and concrete in your dealings with your client. Be precise in setting up meetings and punctual in attending them. Establish and maintain very clear boundaries and set very firm limits for these meetings.
2. Whenever possible, provide your client with documentation of points you wish to pursue.
3. Listen very carefully for the subtext of what your client is telling you.
4. Remain patient and persistent. Avoid personalizing your client's attacks and projections by reminding yourself that these are expected manifestations of his/her illness.

The reason for consistency and concreteness is the tendency of the BPD client to interpret any variation in the attorney's presentation or manner as an abandonment and/or betrayal. BPD individuals are hypersensitive to any perceived failure to meet an expectation and will, consequently, become uncooperative or belligerent. Similarly, the reason to document the points you wish to pursue is to show the client that you are following through and working to meet expectations. Such documentation is also helpful when, in an attempt to manipulate, the BPD client takes matters out of context. Furthermore, it documents your relationship for any potential post-sentence matters. Because of the personality traits discussed above, BPD clients can be very obtuse in their communication. They can also be bellicose, belligerent and demanding or extremely guarded and vague, sometimes within the same interview. Thus, it is necessary to ascertain subtext. While the client may be railing about the injustice of the system, he/she may actually be indicating that his/her primary motivation is the need to talk about the injustices he/she has suffered at the hands of the victim. What may appear to be an irrational

and self-defeating decision to take his/her case to trial may actually reflect an underlying need to present his/her own “victimization” experience in a public forum. Finally, it is crucial that counsel remain patient and persistent. Once the BPD client has demonized counsel, he/she may act out in an attempt to drive the attorney away. It is likely that the client has used this strategy previously to bring about a self-fulfilling prophecy of abandonment or betrayal. When this occurs, if the attorney persists in visiting the client and attempting to communicate, it is possible that, on some level, the client may acknowledge that his/her attorney is not abandoning him/her. This may serve as a basis to move forward toward the goals of representation.

An understanding of BPD is also useful in assisting defense counsel with his/her efforts to explore any BPD-driven thoughts and/or behaviors that could interfere with the defendant’s willingness to accept a plea. Atkins et al. (32) discussed the role the forensic mental health professional could play in such situations. The authors addressed the consultative role that a practitioner could play: “For example, he or she may aid [the attorney] in devising communication strategies to reach and aid the defendant in making the difficult choices that arise in capital litigation, such as accepting a plea to a life sentence in order to avoid a death sentence” (32, p. 8).

CONCLUSION

Let us return to the case of Matthew Smith, the gentleman to whom you were introduced at the beginning of this article. Even without a lengthy historical narrative, our brief vignette reveals components of both an underlying BPD and a resultant catathymic crisis. In spite of his complaints about his wife, Mr. Smith came to believe that he could not live without her and, subsequently, became increasingly suicidal following the divorce. Comingled with this suicidality were feelings of anger—at times, rage—toward her for having abandoned him and for having destroyed his world. Consequently, he determined that, although *he* was the one that would die, *she* would at least have to witness the event.

The early stages of the catathymic crisis were triggered by Mr. Smith’s feelings of insecurity and paranoia regarding his wife’s fidelity. Consequently, a significant level of emotional tension was generated. Unable to resolve this tension, he blamed his wife for his pain. The middle stages of the crisis

reflected his having come to believe that relief of this tension could be accomplished only through his death. The violent method by which he would achieve this objective—as well as his need for his ex-wife to witness this violence—are manifestations of his underlying, unresolved feelings of anger. As individuals with BPD are exquisitely sensitive to rejection, Mr. Smith interpreted his ex-wife's laughter as derisive and as being directed toward him. In that instant, the violent act was redirected toward her. Experiencing an almost immediate sense of relief following the shooting, Mr. Smith no longer felt the need to take his own life. Hence, the “calm” call to the police.

The manner in which a defense attorney might utilize the circumstances surrounding Mr. Smith's commission of his ex-wife's murder will be left for the attorney to determine. The formulation of a legal strategy should, however, include consultation with a forensic mental health practitioner. Likewise, should this issue be raised by the defense, it would be beneficial for the prosecutor to consult with a forensic psychologist in order to determine the relevance of BPD and/or comorbid symptomatology. Representation of homicide clients who suffer from BPD may be one of the greatest challenges faced by defense counsel. However, a recognition and an understanding of the illness may assist counsel strategically in communicating at various points in the process—pretrial, trial and, particularly, at sentencing—why the individual was psychologically driven to commit a violent crime. It may further assist defense counsel in navigating the minefields inherent in relationships with BPD individuals and in maintaining the attorney-client relationship. Ultimately, an understanding of BPD may assist defense counsel, the prosecutor, and the court in reaching a reasonable and just resolution of the case.

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