

Mitigation Basics



Josie Van Dyke
Sentencing Solutions, Inc.

What is mitigation and how do I use it?



- ❧ Everything has mitigation possibilities!
- ❧ There are statutory guidelines, but the ADA, Judge, and jury may consider nearly limitless information.
- ❧ Know everything you can about your client. Tell their story.
- ❧ In addition to gathering information to “help” them in the traditional ways, anticipate difficult questions or things you may need to explain about your client. For example, “What has happened to this person?” “What was he/she thinking?”
- ❧ This information may take many forms and have many audiences.

“What Happened?”



- ❧ What conduct or problems in your client's life contributed to their criminal charges?
 - ❧ Substance abuse
 - ❧ Mental health problems
 - ❧ Financial/employment problems
 - ❧ Personality Disorders
 - ❧ Cognitive impairment
 - ❧ Adverse Childhood Experiences (Can be broad)
 - ❧ Family History (of above items and criminality)
 - ❧ The list goes on

How do you find out what happened?

- ❧ Ask your client questions.
- ❧ Talk to family members and others who know them (as appropriate).
- ❧ Read police reports
- ❧ Send for important records
- ❧ Obtain additional assessments
- ❧ Follow up with more questions as you obtain more information.

Ask your client Questions

- ❧ You can ask direct questions such as:
 - ❧ Do you have any psychiatric or medical diagnoses?
 - ❧ Do you have a drug or alcohol problem?
 - ❧ What is your financial situation?
 - ❧ Was Social Services ever involved with your family?
 - ❧ Have you ever received services for a developmental disability or brain injury?
 - ❧ Can you read and write okay?
- ❧ Sometimes this will work.

Ask your client Questions

❧ More indirect questions:

- ❧ Are you taking any medications?
- ❧ Have you ever been hospitalized for any reason?
- ❧ Who was your last doctor? Do you remember why you saw them?
- ❧ Have you ever been to treatment for drugs or alcohol?
- ❧ Have you ever been court ordered to have a substance abuse assessment?
- ❧ Are there any drug or alcohol charges on your criminal record?
- ❧ Did you receive special education services or have an IEP in school?
- ❧ Can you tell me about the neighborhood where you grew up?
- ❧ Do you receive disability benefits?
- ❧ Are you currently employed or where did you last work?
- ❧ Where are you living? Have you ever been homeless?
- ❧ How do you pay your bills?

What's Right



- ❧ Don't forget everyone has someone who loves them and thinks they are great!
- ❧ Who is the person who has treated you the best?
- ❧ Who do you love/like/respect?
- ❧ Did you play sports or were you involved in any extra activities?
- ❧ Were you ever involved in religious activities?
- ❧ What are your job skills?
- ❧ What classes have you taken (even while incarcerated)?
- ❧ This is just a starter list.

Be Patient and Persistent



- ❧ Gaining client trust and gathering information is a process.
- ❧ Be patient. Many of the topics you will discuss can be painful for your client.
- ❧ The client may not be fully aware of the impact of some experiences on him/her and may be processing issues as you are working with them.
- ❧ Your hard work will help earn your client's trust. This can make him/her more likely to take your advice regarding difficult legal decisions.

ACES as an Interview Tool



- ❧ Adverse Childhood Experiences Survey (ACES) may help identify particularly harmful experiences your client may have had.
- ❧ These early childhood experiences are linked to many problems in later life.
- ❧ The survey can be a good ice-breaker for difficult conversations
- ❧ This short survey is also very impactful when sharing information about your client.
- ❧ The longer version is great for “digging deeper.”

Talk to family members (If appropriate)



- ❧ Many clients will want you to speak with family members to show that they have support in the community or to verify their personal history.
- ❧ Understanding family history can often help explain a defendant's current situation, behaviors, and attitudes.
- ❧ If the client does not want you to talk to family, you need to ask yourself why. There is a reason for this also.
- ❧ Family can be a source of support and/or part of the reason your client is in trouble.
- ❧ Use caution when relying on family members for information.
- ❧ If your client has no "diagnosed" issues such as substance abuse, medical, mental health, or is not in crisis, family history may be the only thing that explains the criminal behavior.

Get the family on board!



- ❧ Visit them in person if you can.
- ❧ Have them tell you specific stories about the client.
- ❧ Ask open-ended questions whenever possible.
- ❧ Get pictures and awards!
- ❧ Have them tell you about others who are important in your client's life. (Get contact information.)
- ❧ Often families will help get character letters for the client.
- ❧ Building a relationship with the family will sometimes help build trust with your client.

Genograms



- ❧ Use Information gathered from client, family, and other documents to prepare a genogram (family tree).
- ❧ This is a great visual aid that shows a lot of information in a clear format.
- ❧ You can show substance abuse, mental health, criminal history, family dysfunction and much more in one visual aid.
- ❧ This can have a big impact on a prosecutor, judge, or jury.

Read Police Reports



- ❧ Police reports and other investigative reports may contain useful information about:
 - ❧ Substance use/ abuse
 - ❧ Your client's mental state
 - ❧ Financial situation
 - ❧ Cognitive ability
 - ❧ Family dynamic
- ❧ There may even be statements from the victim regarding a desire for the defendant to receive help or services.

Send for Important Records

- ❧ You have already asked their history so all you need is the appropriate signed release or court order!
- ❧ First try just asking clients, “Where do I need to send for records to verify your history?”
- ❧ Many clients want to help and understand documents are more convincing to district attorneys and judges than their report alone.
- ❧ This helps verify diagnoses, treatments, medications, family issues, educational problems.
- ❧ Can contain positive or negative information.
- ❧ Records can be VERY expensive. A solid court order will allow you to secure records without outrageous invoices.

Records 101



- ❧ If you do not regularly request records from a facility or agency, CALL (or go online) and ask about the correct procedure. This will save you a lot of time.
- ❧ Save this information for future use.
- ❧ Keep a list of records requested.
- ❧ Follow up if you do not receive them in a timely fashion.
- ❧ Requests get lost or delayed and your follow up may be appreciated.
- ❧ Your first set of records may be incomplete, and you may need to call again.

Reading the Records

Look for abnormalities/inconsistencies OR items which support the history your client reported.

Look for additional providers, schools, people, or facilities you may need to contact.

Don't limit yourself when reading particular sources to what you expect to see.

There can be a lot of “crossover” when reading records. For example, a client may have been in legal trouble as a juvenile and received evaluations from school and mental health providers.

Expert Help



- ❧ Know when to get help.
- ❧ Your mitigation specialist can request and review extensive records, locate and interview mitigation witnesses, and perform many other responsibilities.
- ❧ We can help prepare a mitigation packet/presentation.
- ❧ In many cases, records and interviews will indicate the involvement of a psychologist, psychiatrist or other expert is necessary.
- ❧ Keep in mind, this may be the first time your client has ever been evaluated and possibly diagnosed.

Connection is Key



- ❧ Identify key mitigation points or themes
- ❧ Provide support and specifics related to those themes.
- ❧ Explain how they connect to the criminal offense or behavior surrounding the charges.
- ❧ Describe how this is mitigating for the particular client and this charge/offense.
- ❧ This can be useful not only in presenting to the ADA and Judge but also shows the client how hard you are working for them.

Contact Us



☞ Sentencing Solutions. Incorporated

☞ Josie Van Dyke 919-418-2136

☞ Please feel free to email questions:

☞ josievandyke@aol.com