

# Mental Disabilities in Jails and Prisons, NACDL April 2022

Presented by Elizabeth Kelley

# Mental Disabilities

Mental Illness

Intellectual/ Developmental Disabilities

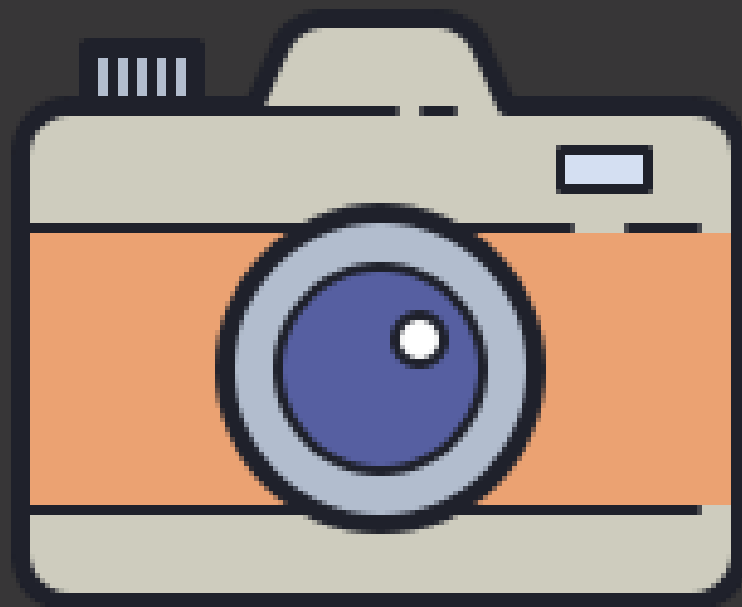
Co-occurring Disorders



# Competency

## Dusky v. U.S. (1960)

- Sufficient present ability to consult with lawyer with reasonable degree of rational understanding
- Rational as well as factual understanding of the proceedings



\*Accused's level of functioning at the time of the legal proceedings



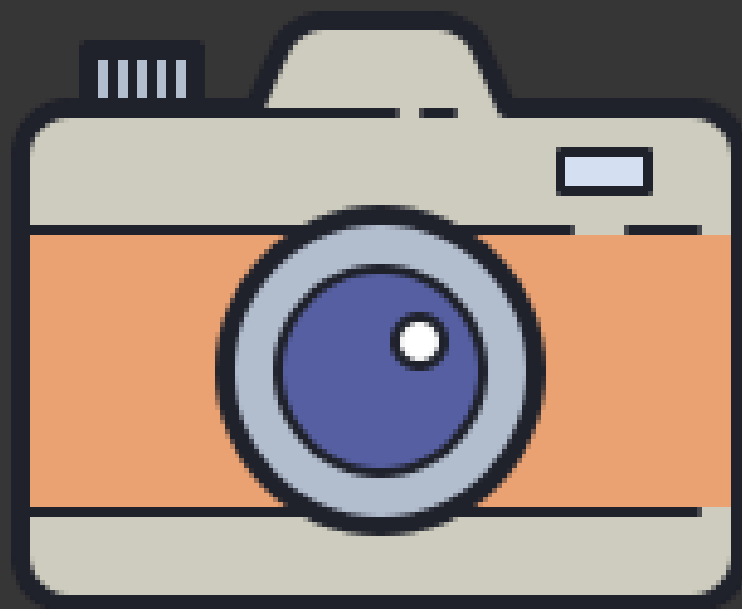
# Restoration

Restoration – No!  
Management – Yes!

# Responsibility

Insanity

Diminished Capacity



\*Accused's level of functioning at the time of alleged offense

# Insanity

## 18 U.S. Code § 17 - Insanity defense

### **(a) Affirmative Defense.—**

It is an affirmative defense to a prosecution under any Federal statute that, at the time of the commission of the acts constituting the offense, the defendant, as a result of a severe mental disease or defect, was unable to appreciate the nature and quality or the wrongfulness of his acts. Mental disease or defect does not otherwise constitute a defense.

### **(b) Burden of Proof.—**

The defendant has the burden of proving the defense of insanity by clear and convincing evidence.

# Mitigation/ Leverage Plea



# The Expert

Purpose

Get Early

Where to Find

Treating Expert Can't Be Forensic Expert

Team





# Table 1

TABLE 1

	<b>Neurologist</b>	<b>Neuropsychiatrist</b>	<b>Neuropsychologist</b>	<b>Social Worker</b>
<b>Degree</b>	MD or DO	MD or DO	PhD or PsyD	Master's degree
<b>Specialty Training</b>	Residency, Fellowship	Residency, Fellowship	Postdoctoral Fellowship	Licensing requirements for clinical practice determined by state, dependent on experience and setting
<b>Board Certification</b>	American Board of Psychiatry and Neurology	American Board of Psychiatry and Neurology	American Board of Professional Psychology or American Board of Professional Neuropsychology	None per se, but various specialty trainings are available
<b>Primary Function</b>	Assessment, diagnosis, and treatment of neurological diseases	Assessment, diagnosis, and treatment of neurological diseases	Assessment, diagnosis, and prognosis of neurological diseases	Prognosis, coordination of care, and resource options
<b>Primary Methods</b>	In person neurological exam, EEG, MRI, PET, bloodwork	In person neurobehavioral status exam, medications, integration of EEG, MRI, PET, bloodwork	In person mental status exam, standardized tests to objectively measure cognitive, behavioral, and emotional symptoms/deficits	Outreach to a client's support network, knowledge of regional support possibilities and available programs

# Table 2

DO	DON'T
<ul style="list-style-type: none"> <li>• Have a referral question, even if it's broad</li> </ul>	<ul style="list-style-type: none"> <li>• Worry about trying to diagnose the client before seeking an expert</li> </ul>
<ul style="list-style-type: none"> <li>• Conduct collateral investigation including records collection and interviews with those who have known your client at various points throughout their life</li> </ul>	<ul style="list-style-type: none"> <li>• Rely on the client for all the information related to their functioning</li> </ul>
<ul style="list-style-type: none"> <li>• Write memos including observations from each client interaction, taking note of the client's mood, physical presentation, language use/misuse, reasoning, and memory</li> </ul>	<ul style="list-style-type: none"> <li>• Force a diagnosis or mental health defense</li> </ul>
<ul style="list-style-type: none"> <li>• Tell the expert all of your observations, big or small, that seem "off"</li> </ul>	<ul style="list-style-type: none"> <li>• Expect the expert to have "the answer" after meeting with the client once; follow-up or additional information is often required</li> </ul>
<ul style="list-style-type: none"> <li>• Work with experts who are comfortable giving you null results</li> </ul>	<ul style="list-style-type: none"> <li>• Provide the expert only with summaries of records</li> </ul>
<ul style="list-style-type: none"> <li>• Organize records and provide all relevant materials to the expert, including any that the prosecutor will have access to.</li> </ul>	<ul style="list-style-type: none"> <li>• Worry if you think there is conflicting evidence that does not help your case; you and the expert are better off knowing all aspects of the evidence</li> </ul>
<ul style="list-style-type: none"> <li>• Give the expert all relevant records, including any materials that the prosecutor will have access to.</li> </ul>	<ul style="list-style-type: none"> <li>• Ask the expert to opine on something that is beyond the scope of their practice</li> </ul>
<ul style="list-style-type: none"> <li>• Know the level of certainty necessary for a particular legal situation (e.g., is it enough for the expert to be reasonably certain that the behavior is due to a dementia syndrome in general or a specific etiology?)</li> </ul>	<ul style="list-style-type: none"> <li>• Forget that dementia syndromes can impair a client's ability to attain competency to stand trial</li> </ul>
<ul style="list-style-type: none"> <li>• Ask the expert for recommendations for other types of providers that can better address certain aspects of a condition</li> </ul>	<ul style="list-style-type: none"> <li>• Hire or exclude an expert solely on experience in a particular type of case or situation</li> </ul>
<ul style="list-style-type: none"> <li>• Communicate with the expert frequently. Set deadlines and/or firm dates to reconvene</li> </ul>	
<ul style="list-style-type: none"> <li>• Make sure the expert knows the audience for a report/testimony</li> </ul>	
<ul style="list-style-type: none"> <li>• Ensure that the expert uses generally accepted procedures and measures</li> </ul>	



# Evaluation

Interviews with client

Collateral Interviews – family, friends, co-workers

Document Review

Testing instruments

Leveraging a plea/dismissing charges



# Jail/ Prison Conditions

Cost

Victimized

Inability to Follow Rules

Disruptive

Expert and/or Consultant should address

Show the Path Forward

# BOP Mental Health Programs

The Habilitation Program  
Mental illness

The Skills Program  
Mental illness & cognitive/intellectual limitations

The Axis II Program (STAGES)  
Borderline or other severe personality disorders

Mental Health Step-Down Units  
Before & after in-patient psychiatric hospitalization

Memory Unit - Devans  
Dementia

\*Limited capacity

\*Document in PSR

# Cases

U.S. v Rodriguez, 2020 WL 4592833, at 1 (S.D. Cal. Aug, 5, 2020) - Major depressive disorder

U.S. v. Gudino, 2020 WL 7319432, at 1, (N.D. Cal. Dec. 11, 2020) - Anxiety

U.S. v. Pina, 2020 WL 3545514, at 1(S.D. N.Y. June 29, 2020\_ -- PTSD

U.S. v. Tillman, 2020 WL 3578374, at 2 (N.D. Iowa June 30, 2020) -- Mood disorder, anxiety

U.S. v. Lavy, 2020 WL 3218110, at 1 (D. Kan. June 15, 2020) -- Bipolar disorder

Doe v. Barr, 2020 WL 1984266 (N.D. Cal. April 27, 2020) -- PTSD, anxiety

U.S. v. Ozols, 2020 WL 2849893 (S.D. N.Y., June 2, 2020) - Anxiety, depression

U.S. v. Hambrock, EDVA, 4:20-cr-26 (2021) - ASD

U.S. v. Watson, D.Nev, 3:18-cr-00025 (2020) - ASD

# More Cases

U.S. v. Brocoli, 2021 WL 2414863, at 3-4(S.D.OH June 14, 2021) - PTSD

U.S. v. Amaro, 2020 WL 397486, at 1 (S.D.N.Y. July 14, 2020) - lengthy mental health history, lack of treatment due to Covid

U.S. v. Reyes, 2021 WL 22727, at 1 (S.D.N.Y. Jan. 4, 2021) - "

U.S. v. Hatcher, 2021 WL 1535310, at 4 (S.D.N.Y Apr. 19, 2021) - "

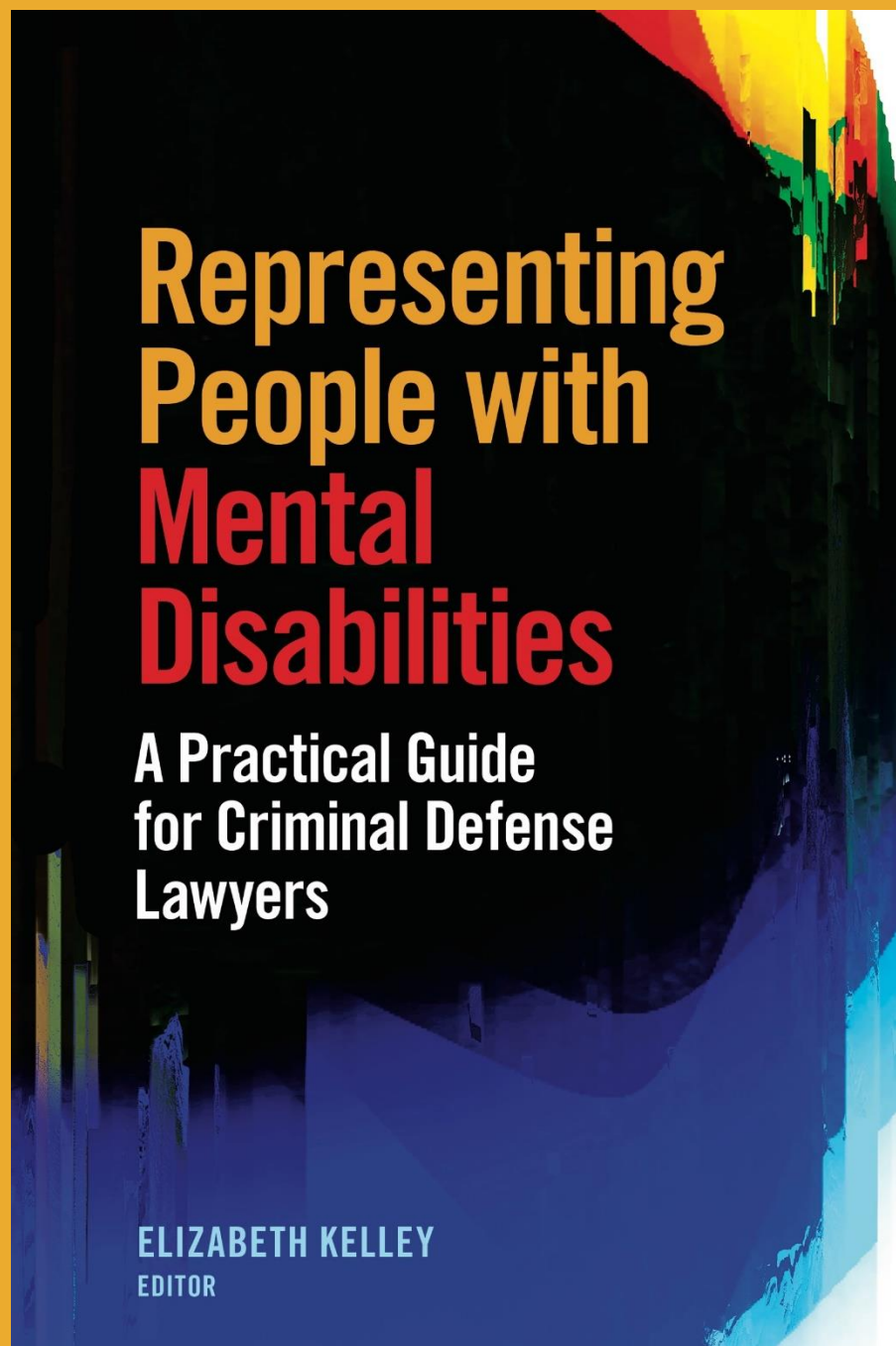
U.S. v. Thrower, 2020 WL 6128950, at 1 (E.D. N.Y. Oct. 19, 2021) - Dementia, TBI

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[www.elizabethkelleylaw.com](http://www.elizabethkelleylaw.com)

[zealousadvocacy@aol.com](mailto:zealousadvocacy@aol.com)