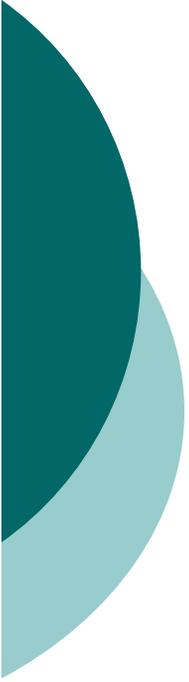




Working with Clients who have a Mental Illness or Intellectual Disability

Billy Edwards, Deputy Public Defender, Los Angeles County

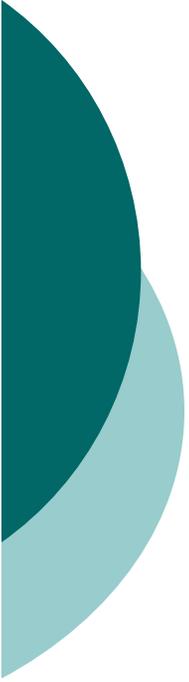
Deborah Fowler, Legal Director, Texas Appleseed



What is an intellectual disability?

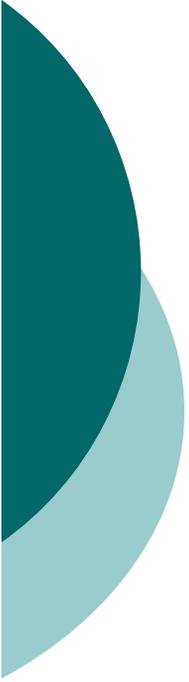
- AAMR:

- A disability characterized by significant limitations both in intellectual functioning and in adaptive behavior as expressed in conceptual, social, and practical adaptive skills. This disability originates before age 18.
- In most state's statutes, "mental retardation" is used rather than "intellectual disability."



Primary Components of MR Determination

- IQ Test Score of about 70 or below (5 point error margin).
- Deficits in Adaptive Behavior
- Onset before age 18.



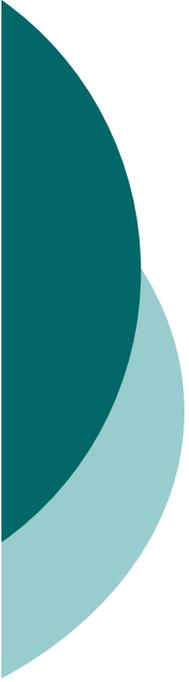
IQ Tests

Good:

Wechsler scales
Stanford-Binet

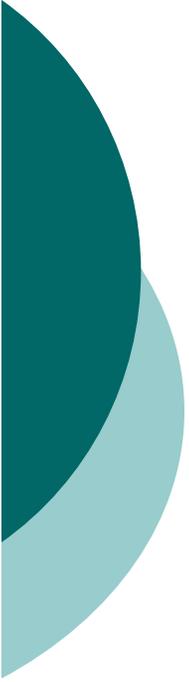
Inadequate/Bad:

Kaufman Brief Intelligence Test
Revised Beta
Lorge-Thorndike Intelligence Test
Peabody Picture Vocabulary Test
Any group-administered test.



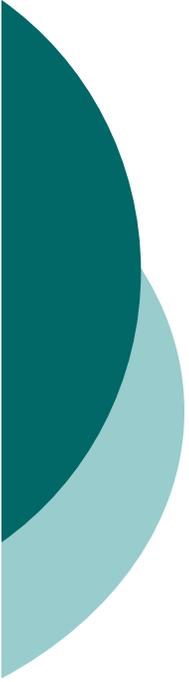
What is Adaptive Behavior?

- Adaptive behavior is the collection of conceptual, social, and practical skills that have been learned by people in order to function in their everyday lives.



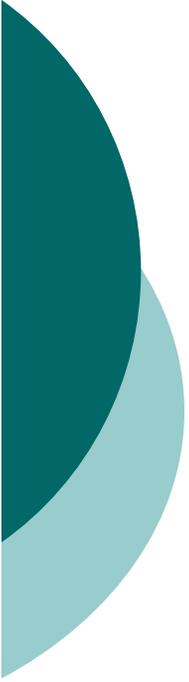
Adaptive Behavior Testing

- Focus on adaptive behavior testing
Must remain on the client's ***limitations*** rather than any skills he/she possesses.
- The standard is not what they ***can*** do but on what they ***commonly*** do on a daily basis.



Adaptive Behavior Testing (cont.)

- It is not required that an individual have been tested with scores indicating mental retardation during the developmental period.
- There must simply be some evidence of manifestation of mental disability during the developmental period.



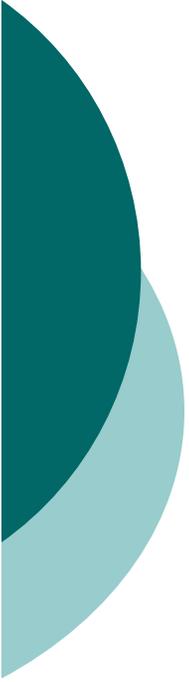
Prevalence in CJ System

- Approximately 4% to 10% in the criminal justice system – this may be low b/c of poor screening.
- At least 25,000 people with MR in nation's prisons.
- Many are arrested and processed without being identified as having MR.
- MR is often confused with mental illness.



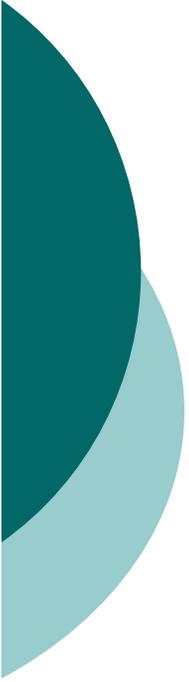
Difficulty in Identification

- Mental retardation is:
 - Rarely identified at the time of the arrest.
 - Rarely identified at the time of police questioning.
 - Rarely identified at arraignment.
 - Infrequently identified at pretrial.
 - Occasionally (10%) identified at trial.
 - Often not identified until person is in prison or on death row.



Clues that intellectual/cognitive disabilities should be investigated

- Special educational placement/services
- Low Academic Performance
- MR only: Low scores on IQ and/or achievements tests.
- LD: significant IQ and achievement discrepancy.
- Unskilled or low skilled jobs



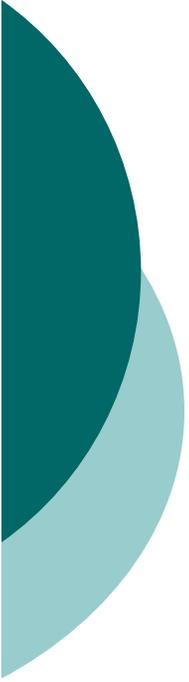
Clues (cont'd)

- Rejection from military
- Taunting by peers
- Family/friends describe as significantly impaired
- History of maternal alcohol or drug ingestion; exposure to toxins; lack of prenatal care; alcohol, drugs, and/or trauma during pregnancy.
- Inability to live independently or unusual dependence on others



Clues (cont'd)

- During your interview, you may notice that your client:
 - May not communicate at age level/has a limited vocabulary.
 - May have difficulty understanding/answering questions.
 - May not be able to explain your questions in their own words.
 - May be easily led/persuaded by others & be eager to please.
 - May have difficulty staying focused & be easily distracted.
 - May laugh or smile at inappropriate times.
 - May have difficulty reading & writing, telling time, obtaining a driver's license, recognizing coins/making change, and giving coherent directions.



Common Characteristics of People with MR

- **Acquiescence**
- **Concrete thinking**
- **Strong Desire to Please Others**
- **Easily deceived/naive**
- **Highly suggestible**
- **Defer to authority figures**
- **Difficulty communicating**
- **Limited memory / impaired recall**
- **Impulsivity/short attention span**
- **“Cloak of Competence”**



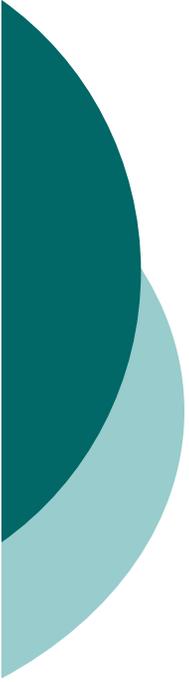
How do these characteristics come into play in the criminal justice system?

- “Masking” – may try to conceal their disability, making identification more difficult.
- May have difficulty discerning when they’re in an adversarial situation with police officers.
- Desire to please authority figures can lead them to agree that they did something they did not do.



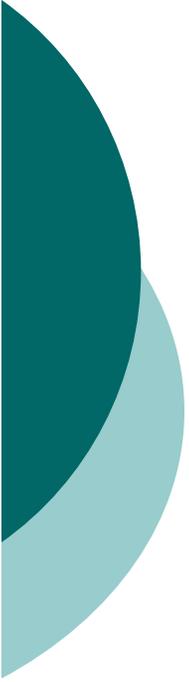
Characteristics & CJ System (cont'd)

- May be overwhelmed by police presence.
- May be confused about who is responsible for the crime & “confess” even if they are innocent.
- May not understand their rights. Miranda warnings are written on a 7th grade reading level – posing a significant obstacle for anyone with an intellectual disability.



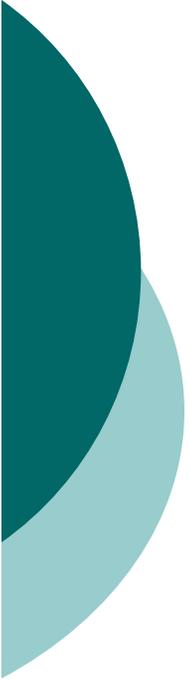
Characteristics & CJ System (cont'd)

- May have difficulty describing the facts or details of the offense.
- May act upset at being detained & try to run away, or may become agitated, frightened, or combative.



Why do Persons with MR Confess to Crimes they Haven't Committed?

If someone has an enhanced desire to please authority figures, doesn't fully understand his/her constitutional rights, is highly suggestible, acquiesces easily, is more easily influenced by verbal & non-verbal clues, and has a tendency to be more gullible or naïve...AND



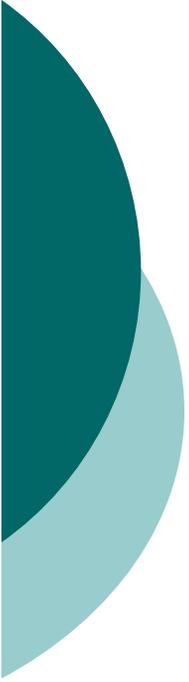
Common Interrogation Methods

- Establishing a position of authority, then endeavoring to convince the suspect that the police are convinced of his/her guilt
- Posits the suspect's guilt as fact
- Cuts off a suspect's denial of guilt and dismisses/discourages exculpatory explanations
- Emphasizes reasons why the suspect committed the act, rather than asking the suspect if he/she did it
- Alternates shows of "kindness" with shows of hostility...



The result...

- A study published in 2004 found that out of 125 inmates that were exonerated after giving false confessions, about 22% had been diagnosed with mental retardation.



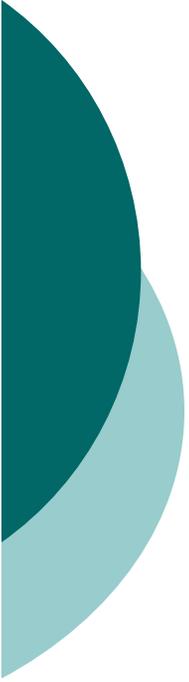
Analyzing the Reliability of a Client's Confession

- How well does it fit with the facts?
- Does it demonstrate "guilty knowledge?"
- Are your client's pre-Miranda statements plausible / internally consistent?
- Use an expert – to analyze confession, conditions under which interrogation took place.
- Was the interrogation recorded or video taped?
- Review the training materials used to train the officer. Subpoena them.
- Subpoena the officer's notes (if discoverable).
- Make a video tape recording of conditions in interrogation room.



Asking your client about his/her disability...

- Your client may not reveal his/her disability if you ask about it directly.
- Ask instead:
 - Did you ever take special education classes?
 - How far did you go in school? Why did you drop out?
 - What do you read on a regular basis at home or work?
 - Have you ever worked? Where? How long?
 - Do you have a checking account? Who takes care of it?
 - Do you drive?
 - Do you cook, clean the house, do laundry?
 - Do you receive SSI?
 - Would you describe yourself as a leader or a follower?
 - Have you ever been taken advantage of?
 - Have you ever been a client of (local agency that provides services to those with MR)?



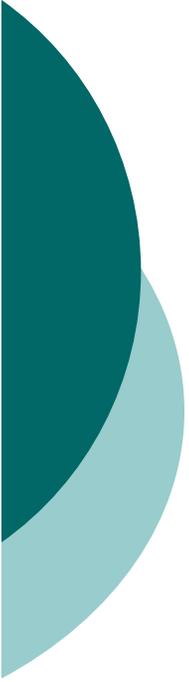
Client & Family are often Poor Identifiers

○ Client

- Is a poor self-reporter
- May try to hide disability b/c of stigma
- Has learned to adapt and compensate – may not be hiding disability intentionally.
- Dual diagnosis: may not be able to distinguish mental retardation from mental illness

○ Family

- May be ashamed, or feel guilty for not recognizing disability
- May be protective of client
- May not know
- May have an intellectual disability, too



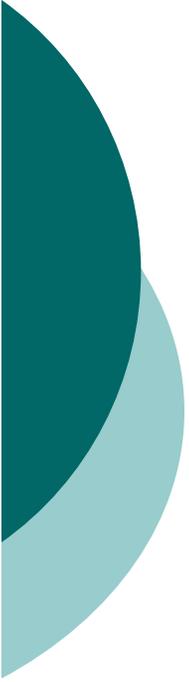
During the time you spend with your client...

- **Be prepared for the interview process to require additional time and patience. You may need to repeat or rephrase questions.**
- **Try to arrange for a quiet & private setting, free from distractions.**
- **If your client has a social worker, you might want to take them with you if they've developed a good relationship with the client.**
- **Identify yourself clearly to your client. Explain everyone's role & reason for being present.**
- **Avoid asking "yes/no" questions. Make every effort to keep your language simple & clear.**
- **Avoid legal jargon.**
- **Avoid rapid-fire questions.**
- **Treat adults in an age-appropriate manner.**
- **Check to make sure your client understands – ask client to repeat in his/her own words.**
- **Speak to your client directly – to not talk through someone else.**



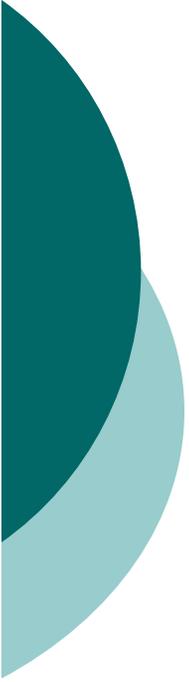
Documenting the History of Mental Retardation

- Birth and Medical Records:
Uncovering the Causes of MR
- Employment Records
- Military Records
- Criminal Records
- Prison Records
- State Agency Records



Documenting the History (cont'd)

- School Records: Tracing a History of Developmental Problems
 - Academic Records
 - Psycho-education Records
 - Individualized Education Plan (IEP)
- However – keep in mind that the school:
 - May have passed the client through (social passing) and not want to admit it
 - May not have followed up with IEP requirements
 - May have poorly documented client's disability
 - Considered the issue from a very different frame of reference – that of a special education teacher. Potentially all of their students are developmentally disabled.



Role of Defense Expert

- Explain the definition of mental retardation
- Dispel juror stereotypes about mental retardation
- Explain the difference between mental retardation and mental illness
- Explain the cause(s) of client's mental retardation
- Explain how mental retardation affected client's functioning (e.g. intent, impulse control, understanding cause/effect, validity of confession)



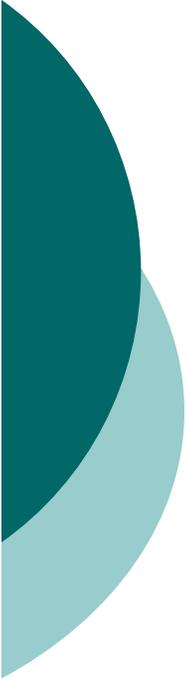
Role of Defense Expert (cont'd)

- Countering the prosecution expert's evaluation or finding that your client does not have MR
 - Prosecution experts may use inappropriate tests (or not test at all)
 - Prosecution experts may not be trained in mental retardation – most psychologists are not trained in testing for MR
 - Prosecution experts may place too much emphasis on IQ scores alone



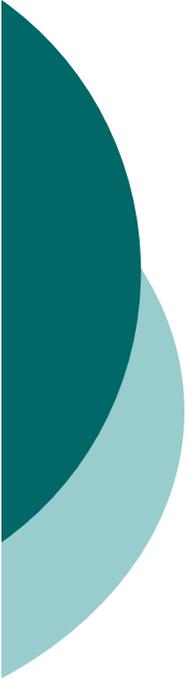
Use of Other Experts

- Investigator – to do necessary social history and locate records.
- Psychologist/neuropsychologist – to do psychological testing and establish the degree of mental retardation.
- Neurologist – to determine whether or not there is brain damage through MRI or other neuroimaging test.



Other Experts (cont'd)

- MD – to determine if the client has Fetal Alcohol Syndrome or Fetal Alcohol Effects or exposure to other toxin, such as lead poisoning.
- School psychologist – can testify to client's school performance, such as reading or writing. If not used as an expert, attorney should use as a consultant.
- NOTE: Psychiatrists are not trained in mental retardation. Don't confuse MR with mental illness!



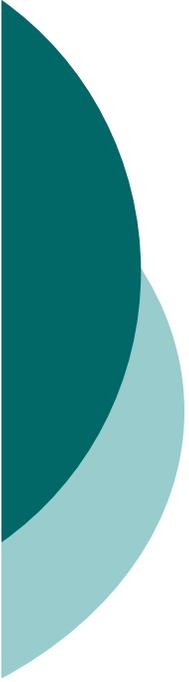
Common Arguments Raised by Prosecutors

- Defendant is malingering.
- Defendant doesn't have any stereotypical behavioral or physical characteristics, therefore – cannot have MR.
- Defendant's behavior is caused by a conduct disorder (anti-social personality disorder) or substance abuse, not MR.
- Crime was too complex for a person with MR to commit.
- Defendant's disability is not very severe.
- Defendant was in the military, so can't have MR.
- People with MR are likely to reoffend.



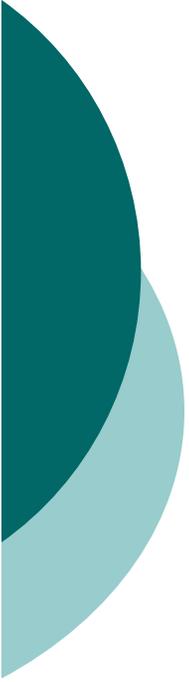
Preparing Your Client for Court

- Appropriate dress
- Visit the courtroom in advance of trial
- Explain courtroom procedures
- If client has a social worker, get court order allowing social worker to be present in court with client
- Get the Arc involved



What is a “mental illness?”

- Generally, an illness, disease or condition that substantially impairs a person’s thought, perception of reality, emotional process, or judgment or grossly impairs behavior as demonstrated by recent disturbed behavior.
- NOTE: this is based on Texas statutory definition – you should check the statute in your state for any differences.



Distinguishing MI from MR

○ Mental Illness

- Usually *disturbances* in thought processes & emotions
- May be temporary, cyclical, episodic
- May be “restorable”
- Requires treatment

○ Mental Retardation

- Is not an illness
- Is simply indicative of a limited ability to learn and process information
- Is usually lifelong
- Does not involve “restoration”
- Requires habilitative services/supports



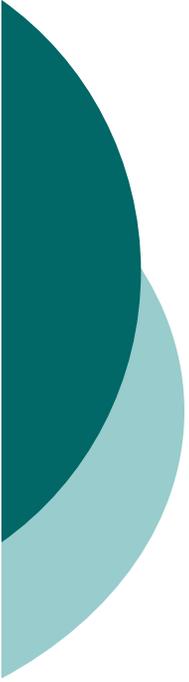
Scope of the Problem

- One in five Americans has some type of mental illness in any given year.
- About 16-22 % of the jail % prison population have a “serious” mental illness (generally, schizophrenia, bipolar disorder, or major depression).
- HOWEVER...half of all prison and jail inmates surveyed in 2005 had some type of mental health problem.
- About 15 % of all people with mental illness will have an accompanying substance abuse disorder (dual diagnosis), tho’ the percentage in the criminal justice system is much higher.



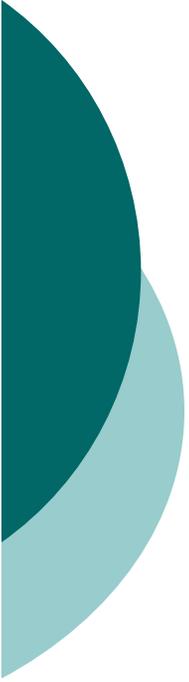
“Serious” Mental Illness

- ***Schizophrenia*** – impairs a person’s ability to think, make judgments, respond emotionally, remember, communicate, interpret reality, and/or behave appropriately so as to grossly interfere with the person’s capacity to meet the daily demands of life. Symptoms may include poor reasoning, disconnected and confusing language, hallucinations, delusions, and deterioration of appearance and personal hygiene.
- ***Bipolar disorder*** – characterized by a person’s moods, alternating between two extremes of depression and mania (exaggerated excitement). Manic phase is often accompanied by delusions, irritability, rapid speech, and increased activity.



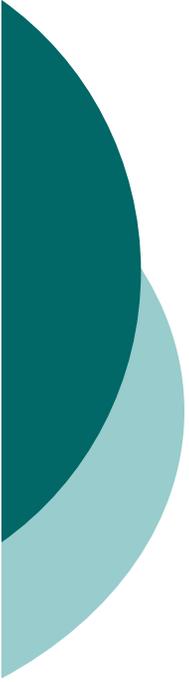
Mental Illness (cont'd)

- ***Major depression*** – much more severe than the depression that most of us feel on occasion. People suffering from major depression may completely lose their interest in daily activities; feel unable to go about daily tasks; have difficulty sleeping; be unable to concentrate; have feelings of worthlessness, guilt, and hopelessness, and may have suicidal thoughts.
- ***Other, less “severe” disorders can also be disabling and may profoundly affect the way a person thinks, behaves, and relates to other people.***



Someone with a mental illness may end up in the CJ system because...

- They are undiagnosed, or have stopped taking their medications, and their behavior, symptomatic of their illness, is misunderstood.
- Law enforcement may use tactics that exacerbate the problem if they are not familiar with de-escalation methods.
- They are homeless, and committed a crime commonly associated with homelessness (they are twice as likely as others to have been homeless before arrest).
- Despite the myth, persons with severe mental illness are NOT more violent than others – in fact, the vast majority of persons with mental illness who are involved in the CJ System were arrested for non-violent misdemeanors.



How do I know if I have a client who has a mental illness?

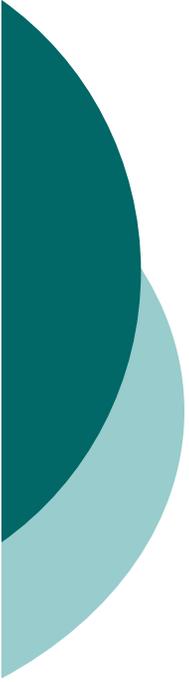
- Look for certain types of offenses:
 - Criminal mischief
 - Criminal trespass
 - Prostitution
 - Failure to identify
 - Public intoxication



How do I know (cont'd)?

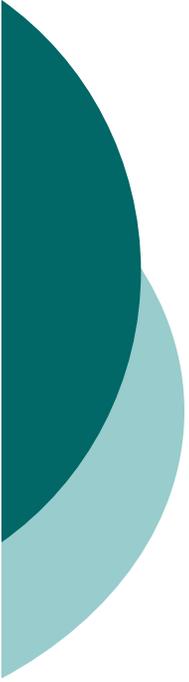
- Behavioral/Psychological Clues
 - Rapid eye blinking
 - Vacant stares
 - Tics or tremors
 - Unusual facial expressions

These may be symptoms of the underlying illness, or of the medications he/she is taking.



Consider mental illness if...

- Circular conversations – your client doesn't follow a logical train of thought, or may be unable to get from point A to point B during a conversation.
- Use of mental health terms – indicating that your client has been in treatment.
- Inappropriate emotional tone, paranoid statements, reality confusion.



Interviewing the Client

- Be patient
- Speak simply.
- Ask simple, open-ended questions
- Use eye contact to keep control of dialogue & keep client focused.
- Do not impose on client's "personal space"
- Be sensitive – remember the stigma attached to mental illness
- Be tactful – asking "Do you have a mental illness?" probably won't work...



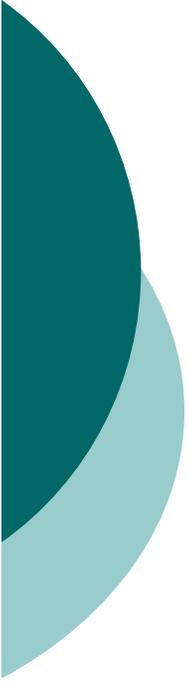
Questions you might ask...

- Have you ever been treated?
 - Mental illness
 - Substance Abuse
- Are you currently receiving treatment?
- Do you know your diagnosis?
- What types of medications are taking/have you taken?
- Ever been hospitalized?
- Are there family/friends/doctors I can talk to?



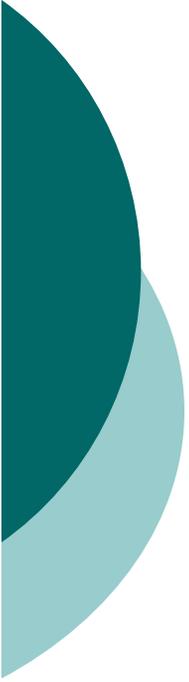
Where to look for more information...

- Client's family
- Talking informally with jail staff
- Find out where client is housed in jail facility
- Basic mental health screening at intake?



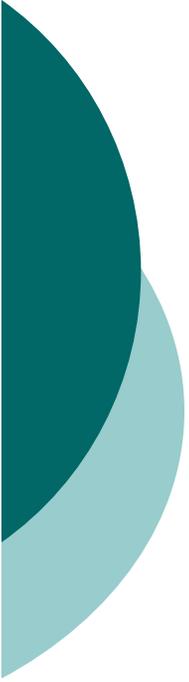
Where to look (cont'd)...

- If your client is being treated while in jail – serve a Request for Medical Information on jail staff.
- Police report – any indication of unusual behavior?
- Probation officer (if client is charged with probation violation)
- If your client has been in court before –
 - prior competence proceedings?
 - Mental health court?
- Information from pretrial release program



Helpful Records

- Medical records from doctors or clinics
- Prior hospitalization records
- Family records
- School records
- Employment records
- SSI or SSDI benefits
- VA records
- Military records
- Child protective services records



Expert Mental Health Witness

- May help you make an informed decision about:
 - The manner in which you relate to your client;
 - Your client's competence to proceed;
 - Your client's mental state at the time of the offense;
 - Plea negotiations;
 - Jury selection;
 - Whether or not your client should testify;
 - Medical treatment or other services for your client while the case is pending;
 - What types of assessments/evaluations are needed; and
 - The selection of witnesses for the trial, including the penalty phase.



Incremental Approach: Start with a Mitigation Specialist

- A mitigation specialist, who is often a licensed social worker, will:
 - Conduct a thorough bio-psycho-social history investigation;
 - Interview your client;
 - Conduct collateral interviews;
 - Gather your client's medical records; and
 - Determine what cultural, environmental, and genetic circumstances might have factored into your client's case.



Incremental Approach (cont'd)

- Mitigation expert may then confer with a consulting psychologist, who can review the records and determine what kind of expert witnesses you need and what role you want them to play.
- Finally, focus on choosing credible and persuasive testifying experts.
 - Psychiatrist – for testimony related to diagnosis/treatment/medication.
 - Psychologist – for testimony related to personality/behavioral disorders, intellectual or cognitive functioning, or administering and interpreting tests.
 - Neuropsychiatrist/psychologist – if your client has a brain injury or problem with memory, language, or orientation functions.