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# Introduction

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Whenever there is a mass shooting like Las Vegas, Sandy Hook, or Aurora or some other violent incident involving a person with a mental disability, the public's attention becomes focused on society's inability to treat these conditions and prevent these tragedies. And then we move on.

However, for criminal defense lawyers of all types, clients with mental disabilities are a part of our practice. This ranges from the white-collar criminal defense lawyer who represents an executive charged with tax evasion who functions despite a variety of conditions he keeps hidden, to the public defender assigned as standby or advisory counsel for the defendant who wants to represent himself at trial, to the sole practitioner representing the man with Asperger's charged with possession of child pornography on his computer.

Depending on the statistics you read, approximately one-third of the inmates in U.S. jails and prisons have some sort of mental disability. It has become cliché to say that our jails and prisons have become *de facto* mental institutions. How did we reach this point?

In 1963, before President John F. Kennedy traveled to Dallas, one of his last official acts was to sign the legislation that began the process of closing our nation's mental institutions. This was desperately needed because of the shameful warehousing and abuse of people with mental disabilities. This was in part made possible by the development of drugs that could treat many conditions. The plan was to implement a system of community-based resources so people could live relatively independently and productively. But for a variety of reasons, including failure to fund, this has not come to pass. Some of these people have ended up homeless. Some of these people have gotten in trouble with the law, often cycling in and out of jails and prisons. In short, *deinstitutionalization* has become replaced by *transinstitutionalization*.

At the same time, it is important to emphasize two points. The first is that people with mental disabilities come from all economic, racial, and social backgrounds. The second is that people with mental disabilities are more likely to be victims rather than perpetrators of a crime.

Unfortunately, it is the perpetrators of major crimes, often murder, who capture the headlines. But as criminal defense lawyers know, for our clients, whatever they are charged with, every case is a major case.

It emotionally weighs on them, and often, their families and friends. From a legal standpoint, every case counts because the existence of a record can limit the ability to negotiate a plea bargain or it can enhance a sentence. For clients with mental disabilities, the stakes can be especially great, whether a conviction makes them ineligible for support services that they need or exposes them to a prison sentence where they may very well be punished for manifesting the symptoms of their disability, have difficulty following the rules of the institution, or be denied proper treatment. Because of this, our representation should be not only zealous but also knowledgeable.

It was with all this in mind that this book was conceived. I specialize in representing people with mental disabilities. I am largely self-taught in this area, that is, I have no formal background in psychology or any related discipline. I learned—and continue to learn—by doing, by reading, by asking questions of experts, and most of all, by listening to my clients and their families. This is the resource I wish I had many years ago. This book is meant to be intensely practical. It is meant to be easy to read and easy to navigate. The authors were sternly admonished to keep endnotes to a minimum. It is intended that you can throw the book in your briefcase on the way to the courthouse, or load it on your iPad, and turn to the appropriate chapter or chapters when needed. Note that I have written brief introductions before each chapter. If you want to learn more about a topic, the Suggested Works section at the end of the book contains titles of books and articles as well as websites. In addition, many chapters contain the statement at the end, “Complete citations are available from the author/authors upon request.” The accompanying website has motions and pleadings you can adapt to your jurisdiction. These resources are available at <http://ambar.org/kelley>.

I have two suggestions for reading this book. First, some of the content necessarily overlaps. On the one hand, it is sufficient to read a single chapter. On the other hand, for a deeper understanding of a topic, you may want to explore a related chapter. For instance, you may want to read the chapters on “Competency to Stand Trial” and “Criminal Responsibility,” both by Dr. Eric Drogin, or after you have read the chapter on “Mitigation: Mental Health and Sentencing” by Attorney Marcia Shein, you may want to read “Mitigation: Utilizing the Forensic Mental Health Professional” by Dr. Elliot Atkins and Attorney Alan Ellis, and then, to learn more about experts, read “Working with Experts” by Jeffrey

Thoma and Dr. Dale Watson. Each chapter also refers to other chapters where appropriate.

The second point to keep in mind while reading this book is that I am deliberate about my word choice. The title is *Representing People with Mental Disabilities*. I use the term “mental disabilities” to include both people with mental illness and intellectual/developmental disabilities. For the most part, I have deferred to the chapter authors in their word choice.

I have many colleagues to thank for their contributions to this book. First and foremost, I would like to thank all of the chapter authors. I appreciate the fact that they all have busy caseloads and busy classloads. And I respect the knowledge, creativity, and sensitivity they channeled into their chapters.

The concept of this book originated several years ago during discussions with Dr. George Schmedlen. Special thanks go to him for his early enthusiasm as well as for helping to shape the structure of the book.

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—Elizabeth Kelley, Editor