
Contents

Introduction v

- 1 Competency to Stand Trial, *Eric Y. Drogin* 1
- 2 Criminal Responsibility, *Eric Y. Drogin* 17
- 3 Mitigation: Mental Health and Sentencing,
Marcia G. Shein 33
- 4 Mitigation: Utilizing the Forensic Mental Health
Professional, *Elliot L. Atkins and Alan Ellis* 45
- 5 Malingering, *John Matthew Fabian* 57
- 6 Risk Assessment of Sex Offenders, *Daniel Montaldi* 79
- 7 False Confessions, *William C. Follette, Richard A. Leo, and
Deborah Davis* 95
- 8 Juveniles, *Antoinette Kavanaugh* 125
- 9 Juvenile Sex Offenses, *Stephanie Tabashneck* 143
- 10 Forced Medication, *Mace J. Yampolsky* 161
- 11 Mental Health Courts, *Jennifer Johnson* 171
- 12 Veterans Treatment Courts, *Julie Marie Baldwin* 195
- 13 Jail and Prison Conditions, *Henry Dlugacz* 225
- 14 Working with Clients, *William J. Edwards
and Risa Grand* 249

- 15 Working with Families, *Elizabeth Kelley* 259
- 16 Working with Experts, *Jeffrey E. Thoma and Dale Watson* 263
- 17 Neuroscience and Abnormal Brain Function, *Stephen G. Cobb* 273
- 18 Sex Offender Registration, *Heather Ellis Cucolo* 287
- 19 Standby or Advisory Counsel, *Elizabeth Owen and Erica Weissmann* 303
- 20 Ethics, *Naomi M. Weinstein* 315

Suggested Works 333

Index 339

Additional resources are available at <http://ambar.org/kelley>.

Introduction

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.