

# PRE-TRIAL ASSESSMENTS WITH PEOPLE WITH ID

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# OUTLINE FOR TODAY

1. A few things that you should know in advance
2. Components of quality forensic evaluations
3. Competence to waive *Miranda* rights
  - I. Standardized Assessment of Miranda Abilities™ (SAMA)
  - II. Miranda Rights Comprehension Instruments™ (MRCI)
4. Competence to Stand Trial
  - I. Competence Assessment for Standing Trial for Defendants with Mental Retardation (CAST\*MR)
  - II. MacArthur Competence Assessment Tool-Criminal Adjudication™ (MacCAT:CA)
  - III. Evaluation of Competency to Stand Trial™-Revised (ECST-R)
  - IV. Fitness Interview Test - Revised (FIT-R)
5. Report Writing

# IN ADVANCE

- Be aware of the laws in your state.
- Check with the licensing board in that jurisdiction
- Know the rules on admissibility
  - FRE 703 - the majority of states
  - Ohio Rule 703

# FRE 703

Permits the admissibility of hearsay evidence if three requirements are met:

1. An expert may base opinion on facts or data in the case that the expert has been made aware of or personally observed
2. If experts in the particular field would reasonably rely on those kinds of facts or data in forming an opinion on the subject  
&
3. If facts or data would otherwise be inadmissible, the proponent of the opinion may disclose them to the jury only if their probative value in helping the jury to evaluate the opinion substantially outweighs their prejudicial effect

# RULE 703 - OHIO

## RULE 703. Bases of Opinion Testimony by Experts

The facts or data in the particular case upon which an expert bases an opinion or inference may be those perceived by the expert or admitted in evidence at the hearing. [Effective: July 1, 1980; amended effectively July 1, 2007.]

# COMPREHENSION OF *MIRANDA* WARNINGS

# AN EXAMPLE ....

## MIRANDA WARNING

1. YOU HAVE THE RIGHT TO REMAIN SILENT.
2. ANYTHING YOU SAY CAN AND WILL BE USED AGAINST YOU IN A COURT OF LAW.
3. YOU HAVE THE RIGHT TO TALK TO A LAWYER AND HAVE HIM PRESENT WITH YOU WHILE YOU ARE BEING QUESTIONED.
4. IF YOU CANNOT AFFORD TO HIRE A LAWYER, ONE WILL BE APPOINTED TO REPRESENT YOU BEFORE ANY QUESTIONING IF YOU WISH.
5. YOU CAN DECIDE AT ANY TIME TO EXERCISE THESE RIGHTS AND NOT ANSWER ANY QUESTIONS OR MAKE ANY STATEMENTS.

## WAIVER

DO YOU UNDERSTAND EACH OF THESE RIGHTS I HAVE EXPLAINED TO YOU?  
HAVING THESE RIGHTS IN MIND, DO YOU WISH TO TALK TO US NOW?

# ESSENTIAL ELEMENTS

- Three essential elements
  - Knowing
  - Intelligent
  - Voluntary
  
- Assessment tools aren't good at everything and provide only one piece of information



# RESEARCH SAYS ....

- Variations in length
- Verbal recall
- Reading level
- Oral administration

# RESEARCH SAYS ....

- Misconceptions
- History of arrests
- Verbal IQ and listening comprehension
- Too confident

## A GOAL

“An immediate goal is the elimination of abstruse and unduly complex warnings. Psychologists can advocate for simple but sweeping changes in Miranda warnings and waivers. The comprehension of Miranda warnings could be improved today by simply removing those variations that are incomprehensible to most custodial suspects: ..”

Richard Rogers, Ph.D.

# SUGGESTIONS

Five suggestions:

# MIRANDA RIGHTS COMPREHENSION INSTRUMENTS™

- Purpose
- Benefits
- Limitations

# MIRANDA RIGHTS COMPREHENSION INSTRUMENTS™

- Adult norms

# MIRANDA RIGHTS COMPREHENSION INSTRUMENTS™

- Organization

# MIRANDA RIGHTS COMPREHENSION INSTRUMENTS™

- Use with individuals with ID
  - Research
  - For consideration



# STANDARDIZED ASSESSMENT OF MIRANDA ABILITIES™ (SAMA)

- Purpose
- Benefits
- Limitations

# STANDARDIZED ASSESSMENT OF MIRANDA ABILITIES™ (SAMA)

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# COMPETENCE TO STAND TRIAL

# The Standard For Competence To Stand Trial

“The test must be whether [the defendant] has sufficient present ability to consult with his attorney with a reasonable degree of rational understanding, and whether he has a rational, as well as factual understanding of the proceedings against him.”

*Dusky v. United States*, 1960

# Key Issues

Capacity versus Willingness

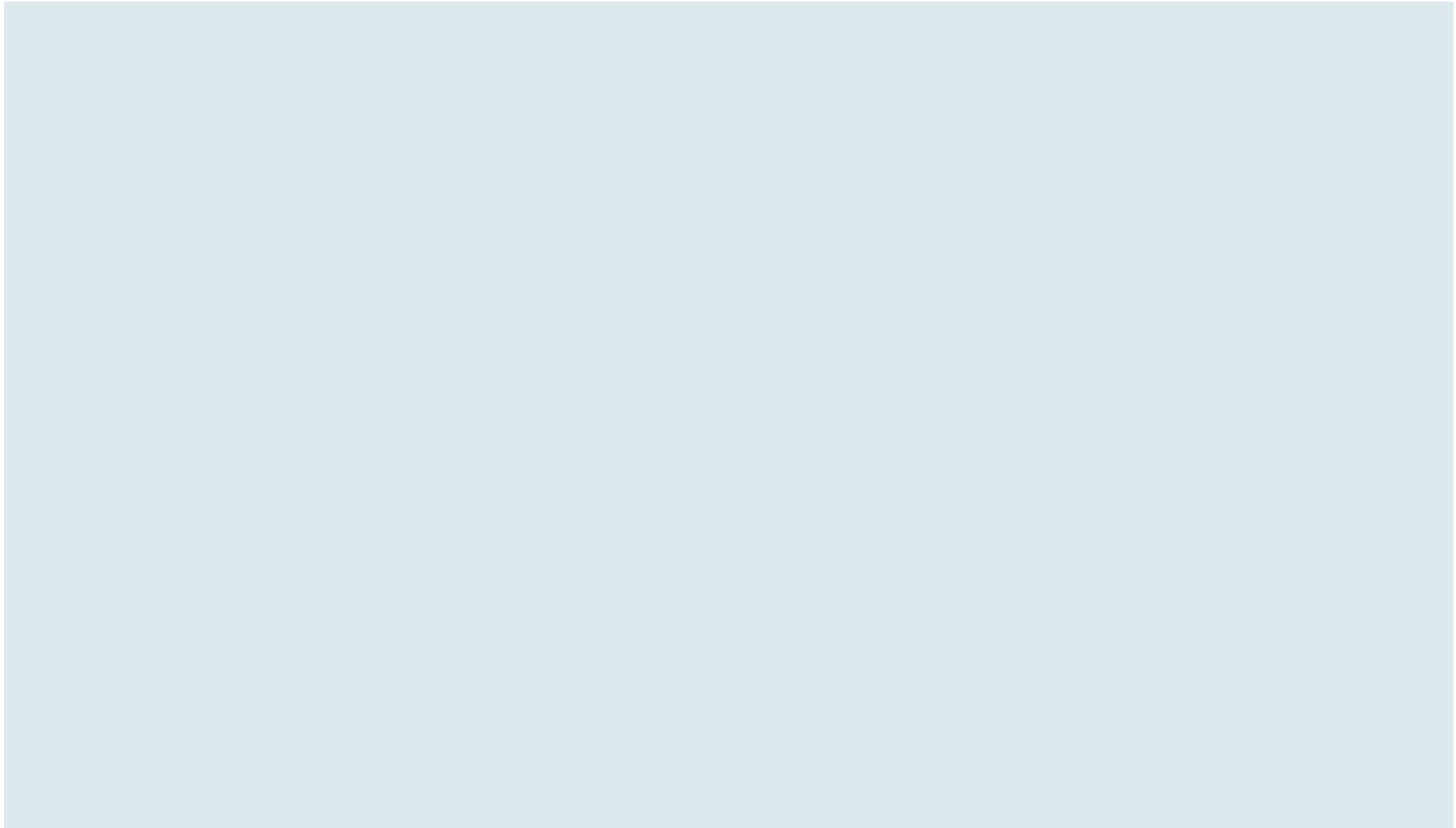
Present Ability

## AT THE CORE ...

- The data collected and integrated is used to answer the legal question.
- The link between symptoms and functional legal deficits.



# GENERAL AREAS OF INTEREST (EXAMPLES)



# THE EVALUATION

- No set standard
- Focus is on functional abilities

# COMPETENCE TO STAND TRIAL

- Screening tests
  - What they are
  - What they are not
- Should they be used for evaluations with people with ID?
- Examples:

# CAST-MR

- Purpose
- Benefits
- Limitations

# CAST-MR

- Adult norms

# CAST-MR

- Organization

# CAST-MR

- Use with individuals with ID
  - Research
  - For consideration

# MACCAT-CA

- Purpose
- Benefits
- Limitations



# MACCAT-CA

- Adult norms

# MACCAT-CA

- Organization

# MACCAT-CA

- Use with individuals with ID
  - Research
  - For consideration

# ECST-R

- Purpose
- Benefits
- Limitations

# ECST-R

- Adult norms

# ECST-R

- Organization

# ECST-R

- Use with individuals with ID
  - Research
  - For consideration

# FIT-R

- Purpose
- Benefits
- Limitations



# FIT-R

- Adult norms

# FIT-R

- Organization

# FIT-R

- Use with individuals with ID
  - Research
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# REPORT WRITING

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“The quality of our reports is often the most tangible and visible measure of our professionalism. At a basic level, misspellings, typographical errors, and poor grammar suggest carelessness, if not a lack of respect for the reader. Submitting a report that has these faults could be compared to submitting an *amicus* brief that has a ketchup stain on it. Other shortcomings, such as unnecessary repetitions, an overly dense writing style, or poorly reasoned opinions, also reflect badly on the writer. A deceptively written report, however, may amount to perjury”

Kenneth Appelbaum

# REPORT WRITING

- As important as the procedures
  - The product of your work.
  - The means by which you provide your data and your interpretation of that data.
  - The report provides the basis for your testimony and a basis for direct & cross examination.
  - The report may show up in post-conviction proceedings (you might too).

# REPORT WRITING

There are many views as to how best conduct a quality forensic evaluation and how best to communicate the findings, but most cover similar topics in different ways (e.g., different titles; combine topics).

Some very similar rules ....

Witt (2010)

Used Grisso's finding and developed the Forensic Report Checklist





# REPORT WRITING

- Collect and review all data before writing
- Be specific when listing collateral sources and list all of them:
- References to literature must be provided & should include the most recent information

# REPORT WRITING

- Clarity

- Self-sufficient:

# REPORT WRITING

- *Simplicity*

# REPORT WRITING

- Opinion

# SUMMARY