Defense Counsel Obligations to Screen for Mental Illness

- Paul Gormley, J.D., LP.D.
- Defense Attorney focusing on representation of mentally ill criminal defendants
Defense Counsel: Obligations and Standards

Gideon & Sixth Amendment:
- Defendant’s right to have the Assistance of Counsel for his defense

Rules of Professional Conduct:
- As advocate, a lawyer zealously asserts the client's position under the rules of the adversary system.
- In all professional functions a lawyer should be competent, prompt, and diligent.
- Ongoing fiduciary and client fidelity duties.
Mental illnesses are medical conditions that disrupt a person's thinking, feeling, mood, ability to relate to others and daily functioning.

In the absence of training in mental health matters and knowledge of client’s mental status, counsel are not competent and cannot properly advocate.

Research: defense counsel identify mental illness in only 4.42% of clients
Mental Illness in the US and Criminal Justice Populations

US population
- SMI found in 8.3% of adult US population
- Impairment that interferes with limits one or more of the activities of daily living

Jails
- Screened / documented in population
- SMI in 16.9% of adults (m:14.5%, f:31.0%)
Mental Illness by Population

- American Populace: 8.0%
- Defendants: 4.0%
- Jails: 16.0%
Direct & Societal Problems of SMI Defendants Aggravated by Ineffective Counsel

- **After arrest**
  - mentally ill defendants spent greater periods of time in custody

- **Dispositions**
  - most resolved with plea / default
  - greater incidence of incarceration upon plea

- **Post-disposition**
  - frequent recidivism, rearrest, technical and substantive violations of probation
  - higher likelihood of detention / incarceration
From a range of solutions ...

- **Screening Tool**
- **Brief Jail Mental Health Screen**
- Developed by SAMHSA / GAINS Center
- High detection for low training
- 3 minutes, 8 questions
- Triggers referral
- Does not diagnose
After Effective Screening

- Rapid referral to clinician
- Informed counsel – appropriate advocacy
- Detention includes treatment
- Trials & Dispositions include consideration of mental health issues, fewer commitments

Unchanged

- frequent recidivism, rearrest, technical and substantive violations of probation
- higher likelihood of detention / incarceration