



PROGRAM MATERIALS

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Competency in Immigration Proceedings: Applying Matter of M-A- M Through Clinical and Legal Analysis

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**Competency in Immigration
Proceedings:
Applying Matter of M-A-M
Through Clinical and Legal
Analysis**

SEMINAR OUTLINE

PART I: Background

PART II: Matter of M-A-M

PART III: Psychiatric Issues to Consider

PART IV: Malingering & Factitious Disorder

PART I:
Background

Case Sample

- For a case sample email me at marksilver1@cs.com with your personal information
- Put the word “Matter of M-A-M” in the subject line with ALL of your information to weed out spam

Types of Cases Evaluated

- Criminal Mitigation in Immigration Cases
- VAWA
- Deportation / Removal
- Waivers
- Asylum
- U Visas
- Detention
- Adam Walsh Act
- Motions to Re-Open & Appeals
- Appeals

Books

Handbook of Mitigation in Criminal and Immigration Forensics: Humanizing the Client Towards a Better Legal Outcome. Seventh Edition. 2021

Psychosocial Evaluations and Consultation in Civil Litigation: Strategies to Understand and Humanize the Client. 2021.

Handbook of Mitigation in Criminal and Immigration Forensics

Humanizing the Client
Towards a Better Legal
Outcome

SEVENTH EDITION

MARK S. SILVER
M.A., LCSW, PhD, JD.

**PSYCHOSOCIAL
EVALUATIONS AND
CONSULTATION IN
CIVIL LITIGATION:**

*Strategies to Understand
and Humanize the Client*

MARK S. SILVER

M.A., L.C.S.W., Ph.D., J.D.

PART II:
Matter of M-A-M

Matter of M-A-M:

3 Prong Test

- Does the respondent understand the nature (process) and object (aim) of the proceedings
“a rational and factual understanding of the nature of the object of the proceedings”
- Can the respondent “consult” with the attorney or representative ie, assist
- Reasonable opportunity to examine (adverse) evidence, present favorable evidence, and cross examine government witnesses

Indicators of Serious Mental Disorders

Potential indicators of serious mental disorders, which may give rise to competency issues, include:

- difficulty communicating thoughts completely or coherently,
- perseveration,
- overly simplistic or concrete thinking,
- words or actions that do not make sense or suggest that the person is experiencing hallucinations or an altered version of reality,
- memory impairment, poor ability to process information
- disorientation,
- an altered level of consciousness or wakefulness,
- high level of distraction, inattention or confusion
- Impressionistic, easily cower, defer, demur, docile

Need for Safeguards

- Even if a respondent has been pronounced mentally competent, procedural safeguards may be necessary to ensure a fair hearing in immigration court if, for example, a respondent has a significant history of mental illness, is experiencing an acute aggravation of mental illness, or if the respondent's
- condition has changed significantly since competency was determined.

Diagnosed and Competent

- Respondent may have the ability to consent to representation, and even to assist in his defense even with a serious psychiatric illness
- Mental impairments do not necessarily preclude meaningful participation in proceedings
- Similar to persons with medical issues who can function quite well
- Important not be condescending or presumptuous about the ability or limitations of persons with mental health issues

Not Psychotic, Yet Not Competent

- Cognitive deficits or limitations
- Trauma – overwhelming anxiety or fear
- Children
- Intellectual Disability

Bewildered Clients

- Statute / law is overly complicated or nuanced and client frustration ensues
- Client views the behavior as normative
- Complex set of facts – even for the prosecutor who misses out on nuances

Parallel History

- Crucial, especially with family and / or friends
- Previous mental health documentation

Course of Illness

- Stages / ups and downs and some problems tend to worsen over time (Schizophrenia)
- Little predictability
- Triggers are often key – ie, major life stressors
- Coherence may be tenuous
- Client may lie due to shame and deep desire to seem healthy to others
- Do not trust the client regarding his own stability

Core Questions

- Can you tell me your name?
- Where we are and what is the date?
- Why are you in detention?
- Do you know who am I?
- Do you want me to help you to stay in the United States?
- Can I help you in immigration courtroom? How?
- Can you help explain and prepare evidence in your case?
- Can you answer questions in cross examination?

Core Questions Con't

- Do you know who is opposing you in this case? And why?
- What is the Immigration Judge's role?
- What could happen to you if you do not win your case? What are the consequences?
- How will you care for yourself if you must leave the United States?

Bias / Prejudice Against Mental Illness

- False assumptions
- Fear
- Anger / Hostility
- Presumption of Lying
- These individuals must be humanized
- Stigma – culture specific

Purpose of Mitigation

- Humanize client through a sympathetic narrative
- Induce empathy for the reader
- Document client's life history
- Contextualize client's conduct
- Stress family's physical, psychological, and financial hardships
- Illustrate client's community, educational, employment ties
- Express client's remorse & regret

Purpose of Mitigation Con't

- Professional expression can replace self-expression
- Not just a mental health report
- Single document theory
- Disabuse parties of bias and prejudice
- Dispel nonexistent patterns
- Conceptual / strategic consult

Clients Who Most Benefit

- Suspected mental health problems
- Won't talk about psychological issues
- Childhood traumas / abuses
- Poor language, communication, social, self-care, adaptive, or executive skills
- Fear of authority
- Case development & strategies

Issues Explored

- Family-Systems Analysis
 - Childhood Development
 - Social Skills & Peer Rejection
 - Sexual Development
 - Hobbies & Interests
 - Community Ties, Friends
 - Education & Employment
 - Finances & Poverty
 - Military Service
 - Self-care (ADL's)
 - Drug & Alcohol History
- Violence, Abuses, Trauma, War
 - Volunteer Community & Charity
 - Arrests & Criminal History
 - Languages - spoken/written
 - Role & Communication
 - Legal Issues
 - Religious Devotion
 - Support System/Caregivers
 - Cultural Issues & Role Models
 - Mental (DSM) & Medical Health
 - Racism & Prejudice

ABA Duty

- While the American Bar Association's Model Rules of Professional Conduct are not binding on Immigration Judges, they do illustrate the special obligations required of private counsel where clients have or are reasonably believed to have diminished capacity. Rule 1.14 provides:
 - (a) When a client's capacity to make adequately considered decisions in connection with a representation is diminished, whether because of minority, mental impairment or for some other reason, the lawyer shall, as far as reasonably possible, maintain a normal client-lawyer relationship with the client.
 - (b) When the lawyer reasonably believes that the client has diminished capacity, is at risk of substantial physical, financial or other harm unless action is taken and cannot adequately act in the client's own interest, the lawyer may take reasonably necessary protective action, including consulting with individuals or entities that have the ability to take action to protect the client and, in appropriate cases, seeking the appointment of a guardian ad litem, conservator or guardian.
 - (c) Information relating to the representation of a client with diminished capacity is protected by Rule 1.6. When taking protective action pursuant to paragraph (b), the lawyer is impliedly authorized under Rule 1.6(a) to reveal information about the client, but only to the extent reasonably necessary to protect the client's interests.

PART III:

PSYCHIATRIC ISSUES to CONSIDER

- What is psychosis?
- Schizophrenia
- PTSD
- Mood Disorders
- Thought Disorders
- OCD – debilitating physically and emotionally

What is Psychosis

- Out of Touch with reality

Schizophrenia

- **Positive symptoms**
- Positive symptoms are psychotic behaviors not seen in healthy people. People with positive symptoms often "lose touch" with reality. These symptoms can come and go. Sometimes they are severe and at other times hardly noticeable, depending on whether the individual is receiving treatment. They include the following:

Hallucinations

- **Hallucinations** are things a person sees, hears, smells, or feels that no one else can see, hear, smell, or feel. "Voices" are the most common type of hallucination in schizophrenia. Many people with the disorder hear voices. The voices may talk to the person about his or her behavior, order the person to do things, or warn the person of danger. Sometimes the voices talk to each other. People with schizophrenia may hear voices for a long time before family and friends notice the problem.
- Other types of hallucinations include seeing people or objects that are not there, smelling odors that no one else detects, and feeling things like invisible fingers touching their bodies when no one is near.
- CAH – Command Auditory Hallucinations

Delusions

- **Delusions** are false beliefs that are not part of the person's culture and do not change.
- The person believes delusions even after other people prove that the beliefs are not true or logical. People with schizophrenia can have delusions that seem bizarre, such as believing that neighbors can control their behavior with magnetic waves. They may also believe that people on television are directing special messages to them, or that radio stations are broadcasting their thoughts aloud to others. Sometimes they believe they are someone else, such as a famous historical figure.
- paranoid delusions and believe that others are trying to harm them, such as by cheating, harassing, poisoning, spying on, or plotting against them or the people they care about. These beliefs are called "delusions of persecution."

Thought Disorders

Thought disorders are unusual or dysfunctional ways of thinking.

- disorganized thinking - when a person has trouble organizing his or her thoughts or connecting them logically. They may talk in a garbled way that is hard to understand.
- thought blocking - when a person stops speaking abruptly in the middle of a thought. When asked why he or she stopped talking, the person may say that it felt as if the thought had been taken out of his or her head.
- Neologism - a thought disorder might make up meaningless words

Movement Disorders

- **Movement disorders** may appear as agitated body movements. A person with a movement disorder may repeat certain motions over and over. In the other extreme, a person may become catatonic. Catatonia is a state in which a person does not move and does not respond to others. Catatonia is rare today, but it was more common when treatment for schizophrenia was not available.

Negative Symptoms

Negative symptoms are associated with disruptions to normal emotions and behaviors. These symptoms are harder to recognize as part of the disorder and can be mistaken for depression or other conditions. These symptoms include the following:

- "Flat affect" (a person's face does not move or he or she talks in a dull or monotonous voice)
- Lack of pleasure in everyday life
- Lack of ability to begin and sustain planned activities
- Speaking little, even when forced to interact.
- People with negative symptoms need help with everyday tasks. They often neglect basic personal hygiene. This may make them seem lazy or unwilling to help themselves, but the problems are symptoms caused by the schizophrenia.

Cognitive Symptoms

Cognitive symptoms are subtle. Like negative symptoms, cognitive symptoms may be difficult to recognize as part of the disorder. Often, they are detected only when other tests are performed. Cognitive symptoms include the following:

- Poor "executive functioning" (the ability to understand information and use it to make decisions)
- Trouble focusing or paying attention
- Problems with "working memory" (the ability to use information immediately after learning it).
- Cognitive symptoms often make it hard to lead a normal life and earn a living. They can cause great emotional distress.

Bipolar Disorder

- Mania – expansive energy, may be goal directed, pressured speech, racing thoughts, grandiosity
- Psychosis -

ADHD

- Inattention
- Hyperactivity
- Impulsivity

Case example: My ADHD supervisor. Impossible to work with so how could she work with a lawyer?

MENTAL HEALTH ISSUES

Posttraumatic Stress Disorder (PTSD):

- Person experienced, witnessed, or was confronted with an event(s) that involved actual or threatened death or serious injury, or a threat to the physical integrity of self or other
- Stressor: Person responds with intense fear, helplessness, or horror
- Intrusion symptoms: Re-experiences
- Avoidance of stimuli associated with the trauma
- Negative alterations in cognitions and mood
- Alterations in arousal and reactivity

CAVEATS

- Severity of a single incident can be systematically damaging
- Micro-aggressions can add up too systemically damaging harm
- People perceive and are affected by harm in idiosyncratic ways
- Resilience - an individual's ability to overcome adversity

DEPRESSION

- **depressed mood nearly every day, as indicated by subjective feelings of sadness and emptiness**
- **crying**
- **hopelessness / helplessness**
- **low energy**
- **anhedonia (crucial)**
- **low self-esteem**
- **psychomotor retardation / agitation**
- **fatigue or loss of energy**
- **feelings of worthlessness or excessive or inappropriate guilt (which may be delusional)**
- **poor or erratic appetite**
- **significant difficulty staying or falling asleep / nightmares**
- **diminished ability to think or concentrate, or indecisiveness**
- **guilt, shame, self-blame, worthless and unloved**

Suicidality

- **Suicidality may be either active or passive. Active suicidality occurs when the person has a plan to end her own life, such as by the ingestion of medications. Active suicidality most often is characterized by deep psychological pain or despair and a hopeless belief that nothing in the person's life can improve in any meaningful way.**
- **Passive suicidality concerns thoughts of death or dying and may include the person stating that they wonder what it would be like never having to wake up so that their pain would vanish. Passive suicidality is usually more ideational, while active suicidality is often accompanied by a thought out plan that may or may not be realistic or even coherent.**
- **Helpless feelings of overwhelming despair / deep psychological pain**

Types of Delusions

- **Bizarre delusion:** Delusions are deemed bizarre if they are clearly implausible and not understandable to same-culture peers and do not derive from ordinary life experiences. An example named by the DSM-5 is a belief that someone replaced all of one's internal organs with someone else's without leaving a scar.
- **Non-bizarre delusion:** A delusion that, though false, is at least possible, e.g., the affected person mistakenly believes that he is under constant police surveillance.
- **Mood-congruent delusion:** Any delusion with content consistent with either a depressive or manic state, e.g., a depressed person believes that news anchors on television highly disapprove of him, or a person in a manic state might believe she is a powerful deity.
- **Mood-neutral delusion:** A delusion that does not relate to the sufferer's emotional state; for example, a belief that an extra limb is growing out of the back of one's head is neutral to either depression or mania.

Themes of Delusions

- **Body dysmorphic disorder** the affected person is excessively concerned about and preoccupied by an imagined or minor defect in his physical features.
- **delusions of reference** involve people having a belief or perception that irrelevant, unrelated or innocuous phenomena in the world refer to them directly or have special personal significance.
- **Fregoli delusion** a person holds a delusional belief that different people are in fact a single person who changes appearance or is in disguise.

Themes of Delusions Con't

- **Capgras delusion** a friend, spouse or other close family member, has been replaced by an identical-looking impostor.
- **Clinical lycanthropy** person can or has transformed into an animal, or that he or she is an animal.
- **Cotard delusion** a delusional belief that he or she is dead, does not exist, is putrefying or has lost his/her blood or internal organs.

Themes of Delusions Con't

- **Delusional jealousy** delusional belief that their spouse or sexual partner is being unfaithful.
- **Intermetamorphosis** people in one's environment swap identities with each other whilst maintaining the same appearance.
- **Subjective doubles** a person believes there is a doppelgänger or double of him or herself carrying out independent actions.
- **Mirrored self-misidentification** is the belief that one's reflection in a mirror is some other person.
- **Reduplicative paramnesia** is the belief that a familiar person, place, object or body part has been duplicated. For example, a person may believe that they are in fact not in the hospital to which they were admitted, but in an identical-looking hospital in a different part of the country.

Themes of Delusions Con't

- **Somatoparaphrenia** is the delusion where one denies ownership of a limb or an entire side of one's body (often connected with stroke).
- **Syndrome of delusional companions** is the belief that objects (such as soft toys) are sentient beings.
- **Delusion of control** is a belief that another person, group of people, or external force controls one's thoughts, feelings, impulses, or behavior.
- **Nihilistic delusion** A delusion whose theme centers on the nonexistence of self or parts of self, others, or the world. A person with this type of delusion may have the false belief that the world is ending.
- **Delusion of guilt or sin** is a feeling of remorse or guilt of delusional intensity. A person may, for example, believe that he or she has committed some horrible crime and should be punished severely.
- **Delusion of mind being read** The belief that other people can know one's thoughts.

Themes of Delusions Con't

- **Delusion of reference** insignificant remarks, events, or objects in one's environment have personal meaning or significance. For instance, a person may believe that he or she is receiving special messages from newspaper headlines.
- **Persecutory delusions** These are the most common type of delusions and involve the theme of being followed, harassed, cheated, poisoned or drugged, conspired against, spied on, attacked, or obstructed in the pursuit of goals.
- **Religious delusion** Any delusion with a religious or spiritual content.
- **Somatic delusion** A delusion whose content pertains to bodily functioning, bodily sensations, or physical appearance. Usually the false belief is that the body is somehow diseased, abnormal, or changed.
- **Clonal pluralization of the self** is where a person believes there are multiple copies of him or herself, identical both physically and psychologically.

Themes of Delusions Con't

- **delusional parasitosis** is where a person believes that they are infested with parasites.
- **Erotomania** is a rare type of delusion in which the subject believes that another person is in love with him or her.
- **Folie à deux** a symptom of psychosis (particularly a paranoid or delusional belief) is transmitted from one individual to another.
- **Grandiose delusions** are a type of delusion characterized by fantastical beliefs that one is famous, omnipotent, or otherwise very powerful. Delusions of grandeur are generally fantastic, often with a supernatural, science-fictional, or religious bent (for example, belief that one is an incarnation of Jesus Christ).

Intellectual Disability

- Developmental Milestones
- Educational Issues: reading, writing
- Ability to function: make change in a store & ADL's
- Insight
- Judgment

Cognitive Issues

- Poor memory – short or long term
- Disorientation / LOC
- Cannot process information or retain or learn new information
- Dementia – a term that describes a wide range of symptoms associated with a decline in memory or other thinking skills severe enough to reduce a person's ability to perform everyday activities.
- Alzheimer's Disease accounts for 60 to 80 percent of cases.
- Vascular Dementia, which occurs after a stroke, is the second most common dementia type. But there are many other conditions that can cause symptoms of dementia, including some that are reversible, such as thyroid problems and vitamin deficiencies.
- Head trauma

Functioning

- Examine functioning over diagnosis
- That is, a less “serious” mental illness could still be quite debilitating depending how it affects that particular person
- Patterns of behavior and functioning

Atypical or Subclinical Issues

PART IV:
Malingering & Factitious Disorder

Factitious Disorder

- A **factitious disorder** is a condition in which a person acts as if he or she has an illness by deliberately producing, feigning, or exaggerating symptoms.
- **Factitious disorder** imposed on another is a condition in which a person deliberately produces, feigns, or exaggerates the symptoms of someone in his or her care.
- FOR PSYCHOLOGICAL / EMOTIONAL GAIN

Malingering Disorder

- the intentional production of false or grossly exaggerated physical or psychological problems. Motivation for malingering is usually external (e.g., avoiding military duty or work, obtaining financial compensation, evading criminal prosecution, or obtaining drugs).

Malingering Con't

Malingering should be suspected in the presence of any combination of the following:

- Medicolegal presentation (eg, an attorney refers patient, a patient is seeking compensation for injury)
- Marked discrepancy between the claimed distress and the objective findings
- Lack of cooperation during evaluation and in complying with prescribed treatment
- Presence of an antisocial personality disorder ^[3]
- Malingering often is associated with an antisocial [personality disorder](#) and a histrionic personality style.

Malingering Con't

- Prolonged direct observation can reveal evidence of malingering because it is difficult for the person who is malingering to maintain consistency with the false or exaggerated claims for extended periods.
- The person who is malingering usually lacks knowledge of the nuances of the feigned disorder. For example, someone complaining of carpal tunnel syndrome may be referred to occupational therapy, where the person who is malingering would be unable to predict the effect of true carpal tunnel syndrome on tasks in the wood shop.

Malingering Con't

- Prolonged interview and examination of a person suspected of a malingering disorder may induce fatigue and diminish the ability of the person who is malingering to maintain the deception. Rapid firing of questions increases the likelihood of contradictory or inconsistent responses. Asking leading questions may induce the person to endorse symptoms of a different illness. Questions about improbable symptoms may yield positive responses. However, because some of these techniques may induce similar responses in some patients with genuine psychiatric disorders, exercise caution in reaching a conclusion of malingering.

Malingering Con't

- Persons malingering psychotic disorders often exaggerate hallucinations and delusions but cannot mimic formal thought disorders. They usually cannot feign blunted affect, concrete thinking, or impaired interpersonal relatedness. They frequently assume that dense amnesia and disorientation are features of psychosis. It should be noted that these descriptions also may apply to some patients with genuine psychiatric disorders. For example, individuals with a delusional disorder can have unshakable beliefs and bizarre ideas without formal thought disorder or affective blunting.
- The most common goals of people who malingering in the emergency department are obtaining drugs and shelter. In the clinic or office, the most common goal is financial compensation.

Malingering Con't

- Typically, deficits on physical examination do not follow known anatomical distributions. Otherwise, there are no specific techniques of physical examination that reliably detect malingering.
- The following can be found on a Mental Status Examination:
- A patient's attitude toward the examining physician is often vague or evasive.
- Mood may be irritable or hostile.
- Thought processes are generally cogent. Thought content is marked by preoccupation with the claimed illness or injury.
- Threats of suicide may follow any challenge to the veracity of the claim, or a response deemed by the malingerer to be inadequate.

Malingering Con't

- As noted under History, persons with malingering psychotic disorders often exaggerate hallucinations and delusions but cannot mimic formal thought disorders. They usually cannot feign blunted affect, concrete thinking, or impaired interpersonal relatedness. They frequently assume that dense amnesia and disorientation are features of psychosis. These descriptions may also apply to some patients with genuine psychiatric disorders. For example, individuals with a delusional disorder can have unshakable beliefs and bizarre ideas without formal thought disorder or affective blunting.
- Individuals with malingering may attempt to feign any other type of mental status abnormality, but usually do so in a manner that is erroneous or grossly exaggerated.

GETTING HELP

- Mental health clinic with full resources are best b/c it tends to be psychiatrically holistic
- Support Groups
- Psychiatric Care
- Psychotherapy
- Spiritual / Religious Support
- Self Support
- Friends / Family
- Leave Well Enough Alone

Failure to Seek Mental Health Assistance

- Ignorance / Shame
- Lack of financial resources
- Fear of authority or government workers
- Feelings of depression and anxiety that prohibit the individual from accessing proper healthcare
- Feel that people who did not experience what they did simply would not understand or believe the experiences
- It may be the first time that the client has spoken about his experiences
- Anathema / Stigma

THANK YOU