

Each year, many people with mental illness come in contact with the criminal justice system. This video is one in a series designed to train defense attorneys for better understanding of how to best represent a client with mental illness.

So how can expert mental health witnesses help you? With their assistance, you'll be able to make informed decisions about how you relate to your client, your client's competence to proceed, your client's mental state at the time of the offense, plea negotiations, jury selection, decisions about whether or not your client should testify, medical treatment for your client while the case is pending, the types of assessment that are needed, and the selection of witnesses for trial.

Malingering is exaggerating psychological symptoms or disability to avoid legal consequences. As a defense attorney, you should never try to determine if your client is malingering. If an expert mentions malingering, questioning the expert on the test administered, and the basis for the determination because a malingering diagnosis can be harmful to your client.

Let's look at mitigation. Mitigation is the explanation of the influences that led up to the crime, and how information was processed by someone with a mental illness. Mitigation evidence can help the judge or jury understand who your client is and why they behave a certain way. It's important to note that your client's mental illness should be factored into decisions about probation to make sure conditions can be successfully completed. If your client is facing probation revocation, you should educate the court about your client's mental illness and the treatment options that could be made part of the conditions of probation to help them be successful.

If your client does not want treatment, you cannot force it even though you think it will be in your client's best interests. In this case, you may be limited in what you can do. If the charges are minor and your client has a supportive family, a safe place to live, and is relatively stable and competent, it may be better for your client to plead guilty and receive jail time, rather than pursuing an insanity defense or accepting a probation sentence.

Before that happens, present all the pros and cons of any plea bargain agreement.