

CONTENTS

	<i>Page</i>
<i>Preface</i>	v
<i>Introduction</i>	vii
 <i>Chapter</i>	
1. WHAT ARE THE MENTAL DISABILITY ISSUES?	3
Insanity Defense	3
<i>M’Naghten</i>	5
Irresistible Impulse	6
American Law Institute	8
<i>Mens Rea</i> Insanity Defense	9
Examples Of Insanity Defenses	11
California	11
Federal	11
Insanity Defense or Nothing Jurisdictions	12
Diminished Capacity	13
Strict <i>Mens Rea</i>	14
Diminished Capacity <i>Mens Rea</i>	15
Confusion Caused by Diminished Responsibility	16
Examples	17
California	17
Federal	21
Guilty But Mentally Ill	23
Competency to Stand Trial	25
Violence Prediction	26
 2. WHO EVALUATES THE ISSUES	 33
Law Enforcement Agencies (Including Police	
Departments)	34
Consultation with and Involvement of Lawyers	34

Non-Lawyer Investigators	35
Legal Assistants (Paralegals)	37
Psychiatrists and Psychologists	37
Prosecutors	38
Non-Lawyer Investigators	39
Legal Assistants (Paralegals)	40
Psychiatrists or Psychologists	40
Defense Attorneys	41
Non-Lawyer Investigators	41
Legal Assistants (Paralegals)	42
Psychiatrists or Psychologists	42
Juries	43
Judges	43
Instructions to Juries and Rulings on Admissibility of Evidence	43
Decisions On Competency To Stand Trial	43
Pretrial Detention Decisions Involving Violence Prediction	44
Sentencing Decisions Involving Violence Prediction	44
3. HOW THE ISSUES ARE EVALUATED	45
Shopping for Experts (Psychiatrists or Psychologists)	47
Development of Lay Evidence	51
Development of Mental Disability History	53
Briefing the Experts Before They Render Opinions	56
Lay Evidence	58
Mental Disability History	58
Facts and Circumstances Involved in the Crime	59
Crime Charged (Legal Elements Including Intent)	59
Insanity Defense and Any Diminished Capacity	59
Concept in the Jurisdiction	.
Legal Definition of Guilty But Mentally Ill (If It Exists In The Jurisdiction)	60
Legal Definition of Competency to Stand Trial (If That Is Involved)	60
Positions of Other Commentators	60
4. WHEN ARE THE ISSUES EVALUATED?	65
Pre-Indictment (or Information)	66

Focus on Whether There <i>Should</i> Be Prosecution	66
Tactics from Point of View of Defense Attorneys and Prosecutors	67
Should Opinion of Psychiatrist or Psychologist Govern Prosecution Decision?	69
Competency to Stand Trial Evaluation	72
Violence Prediction	73
Pre-Trial (or Pre-Hearing) Preparation	73
Organizing Evidence and Preparing Witnesses (Including Experts) for Testimony	73
Trial (or Hearing)	74
Presenting All Evidence and Witnesses	75
Expert and Lay Testimony Should Be Weighed, But Lay Testimony Can Prevail	76
“Battle of the Experts” Involving Severity of Mental Disability or Lack Thereof	76
Jury Makes Ultimate Decision at Trial; Judge Makes It at Competency Hearing--	78
Post-Trial	79
Sentencing by Judge to Confinement or Probation (Involving Violence Prediction)	79
Violence Prediction in Connection with Parole, If There Is a Prison Sentence	79
Dangerousness Prediction If There Is a Finding of Not Guilty by Reason of Insanity	79
Preparing Appeals	81
<i>Epilogue</i>	83
<i>Appendix A: United States v. Master Sergeant Maurice L. Schick, Master Sergeant, U.S. Army</i>	87
<i>Appendix B: United States v. Bernard Goldfine</i>	117
<i>Index</i>	135