

ASSESSMENT OF INTELLECTUAL DISABILITY IN CAPITAL CASES: USING ETHICAL PRINCIPLES TO ADDRESS CHALLENGES

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ATKINS V. VIRGINIA (2002)

- Executing ID offenders is cruel and unusual
- Defendants awaiting trial
- Death row inmates – habeas petitions
 - Estimated 10% eligible
 - About 7% filed
- Challenges in assessment

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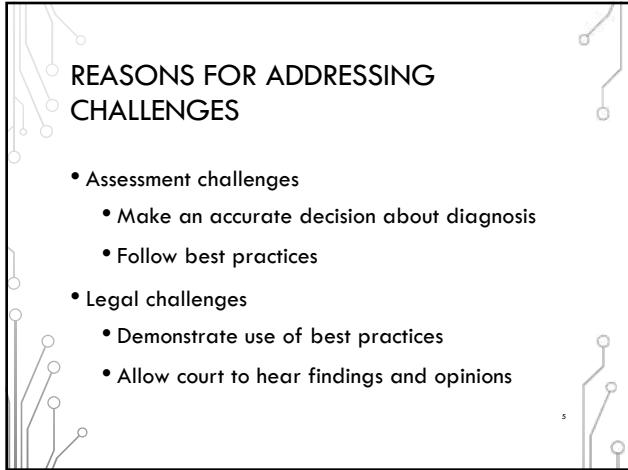
OVERVIEW OF PRESENTATION

- Ethical & other reasons for addressing challenges
- Common challenges
- Best practice & ethical solutions

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ETHICAL & OTHER REASONS TO ADDRESS CHALLENGES PROACTIVELY

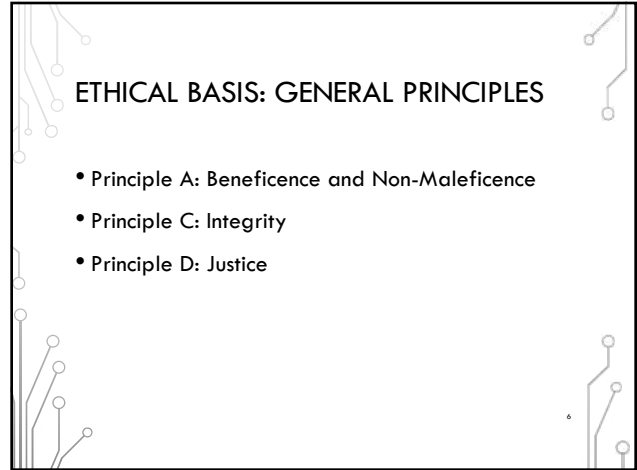
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REASONS FOR ADDRESSING CHALLENGES

- Assessment challenges
 - Make an accurate decision about diagnosis
 - Follow best practices
- Legal challenges
 - Demonstrate use of best practices
 - Allow court to hear findings and opinions

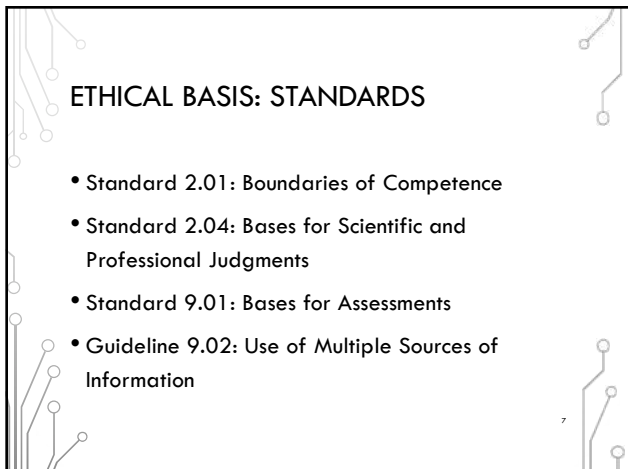
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ETHICAL BASIS: GENERAL PRINCIPLES

- Principle A: Beneficence and Non-Maleficence
- Principle C: Integrity
- Principle D: Justice

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ETHICAL BASIS: STANDARDS

- Standard 2.01: Boundaries of Competence
- Standard 2.04: Bases for Scientific and Professional Judgments
- Standard 9.01: Bases for Assessments
- Guideline 9.02: Use of Multiple Sources of Information

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COMMON CHALLENGES

AND BEST PRACTICE AND ETHICAL SOLUTIONS

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THE MULTIPLE DEFINITION CHALLENGE

- Nature of the Challenge
 - DSM-5-TR, AAIDD, and state laws
 - DSM-5-TR ≈ AAIDD
 - Deficits in intellectual functioning, deficits in adaptive functioning, onset during developmental period
 - Varying state definitions

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VARYING STATE DEFINITIONS

State (examples)	Definition of Deficient Intellectual Functioning
Mississippi	FSIQ = 75
Arizona	FSIQ = 70 ± SEM
Arkansas	FSIQ = 65

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VARYING STATE DEFINITIONS

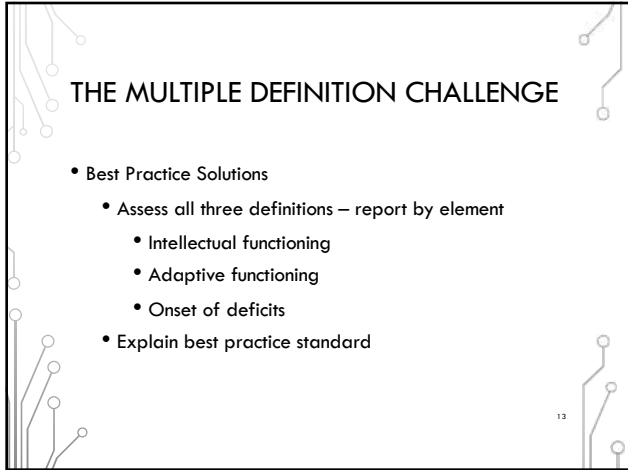
State (examples)	Definition of Adaptive Functioning
Virginia	Conceptual, social, and practical adaptive skills
South Carolina	Communication, self-care, and self-direction
Pennsylvania	Home living, social and interpersonal skills, and functional academic skills
Kansas	Personal independence and social responsibility

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VARYING STATE DEFINITIONS

- Age of onset variations
- Addition of mental illness criteria

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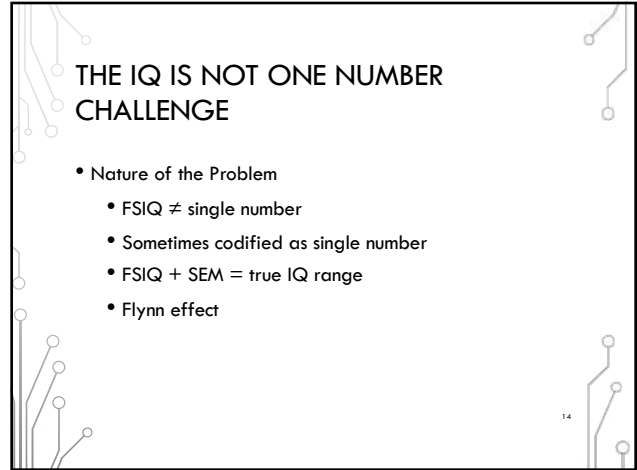


THE MULTIPLE DEFINITION CHALLENGE

- Best Practice Solutions
 - Assess all three definitions – report by element
 - Intellectual functioning
 - Adaptive functioning
 - Onset of deficits
 - Explain best practice standard

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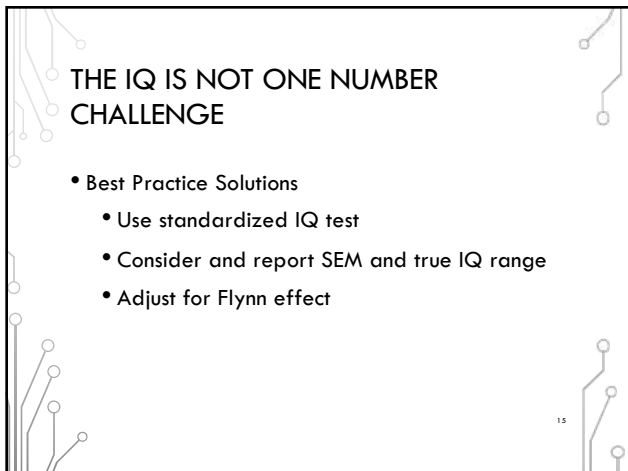


THE IQ IS NOT ONE NUMBER CHALLENGE

- Nature of the Problem
 - FSIQ ≠ single number
 - Sometimes codified as single number
 - FSIQ + SEM = true IQ range
 - Flynn effect

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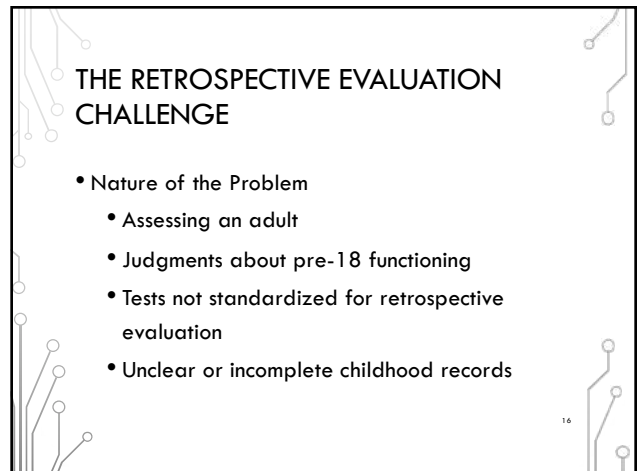


THE IQ IS NOT ONE NUMBER CHALLENGE

- Best Practice Solutions
 - Use standardized IQ test
 - Consider and report SEM and true IQ range
 - Adjust for Flynn effect

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THE RETROSPECTIVE EVALUATION CHALLENGE

- Nature of the Problem
 - Assessing an adult
 - Judgments about pre-18 functioning
 - Tests not standardized for retrospective evaluation
 - Unclear or incomplete childhood records

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THE RETROSPECTIVE EVALUATION CHALLENGE

- Best Practice Solutions
 - Start with assessment of adult functioning
 - Standardized tests of IQ and adaptive functioning
 - IQ is stable
 - Possible exception → premorbid assessment
 - Adaptive functioning stable or improves
 - Standardized tests of specific adaptive behaviors

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THE RETROSPECTIVE EVALUATION CHALLENGE

- Best Practice Solutions (continued)
 - Assess childhood functioning
 - Relevant records
 - Suitable collateral sources
 - Possible causal factors
 - Consistency of information

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THE INMATE FUNCTIONS WELL IN PRISON CHALLENGE

- Nature of the Problem
 - Jail and prison → structured environments
 - People with ID do best in structured environments
 - May view functioning as normal

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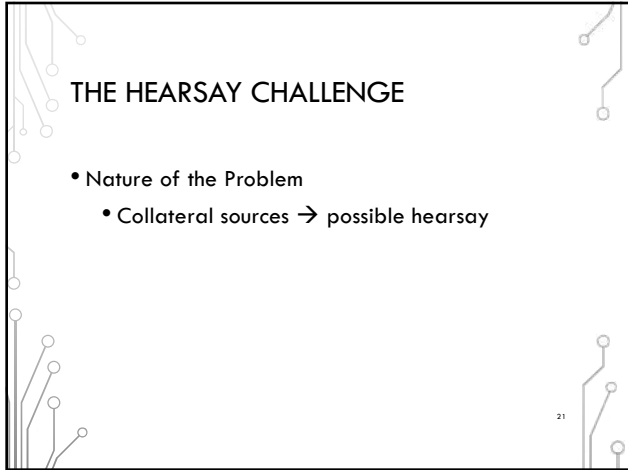
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THE INMATE FUNCTIONS WELL IN PRISON CHALLENGE

- Best Practice Solutions
 - Recognize and inform re: appropriate environments
 - Adaptive functioning = actual typical performance in home and community
 - Assess adaptive functioning outside structured environment
 - Collateral reports
 - Standardized tests

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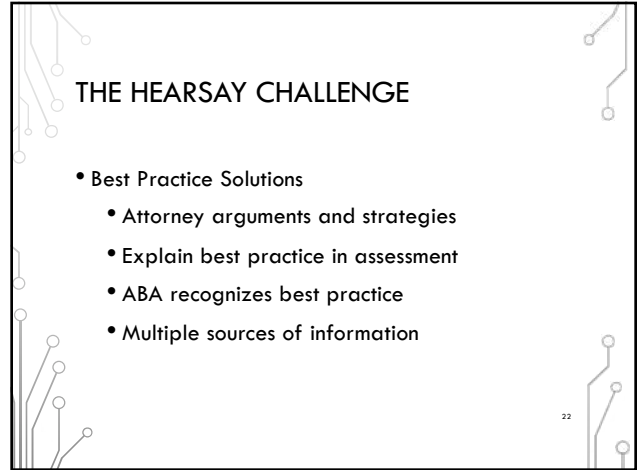


THE HEARSAY CHALLENGE

- Nature of the Problem
 - Collateral sources → possible hearsay

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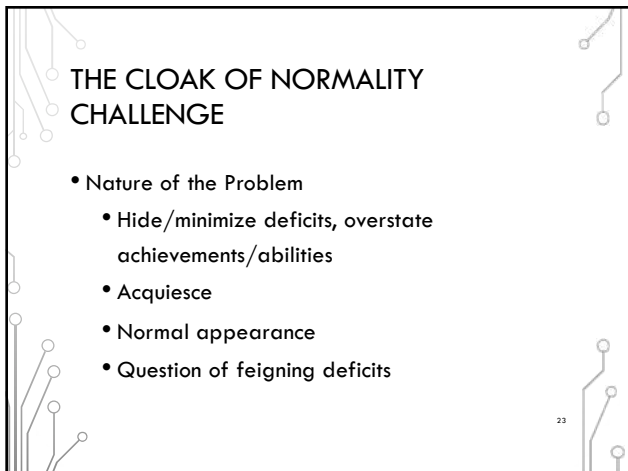


THE HEARSAY CHALLENGE

- Best Practice Solutions
 - Attorney arguments and strategies
 - Explain best practice in assessment
 - ABA recognizes best practice
 - Multiple sources of information

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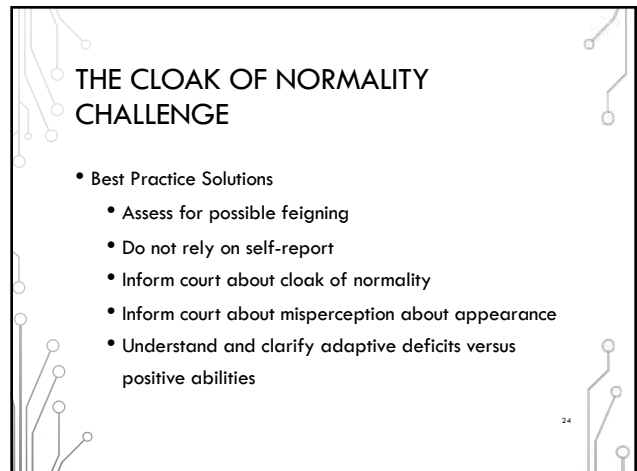


THE CLOAK OF NORMALITY CHALLENGE

- Nature of the Problem
 - Hide/minimize deficits, overstate achievements/abilities
 - Acquiesce
 - Normal appearance
 - Question of feigning deficits

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THE CLOAK OF NORMALITY CHALLENGE

- Best Practice Solutions
 - Assess for possible feigning
 - Do not rely on self-report
 - Inform court about cloak of normality
 - Inform court about misperception about appearance
 - Understand and clarify adaptive deficits versus positive abilities

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THE “NO OBVIOUS BRAIN DAMAGE” CHALLENGE

- Nature of the Problem
 - Increased use of neuroimaging results in trial
 - Arguments made by defense and prosecution
 - Neuroimaging cannot be used to determine ID

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THE “NO OBVIOUS BRAIN DAMAGE” CHALLENGE

- Best Practice Solutions
 - Reiterate definition of ID
 - Present relevant research

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THE “ANTISOCIAL PERSONALITY” CHALLENGE

- Nature of the Problem
 - Possible diagnosis of APD from corrections
 - Argue no ID

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THE “ANTISOCIAL PERSONALITY” CHALLENGE

- Best Practice Solutions
 - Clarify adaptive behavior versus problem behavior
 - Do not confuse unsuccessful criminal behavior for adaptive deficits

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CONCLUSIONS

- High stakes
- Thorough evaluation
- Addressing challenges → best practice + ethical imperative

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QUESTIONS?

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