



2016

NCBJ

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# Diffusing the Stress in Financial Distress: The Intersection of Bankruptcy and Mental Health

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What mental illnesses is one likely to encounter in bankruptcy?



When is mental illness part of  
the bankruptcy case?



How can lawyers and clients prepare for the mental toll of bankruptcy?



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# Bankruptcy and Mental Health

Understanding—and Mitigating—the  
Impact of Psychiatric Illness in Court



# Frequency of Bankruptcy, 2010-2014

US Courts: <http://www.uscourts.gov/news/2014/04/24>

TOTAL BANKRUPTCY FILINGS BY BANKRUPTCY CHAPTER YEARS ENDING MARCH 31, 2010-2014				
Year	Chapter			
	7	11	12	13
<b>2014</b>	<b>699,982</b>	<b>8,564</b>	<b>388</b>	<b>329,256</b>
2013	804,885	9,811	463	355,081
2012	958,757	11,339	606	396,175
2011	1,118,481	13,051	743	438,788
2010	1,100,032	15,251	605	415,966

# Relationship Between Mental Disorders and Bankruptcy

- *Pre-existing* mental illness that impairs financial decision-making and increases likelihood of bankruptcy. (bankruptcy as direct result of symptoms of illness)
- Mental illness that emerges during legal proceeding that has an adverse impact on outcome in court. (typically anxiety and depression)
- Normal emergency emotional reactions to the threat that bankruptcy represents
- Need to distinguish between these two different scenarios because the first involves possible lack of responsibility, with a potentially different legal outcome.



## How Common is Mental Illness in the U.S?

- Lifetime prevalence of *any* major psychiatric illness among those  $\geq$  18 years old is **51%**
- Depression: 17%
- Bipolar Disorder: 4%
- Anxiety Disorder (Panic, GAD, OCD, Social Phobia, PTSD): 28%
- Impulse Control Disorder: 26%
- Any Substance Use Disorder: 15%

Kessler R et al: Lifetime Prevalence and Age-of-Onset Distributions of DSM-IV Disorders in the National Comorbidity Survey Replication. Arch Gen Psychiatry. 2005;62:593-602

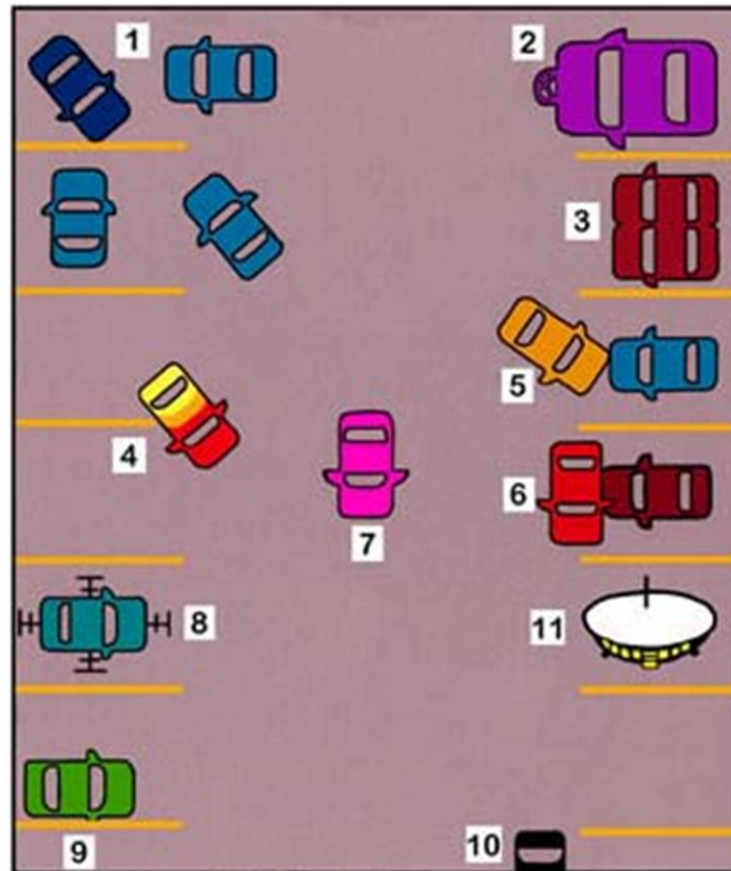
# Concept of Psychiatric Comorbidity

- Very common that people have more than one psychiatric disorder for complicated reasons
- For example, the comorbidity of alcohol abuse in patients with bipolar disorder is estimated to be 40-50%
- In the National Comorbidity Survey-Replication (2005) found that more than more than 40% of 12-month cases were comorbid.

# DSM-V Personality Disorders

- Defining characteristic: inflexible personality traits (enduring patterns of thinking and relating to the world and others) that are maladaptive and cause significant impairment in functioning or distress.
- Cluster A (strange/odd): paranoid, schizoid, schizotypal
- Cluster B (dramatic): antisocial, borderline, histrionic, narcissistic
- Cluster C (anxious/avoidant): avoidant, dependent, obsessive-compulsive.

# Personality Disorder Parking Lot



## Parking Lot of the Personality Disordered

- 1. PARANOID - Cornered again!!
- 2. NARCISSIST - Largest car; prominent hood ornament
- 3. DEPENDENT - Needs other cars to feel sheltered
- 4. PASSIVE-AGGRESSIVE - Angles car to take 2 spaces
- 5. BORDERLINE - Rams into car of ex-lover
- 6. ANTISOCIAL - Blocks other cars
- 7. HISTRIONIC - Parks in center of lot for dramatic effect
- 8. OBSESSIVE - Perfect alignment in parking space
- 9. AVOIDANT - Hides in corner
- 10. SCHIZOID - Can't tolerate closeness to other cars
- 11. SCHIZOTYPAL - Intergalactic parking



# Prevalence of Personality Disorders, DSM-IV

personality disorders in the National Comorbidity Survey Replication. *Biol Psychiatry*. 2007 Sep 15; 62(6): 553–564.

	Part II NCS-R	Clinical reappraisal sample
	% (se)	% (se)
Cluster A	5.7 (1.6)	6.2 (2.2)
Cluster B	1.5 (0.3)	2.3 (0.8)
ASPD	0.6 (0.2)	1.0 (0.5)
BPD	1.4 (0.3)	1.6 (0.7)
Cluster C	6.0 (1.5)	6.8 (1.8)
Any <sup>†</sup>	9.1 (0.9)	

# Prevalence of Psychiatric Illness in Court

- Well-documented that the rates of mental disorders and substance abuse are *much* higher in the criminal population compared with general population
- But no clear data about relative prevalence of psychiatric illness among those involved in bankruptcy
- Bankruptcy is obviously very stressful and threatening to most people with or without a history of mental illness
- Those with a history of mental illness would be a high risk of relapse or recurrence of underlying disorder during legal proceeding.

# Clinical Examples

- Bipolar patient whose reckless spending, which led to bankruptcy, is a core symptom of his/her psychiatric illness
- Avoidant procrastinator person who neglects to pay bills on time
- Narcissistic patient who feels entitled and not very interested in financial consequences
- Antisocial patient who has fundamental lack of conscience, consistently violates norms and rights of others
- Cases with different implications for individual accountability/responsibility for one's behavior

# When Might a Psychiatric Disorder Contribute Significantly to Bankruptcy?

- Psychiatric disorders might impair financial decision-making several ways:
  - Impair judgement about consequences of one's behavior (mood, substance use, and psychotic disorders)
  - Impair impulse control (e.g. bipolar disorder and certain personality disorders)
  - Impair cognitive function (e.g. dementia)
  - Impair reality testing (e.g. a psychotic disorder)
  - *How much, then, is a mental illness a mitigating factor in given circumstance??*