

CRIMES OF INNOCENCE:

Examining Transgressions of the Mentally Young Offender

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Kevin, 15 years old and suspected of arson, faced the most important interview of his young life without legal representation. Like many defendants with mental retardation, this youngster had no concept of what RIGHTS are, thus freely waived them upon arrest. He also made several common mistakes that we see in this disability group which include 1) feigning understanding of abstract concepts, 2) watching his interrogator's face and body language for clues of desired answers, 3) agreeing with statements and questions in order to please authority figures, and 4) providing a confabulated and/or inconsistent account which he cannot duplicate under cross examination. These behaviors* helped to mask his considerable deficits from the untrained officers.

In fact, the youngster's brief and disastrous adventure playing with matches was entirely explainable from a developmental perspective. Here, it is common for children between the ages of 4 and 7 to experiment with fire unless educated preventively and well supervised. Young teens with cognitive disabilities often have mental ages that fall into this developmental band, even though they appear to most observers to be more mature both socially and chronologically. Thus, we see an elevated incidence of arson among youngsters with mental retardation, often with the sort of unintended outcome that occurred in Kevin's case: a warehouse and all of its contents was burned to the ground.

In the following discussion, the term "mentally young offenders" includes those defendants whose reduced cognitive maturity renders them childlike regardless of their ages and physical size. Disabilities manifested in this group include mental retardation (all levels, mild to severe), specific learning disabilities, and, to a lesser extent, attention deficit disorders. These cognitive differences have the potential to reduce culpability in criminal defendants, thus deserve and require careful assessment and advocacy with courts, juries, and other professionals in the justice system. The title, "Crimes of Innocence", is not intended to excuse antisocial actions by disabled offenders, but rather to explain the genesis of certain behaviors and actions from a developmental perspective. Discussion will therefore focus on several categories of crimes involving developmental immaturity, experiential deviance, and personal incompetence in disabled as well as young normal individuals. Both client groups manifest cognitive deficits that can limit the ability to plan and control multiple and typically unintended outcomes of their impulsive actions. They may therefore be as surprised and horrified as innocent bystanders when unexpected outcomes involving property damage and/or personal injury unfold before their eyes. In addition, their developmental ceilings often limit abstract understanding of the far-reaching implications of these actions, thus they neither self-advocate at arrest nor demonstrate appropriate insight or remorse in hindsight. Finally, it cannot be overlooked that the very obviousness of some cognitive disorders leads to exploitation by more capable individuals who sense their vulnerability and need for friendship. For example, youth gangs often assign mascot status to one or more disabled "wannabe's" simply to use them as lackeys. Here again, we must question the culpability of the disabled accomplice in group activities that result in criminal outcomes.

* A listing of language issues that can interfere with self-advocacy and suggested remedies follows this article.

Crimes of Immaturity

To understand the actions of disabled defendants in some situations, we must look to research in the stages of normal human development. Here, the developing child becomes less egocentric with increasing maturation, and this enables him to envision the possible outcomes of his own behavior from the perspective of others, as well as its impact on the larger society. However, this level of “externality” typically requires adolescent development at a minimum mental age of 11 to 12 years. Prior to this developmental stage (Formal Operations), children view the world from a selfish perspective, believing that their own impulsive desires and expectations are widely shared by others. This is the foundation for actions that lead to petty thefts, arson, and exploratory sexual behavior with younger children.

Arson. Thirteen year old Eduardo set fire to a wooden shed on a neighbor’s property in an impulsive, experimental manner just to see if it would burn. This disabled teen’s behavior was similar to 7 year old James’ decision to light a “small” fire in the coat closet of his classroom in order to attract the teacher’s attention. Both boys functioned in a mental age range where such experimental behavior is predictable under the right conditions. Neither boy could envision the ultimate destructive outcome of his exploratory action, nor understand the lengthy legal entanglement that followed. Children at this “Concrete Operational” stage are indeed limited in their ability to foresee negative consequences and are thus unprepared to make adaptive adjustments when situations like these get out of hand.

Petty Theft. Likewise, several of my young adult clients with mental retardation impulsively “took things” they fancied without considering the risks and consequences of these actions. Reggie appropriated two flags from his school auditorium because he admired them; while Moses snatched a carton of cookies from a parked factory delivery truck. When Tyrone, a 19 year old “Crip” gang mascot, roughly handled a gold chain on a young lady’s neck, it broke and fell free as she pulled away. His decision to pick it up ultimately constituted robbery charges. Finally, Charles snatched a purse from a woman on the street and ran off with it. All of these impulsive crimes of opportunity went awry when the disabled perpetrators botched the “getaway” by dropping the items on the ground behind themselves. None were *planned* in the conventional sense, nor did they show the sophistication of seasoned criminals. Yet, probation reports routinely describe random actions by disabled offenders in this very manner, then recommend stiff prison terms as punishment.

Sexual Curiosity. While troubling to many parents, child-to-child sexual exploration has been well documented in the early developmental stages. For example, “playing doctor” between the ages of 4 and 7 years is not considered deviant by most observers, as long as the participants are chronological peers. Yet, the criminal justice system steps in when *mental ages* of differing chronological ages engage in similar experiences. Although these immature crimes of exploration vary in motivation depending on the individual case, three common themes are evident where the perpetrator is disabled: pure curiosity, re-enactment of one’s own abuse, and exploitation by the younger partner in the scenario.

Casey and Aaron are both 13 year olds whose separate crimes involved the inappropriate touching of 4 and 5 year old children. Both boys have cognitive disabilities that reduce their mental ages to levels similar to their child victims. Yet, both matters were relegated to juvenile courts where prosecutors sought high-term periods of incarceration among teenaged felons. This discussion must first point out that sexual curiosity is a natural byproduct of physical maturation, even where mental development has been stalled in early or middle childhood. For many adolescents with mental retardation, this physical-mental imbalance leads to confused feelings and desires which remain outside the realm of understanding due to their cognitive limitations. Without proper preventive sexual-social education, these youngsters may behave inappropriately with both adults and children in their acquaintance, due to natural curiosity that is oblivious to sanctions without such instruction. "Proper" preventive education should be timed so as to head off emerging problems, and must provide concrete instruction related to *appropriate versus inappropriate, public versus private* behaviors. The most effective curricula in this area include direct commands that serve as guideposts in times of uncertainty. For example, the "Circles Stop Abuse" program (James Stanfield Publishers, Santa Barbara, CA) utilizes colorful relationship circles to depict varying degrees of closeness among acquaintances. Most or all children are placed in the orange "Wave" circle, with the instruction, "We never touch children; we only wave to them." Without preventive education of this sort, youngsters like Casey and Aaron may remain unaware of boundaries, especially when interacting with children who are their mental peers.

Casey's situation provides a good look into the dynamics involved where immature curiosity motivates such behavior. This youngster was born with a rare genetic syndrome that limits overall intelligence (measured IQ of about 50); but he also possesses the unreserved friendliness, loquaciousness, and curiosity documented in other individuals with this disorder. Casey additionally demonstrates mental preoccupation with several perseverative topics, one of which is, and has always been, the location and function of body parts. Because of his small stature, young age, and cognitive limitations, appropriate sex education had not been initiated by his school or family; although in hindsight, all concerned admit that the precursor behaviors were in place. Casey's inappropriate touching of a 5 year old girl must therefore be evaluated as a somewhat foreseeable exploratory action that happened when his customary strict supervision lapsed during a visit with relatives. Advocacy on Casey's behalf included a complete psychoeducational assessment of his skills and weaknesses so as to describe his composite mental age and developmental stage to the Court. In his particular state of residence, both *competence* and *capacity* are issues that must be addressed in order to dismiss punitive sanctions against a given youngster. Due to the severe cognitive deficits outlined in his assessment report, Casey was declared both incompetent to stand trial and incapable of committing a purposeful crime. Thus, preventive alternatives in the form of counseling and proper sexual-social education were put into effect in lieu of incarceration.

The second theme underlying crimes of sexual exploitation occurs when an abuse reactive teen reenacts his or her experiences with a peer or younger child. This was precisely the case for Thomas, a 15 year old California youth with a dual diagnosis of mental illness and severe learning

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disabilities. Here, the boy's repeated sexual acting out was rather obviously correlated to his developmental, emotional, and social levels. Compounded by his serious interrelated disabilities, Thomas's early victimization by a deviant adult caused much sexual confusion as he entered puberty. Here, the prolonged exploitation could not be maturely processed by the youngster due to both his young age and various cognitive deficits. In addition, his relationship to the temporary father-figure who perpetrated the abuse led to a host of contradictory feelings and reactions. The result was a serious, persisting interest in related sexual activities, expressed in jokes, provocative language, and copycat behaviors that were inappropriate for Thomas's age and peer group. Immediate re-education was crucial to head off the victimization of others by this child who was himself the confused victim of such abuse. It seems pertinent to add here that, in today's social and political climate, sex offenders of all ages are immediately divested of their victim status.

For individuals whose cognitive development has "ceilinged" below 11 or 12 years of age, there may *never* be complete understanding of the social and personal ramifications of sexual maturation or experience. This remains true despite the plethora of sexually explicit messages promoted on a daily basis in the current entertainment media. It goes without saying that individuals with cognitive impairments cannot provide knowing consent where sexuality is concerned; but neither can they be held to the same standards as their agemates for sexual "acting out". The solution in Thomas's case had to balance public safety with the youngster's own needs regarding reeducation and counseling. All concerned agreed that he was unlikely to receive appropriate intervention in a correctional system designed merely to punish offenders. Instead, a group treatment facility appeared to be the best alternative, and one that held the most promise for the sort of specialized remedial interventions that will shape his future social behavior.

Finally, we have encountered cases where a teen or young adult with cognitive disabilities was actually sexually exploited by a younger normal peer. This was the scenario when Andrea, a 22 year old woman with mild mental retardation, was befriended by several 14 year old youngsters in her neighborhood. The young woman had recently been placed in an independent living situation by her California Regional Center, and was struggling with the isolation that sometimes accompanies such autonomy. She was therefore happy to occasionally welcome one of the youths into her apartment, oblivious of his developing sexual curiosity. When he suggested they "try out" a condom he brought along, she consented, and was subsequently charged with child molestation. Advocacy in Andrea's case again included a complete cognitive and adaptive skills evaluation so as to accurately portray her intellectual and social limitations. When it was made clear that the young enticer's mental age exceeded her own, the court was willing to forego penalties that would have required Andrea's mandatory registration as a sex offender. This status would have precluded her inclusion in the more appropriate Regional Center residential option that was put in place following the incident. This group home setting offered the best hope of eliminating the "opportunity" factor that contributes to recidivism in such cases. In this and all of the situations discussed in this section, the cognitive immaturity of the disabled defendants *both led to and mitigated* their involvement in the criminal justice system.

Crimes of Deviant Experience

Stephen is a 55 year old male whose case illustrates the effects of deviant past sexual experience. He grew up in an institution for the mentally retarded in New York State from the age of about 4 to 26 years. He never knew his natural parents and did not establish close relationships with any adults in foster or institutional settings. Diagnosis as "mildly" mentally retarded remains fairly consistent throughout his file; with accompanying epilepsy, "environmental" and "psychosocial deprivation", and psychosis indicated by various examiners. All of his education took place within institutional classrooms, which were numbered 1 through 12. Presumably, this numbering system corresponded to public school grade levels, where the client completed Classroom 6 just before his adult release from the facility.

Stephen's history of institutionalization had a profound impact on his present functioning in all life domains, and his sexual development is no exception. It should be noted that institutions in the 1950s and 1960s commonly omitted sex education from training options offered to clients. It was believed that such information would only lead to sexual experimentation between clients, difficult behavior management, and possible embarrassing outcomes for all concerned. Also, to lessen the chance of pregnancy among institutionalized clients in instances where adequate supervision failed, both male and female clients were customarily sterilized during this time period. Thus, institutionalized clients rarely had appropriate sex education, nor experienced normal sexual development and/or healthy and consensual heterosexual encounters with peers. Homosexual encounters were (and still are) available to most institutionalized clients, but are usually discouraged when detected by staff members.

Unfortunately, the vast majority of mentally disabled clients (upwards from 75%) have experienced deviant, often abusive, sexual encounters with staff and others in school and institutional settings. Often, these deviant experiences are the only source of sexual information for retarded clients, and their side effects are difficult to extinguish. As educators, we have found the need to use graphic teaching scripts and pictures along with detailed explanations, discussion of appropriate sexual behavior, ample time for questions to clear up misconceptions, and overlearning of content in order for even minimal learning to occur. However, even with this instruction, it is not uncommon for retarded clients to miss a great deal of content, to misunderstand and internalize grossly inaccurate information, or to forget curricular content and instead rely on deviant sexual experience as their only first-hand information. In the present case, Stephen reported several homosexual contacts with same-age institutional peers. He also indicated that he submitted to sexual relations with a male employee at the institution on four occasions in order to "get special privileges". As an independent adult, Stephen had continued to reenact some of these experiences. In this regard, he was accused in connection with several instances of inappropriate sexual conduct, including child sexual abuse (charges dropped 16 years ago) and, more recently, indecent exposure in the presence of two older females. He had never married or maintained a successful long-term relationship with a female in his age group.

Stephen's current charge involved the sexual assault of an elderly woman who he assisted on a public bus. He was in turn invited to her home for dinner, and allowed to spend the night on the sofa. The victim awoke in the middle of the night as Stephen attempted a failed rape. During the assault, he spoke apologetically as he reenacted what appears to have been a familiar deviant experience of his own. The incident brought to light the fact that the client needed direct teaching of appropriate sexual behavior, with specific information about normal heterosexual relationships from both physiological and social perspectives. Like others who tend to act reflexively, he needed to distinguish between behaviors which are publicly acceptable, those which are appropriate only in private, and those which are never acceptable at any time (e.g., sexual assault). There was also some concern here that Stephen himself would continue to be sexually victimized as he was in his earlier years. Advocacy efforts on behalf of this defendant succeeded in characterizing him as the hapless victim of an institutional system that, through its defective educational and custodial programs, had doomed the client to repeated failure in several life domains.

With these concerns in mind, it became apparent that the prison system was the *least likely* source of appropriate treatment for this disabled offender. This is because, until quite recently, the California Department of Corrections (CDC) had no programs or classes in place to assist its disabled inmate population. They were instead channeled into living units, classrooms, and vocational programs with violent offenders who exploited their vulnerability in every imaginable way. Recent class action lawsuits* on behalf of disabled inmates in California prisons have resulted in some improvements. For example, CDC Reception Centers now attempt to identify and classify developmental disabilities in incoming offenders, then take steps to remove these inmates from the general population. Still, there remain serious unresolved issues that will only be ameliorated over time with close monitoring by disability advocates, attorneys, and other public agencies. Until then, advocates recommend appropriate alternatives to prison for those disabled offenders determined to be good candidates for a variety of placement arrangements. California diversion statutes authorize a hierarchy of secure group facilities which frequently monitor appropriate and prosocial behavior. These residential programs pair correctional and retraining efforts under court supervision, with reevaluation on a regular basis. The diversion statute recognizes that individuals like Stephen will most certainly not learn anything but aberrant behavior from incarceration with violent offenders.

* For the full text of the federal court's Findings of Fact and Conclusions of Law in *Armstrong v. Davis* (C94-02307), visit the Northern District of California web site at: www.cand.uscourts.gov

Crimes of Incompetence

The final category of crimes associated with disabled defendants involves actions which they *fail to take* due to self-perceived or actual incompetence. Facing several charges of child endangerment, 36 year old Tina presents just such an example. This mentally handicapped mother of two daughters failed to prevent their molestation by her husband and two brothers. To complicate

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matters further, all of the individuals involved in this New York case had been diagnosed with mild

to moderate mental retardation, with Tina and her husband the highest functioning of the group. The client was identified as developmentally delayed in her early school years, and enrolled in a full-time special education setting until her “graduation” with a nonstandard diploma at the age of 18. Reports document that she was the victim of long term sexual and physical abuse by her father and, at approximately 14 years of age, gave birth to his child. It does not appear that her father was punished for his transgressions, nor was her mother supportive or protective of Tina. Following high school, the young woman established a common law marriage with a classmate who was also her first cousin. Their two preteen daughters have been tracked into special education classes since their early school years. Tina and her younger daughter both received SSI payments, while her husband collected unemployment for a physical disability. Having been homeless in past years, the family was assisted in finding housing by a social service agency. The four of them lived with Tina’s mother-in-law in a three-bedroom apartment along with several pet dogs, cats, and hamsters. They also allowed friends and relatives into their home for extended stays, including Tina’s young “Godson”, who was also named as a victim in the case.

The family’s living environment was extremely cluttered with possessions and debris, and rarely cleaned thoroughly. As a result, the apartment became infested with insects, and the children were removed from the home temporarily. Determined to regain custody of the children, Tina doused the place with several gallon containers of professional strength insecticide. Her daughters were returned to the home, along with a government-assigned homemaker who assisted the family weekdays, 8 AM to 4 PM. Her duties were not restricted to cleaning the apartment, but included assisting with bill paying, arranging medical appointments, helping the children with homework, shopping, and providing assisted care to the grandmother. Thus, Tina’s substandard domestic skills were acknowledged and supported through government intervention.

The family enjoyed numerous birthday and holiday celebrations, many of which were attended by Tina’s two mentally retarded brothers. These celebrations were typically barbecues held in the common outdoor area of their apartment complex. Unfortunately, however, the family held several more private functions where lewd conduct was the norm. At these events, as well as during typical visits, both of Tina’s brothers and their friend and former classmate sexually assaulted the three children in her care. Review of videotaped and transcribed arrest interviews indicates that Tina made numerous attempts to intervene on behalf of the children to prevent abuses such as those she, herself, suffered as a youngster. Most, if not all, of these interventions (yelling, slapping and hitting, telling “very nicely”, shadowing, warning and threatening, punishing, and the like) were unsuccessful in effecting permanent behavior changes in family members and friends. As a result, Tina found herself included among the defendants in this complex case, characterized as an enabler and lesser perpetrator of child abuse.

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The point of presenting this somewhat detailed case study is to illustrate the enormity of the day-to-day problems faced by this defendant in her efforts to both support her family and protect her

children. Here, her own deviant parents provide poor models of effective intervention. At her mental age, Tina had never thoroughly processed and integrated the specific transgressions of her parents nor their betrayal of her innocence. Another issue here was the fact that Tina's own husband was intermittently involved in the abuses that took place in her home, and this posed an insurmountable moral dilemma for one with such intellectual limitations. Here, on the one hand, her daughters and their well being were of paramount concern; but she also felt an obligation to protect her husband from criminal prosecution. Finally, Tina's own actions at family gatherings were marginally inappropriate, especially on a few occasions when alcohol was involved. Her reported behavior in these instances illustrates a sort of blurring of sexual and familial boundaries based on her experiential and intellectual deprivation. However, even though there remained much confusion in her consciousness, to her credit, she did take the specific steps listed above to break the cycle of family sexual abuse.

Clearly, a task of this magnitude was simply beyond the capability of this mentally disabled client. Psychoeducational assessment revealed that she could not articulate sexual-social boundaries if, indeed, she intellectually discerned them at all. This finding left justice professionals to determine what, apart from parental incompetence and poor social judgment, constituted her offenses. Local newspaper accounts of the sordid case both shocked and educated the public, many of whom never realized that persons with mental retardation can and do become parents. These accounts also highlighted the crucial need for more effective parenting education in programs for mentally handicapped teenagers. In the end, Tina spent only a few months in prison, in that time served in jail and under observation at a state hospital sufficed as her punishment. However, this incompetent mother has paid the ultimate price in losing her daughters to State custody until they reach adulthood.

Conclusion

This discussion was not intended to minimize antisocial actions on the part of disabled clients, nor to excuse them from punishment where justified. Instead, it is offered to help explain cognitive conditions involving immaturity, deviant experience, and incompetence, all of which contribute to the behaviors at hand. Many or most crimes of mentally handicapped offenders epitomize the sort of innocence we see in children who have made unwise choices. The bungling, random nature of these actions calls into question issues of capacity and intent that must be considered by our justice system if fundamental fairness is to prevail.

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**LANGUAGE ISSUES IN CLIENTS WITH COGNITIVE DISABILITIES:
SUGGESTED REMEDIES**

- ▶ ***Lack of self-trust resulting in “outerdirectedness”***
Avoid leading the client by smiling, nodding, using facial expressions or body language that communicate an expected or desired answer. Support the client’s attempts to supply his own answers. Extend the “wait time” for the client to formulate answers.

- ▶ ***Literal, concrete translations***
Use low level language; avoid abstractions and double-meaning words; be concrete.

- ▶ ***“Parroting” the phrases of others without understanding***
Ask the client to paraphrase statements he takes from other sources by asking, “What does that mean to you?” or “How do you understand that?” Ask the client to restate using his own words.

- ▶ ***Naivety: Inability to discern sarcasm, “in-jokes”, and subtle messages***
Don’t confuse the client with sarcastic comments or esoteric phrases. Be direct in your questions, comments, and/or instructions.

- ▶ ***Immaturity in terms of content and presentation style***
Be prepared to accept and parrot back immature terms and phrases rather than inserting your own. Use lowest language level terms and explanations in your communications.

- ▶ ***Inappropriate or unrelated comments in specific situations***
You may wish to ignore such comments and redirect the client back to the topic that is underway OR use these utterances as communicative springboards. (NOTE: Several studies have shown that off-track utterances and verbal perseverations may have communicative intent that should be utilized to make a conversational connection rather than be extinguished.)

- ▶ ***Semantic restriction of multiple meaning words***
Try to avoid using words that have more than one meaning. If you must do so, explain the meaning of the word in *your particular context* (Example: A RIGHT is SOMETHING YOU ARE ALLOWED TO DO. It is different from BEING RIGHT or ON THE RIGHT).

- ▶ ***No/little incidental learning of common terms and phrases***
Do not expect the client to understand slang, street terms, or other vernacular even

though it may be popular in his/her age group. Avoid using such language as it can be quite confusing to the client.

- ▶ ***No/little notice of peripheral details -OR- Focus scattered to peripheral details***
Be specific in pointing out details that you want considered; redirect attention to the main focus of your presentation.
- ▶ ***Misinformation from unmonitored TV watching (or other experiences)***
Parents/caregivers should provide adult guidance to accompany televised programs. Where lacking, correct misperceptions with clear explanations. Use real life experience and manipulative materials where possible.
- ▶ ***Failure to grasp abstract concepts and terms***
Use concrete terms and explanations instead.
- ▶ ***Associating unrelated terms and information***
Avoid terms which are vague. Simplify content and language.
- ▶ ***Conceptual and/or perceptual confusion***
Ask client to rephrase what was said, listen for confusion, and correct it.
- ▶ ***Confabulating or agreeing in order to please the questioner***
Question his/her answers and assertions. Ask, “Is that what *really* happened?” or “Are you sure about that?” Discuss the difference between truth and lies. Admonish the client not to tell any lies whenever he talks to you.
- ▶ ***Inappropriate disclosure of information can jeopardize personal safety***
Caution the client not to talk about his personal business where others can overhear him.
- ▶ ***Limited vocabulary makes self-expression labored or confusing***
Take the time to sort out all the details in confused stories. Check to be sure you have received the intended meaning of utterances (Example: “Are you saying ...?” or “Let me be sure I understand you...”). Help the client stay focused and follow a logical sequence in telling and retelling the details of his experiences.

Mental Retardation is a disability characterized by significant limitations both in intellectual functioning and in adaptive behavior as expressed in conceptual, social, and practical skills. This disability originates before age 18.

Five Assumptions are essential to the application of this definition:

1. Limitations in present functioning must be considered within the context of community environments typical of the individual's age, peers, and culture.
2. Valid assessment considers cultural and linguistic diversity as well as differences in communication, sensory, motor, and behavioral factors.
3. Within an individual, limitations often coexist with strengths.
4. An important purpose of describing limitations is to develop a profile of needed supports.
5. With appropriate personalized supports over a sustained period, the life functioning of the person with mental retardation generally will improve.

EXAMPLES OF CONCEPTUAL, SOCIAL, AND PRACTICAL ADAPTIVE SKILLS

Conceptual

Language (Receptive)
Language (Expressive)
Reading
Writing
Money Concepts
Self-Direction
Functional Literacy

Social

Interpersonal
Responsibility
Self-esteem
Gullibility/Naivety
Following rules
Obeys Laws
Avoids Victimization

Practical

Self Help Activities
Eating, Dressing,
Toileting, Mobility
Daily Living Activities
Meal preparation,
Housekeeping,
Taking medication,
Telephone use
Occupational Skills
Maintains Safe Environment