Beyond Competence and Sanity: The Influence of Pretrial Evaluation on Case Disposition

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A preliminary investigation of the impact of pretrial evaluations of trial competence and legal insanity, and the variables that mediate case outcomes is reported. Twenty-four percent of defendants evaluated as incompetent to stand trial were found competent by the court or were tried without the question of competence being adjudicated. Charges were dropped in more than half of the cases in which an evaluator considered a defendant incompetent, most frequently in cases involving misdemeanor charges and/or the clinician considered it unlikely that the defendant could be restored to competence. One third of defendants considered to meet criteria for legal insanity subsequently were acquitted NGRI; more than half did not present an insanity defense and were ultimately convicted or plea bargained a guilty verdict. The defendants considered to meet the criteria for legal insanity were more likely than their mentally ill but not insane counterparts to have treatment ordered in lieu of incarceration. The defendant's age and race and the evaluator's professional discipline were unrelated to case outcome.

The professional literature is replete with studies cataloging the characteristics of criminal defendants adjudicated incompetent to stand trial or not guilty by reason of insanity. Nicholson and Kugler (1991)[1] recently reviewed 30 studies published or presented over the past 25 years comparing competent and incompetent defendants. A smaller but growing number of studies have examined insanity acquittees (Boehnert, 1989;[2] Callahan, Steadman, McGreevy & Robbins, 1991;[3] Steadman, Keitner, Braff & Arvanites, 1983).[4] Typically these studies have aimed to identify defendant characteristics (e.g., demographic, psychiatric) and offense characteristics (e.g., seriousness of offense) that correlate with competence or sanity determinations (competent or incompetent, sane or insane). None, however, has focused on what may be a far more significant question: how these characteristics of defendants and offenses relate to ultimate case disposition.

At least since the United States Supreme Court's decision in *Jackson v. Indiana* (1972),[5] barring extended hospital confinement as the ultimate dis-

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position of cases involving defendants found incompetent to stand trial, it has been the law's clear presumption that defendants found incompetent would be restored to competency and brought to trial. Under *Jackson*, defendants found to be incompetent to stand trial and likely to remain so for "the foreseeable future" might be permanently diverted from the criminal justice system, but findings of unrestorable incompetence are uncommon (Carbonell, Heilbrun, & Friedman, 1992).[6] Thus, a finding of incompetence to stand trial rarely represents the ultimate disposition in a criminal case. Nonetheless, a clinical assessment of incompetence may have a significant impact on how a case ultimately is resolved.

Just as rates of incompetence adjudication provide an incomplete measure of the significance of competence evaluation findings, rates of acquittal by reason of insanity represent only one aspect of the overall impact of sanity evaluation data on case outcome. Because the legal tests of insanity used in most states are narrowly drawn, only a fraction of defendants who may have been mentally disordered at the time of an offense receive a forensic evaluation resulting in an opinion supporting an insanity defense (Warren, Fitch, Deitz, & Rosenfeld, 1991).[7] Moreover, because the law in many states allows for the indefinite confinement of insanity acquittees—confinement for periods that may be considerably longer than would be likely upon conviction—some defendants may forgo presentation of a viable insanity defense as a matter of strategy. Finally, recent data suggest that of those defendants who do plead insanity, only about one quarter are ultimately acquitted on this basis (Callahan et al., 1991;[3] Janofsky, Vandewalle, & Rappeport, 1989).[8] Yet few would suggest that, in the absence of an insanity acquittal, findings of major mental abnormality have no bearing on case outcome. Indeed, it has been our observation in Virginia that despite the low frequency of acquittals by reason of insanity in this state (approximately 25 acquittals per year), findings of mental abnormality resulting from pretrial evaluations of criminal defendants often have considerable impact on case outcome.

This study is a preliminary examination of the impact of clinical assessment and defendant and offense characteristics on ultimate case disposition. Three samples of defendants referred for pretrial evaluation in Virginia are considered: 1) defendants considered by their evaluators to be incompetent to stand trial; 2) defendants considered by their evaluators to satisfy criteria for an insanity defense; and 3) defendants considered by their evaluators to be suffering from major mental abnormality at the time of the offense but not satisfying the criteria for an insanity defense.

Legal Background

In Virginia, a defendant is incompetent to stand trial if he or she "lacks substantial capacity to understand the proceedings against him or to assist his attorney in his own defense" (Code of Virginia, Section 19.2–169.1).[9] On a finding of trial incompetence, the court

is obliged to order treatment to restore the defendant to competence. The court must reconsider the defendant's competence no less frequently than every six months. If at any point it appears that the defendant is not likely to become competent in the foreseeable future, he or she must be released from treatment or be civilly committed. No defendant may be held in treatment to restore competence for longer than five years or the maximum sentence for the offense charged, whichever is shorter.

Under Virginia law a defendant may be found not guilty by reason of insanity if at the time of the offense, because of a mental disease or defect, he or she did not understand the nature, character, and consequences of the act, was unable to distinguish right from wrong, (*Price v. Commonwealth*, 1984)[10] or was driven by an irresistible impulse to commit the act (*Thompson v. Commonwealth*, 1952).[11] Under Virginia law, legal insanity is characterized as a disorder that engenders a "substantial impairment of capacity to understand or appreciate his criminal conduct" (*Snider v. Smyth*, 1960, p. 303).[12]

Method

Since 1985, the University of Virginia's Institute of Law, Psychiatry, and Public Policy, working under a contract with the Virginia Department of Mental Health, Mental Retardation, and Substance Abuse Services, has collected data on pretrial forensic evaluations ordered by Virginia courts in criminal cases. Data are derived from "forensic information forms" completed by public-sector evaluators throughout the state. The forms call for information about the defendant, the evaluator, the offense charged, including the evaluator's diagnostic findings and opinion on the psycho-legal question presented (e.g., competence to stand trial, sanity at the time of the offense).

Of the 2,772 forensic information forms submitted between July 1, 1985, and June 30, 1989, competence to stand trial was a referral question in 1986 cases, and sanity at the time of the offense was a referral question in 1632 cases. Criminal defendants were considered to be incompetent by evaluating clinicians in 312 of the 1986 cases in which the question of competence was raised (16%).

Because the forensic information forms did not elicit the names of referring attorneys, a two-step process was necessary to determine how evaluation results influenced case outcome. The authors first contacted each of the clinicians authoring a report supporting a finding of incompetence, requesting the name and address of the attorney referring the case. Two-page questionnaires were subsequently mailed to the attorneys who had represented defendants in the sample. Of the 312 cases in which a finding of incompetence was reported, approximately 200 clinicians (two-thirds of those contacted) provided the name and address of the referring attorney (the exact proportion of clinicians and attorneys responding at each stage of data collection was unavailable), and roughly half of these attorneys completed the mailed questionnaire, yielding a final

sample of 100 cases in which defendants were evaluated as incompetent to stand trial. Questionnaires yielded information about plea negotiation, expert testimony, the outcome of competency hearings, trial verdict, sentence, and mental health treatment.

Of the 1632 defendants whose sanity at the time of the offense was the subject of evaluation, 523 (32%) were diagnosed as having a mental disease or defect. Only 146, however, were believed to meet Virginia criteria for legal insanity (9% of the sample, 28 percent of the cases in which defendants were diagnosed with a mental disease or defect). A two-step process was also used to obtain disposition data for cases in which defendants were considered to meet criteria for legal insanity. However, in order to generate a subset of the 377 cases in which defendants were believed to be mentally ill but did not meet Virginia criteria for insanity, alternating cases were chosen for incorporation into the sample. As noted above, approximately two-thirds of the clinicians contacted (190 and 146) provided the necessary information, and roughly one-half of the attorneys completed the questionnaires. The final sample included 46 cases in which defendants were believed to meet criteria for legal insanity, and 64 cases in which the defendants were considered mentally ill but sane. Frequency analyses were used to assess differences between groups on the various clinical and demographic variables.

Results

Preliminary analyses contrasted cases in which outcome data was obtained with those cases in which either clinicians or attorneys failed to respond. No significant differences between these two groups ($p < .05$) were revealed on any variable measured (offense, diagnosis, source of referral, etc.), indicating that the sample was roughly representative of the types of cases referred for evaluation in Virginia.

Subsequent data analyses indicated that the evaluators' findings influenced the disposition of cases in a number of different ways. Forensic evaluations were used to support: 1) dismissal of charges prior to trial; 2) plea negotiation; 3) adjudication of incompetence (that in many cases resulted in a subsequent dismissal of charges); 4) acquittal by reason of insanity; and 5) arguments in mitigation at sentencing or for mental health treatment in lieu of incarceration.

Competence to Stand Trial

The impact of clinical findings suggesting incompetence to stand trial was examined for 100 cases. As can be seen in Figure 1, in six cases (6%) charges against the defendant were dismissed outright, without any adjudication of the

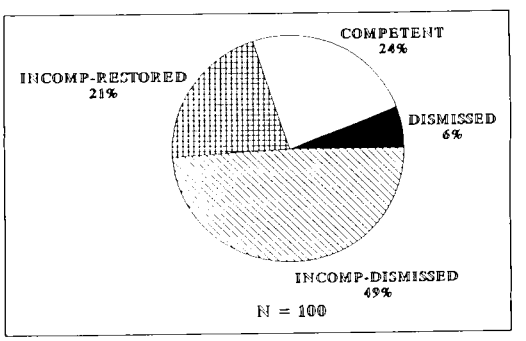

Figure 1. Disposition of defendants evaluated as incompetent to stand trial.

questions of competence or restorability. The evaluator's findings were utilized in negotiating the dismissal of charges in all six of these cases. In 24 cases (24%), either the defendant was found competent notwithstanding the evaluator's opinion to the contrary (and was subsequently tried), or the case proceeded to trial without an adjudication of the defendant's competence.* In 70 cases (70%), the defendant was adjudicated incompetent (in accord with the evaluator's opinion) and the case was continued while the defendant received treatment to restore his or her competence. Of these 70 cases, the charges ultimately were dismissed in 49 cases (70%), whereas in 21 cases (30%), the defendant was restored to competency and tried.

The first stage of analysis aimed at identifying variables that distinguished the 24 cases in which the defendant was *not* adjudicated incompetent to stand trial despite the evaluator's opinion that he or she *was* incompetent. Interestingly, many of the variables studied bore no significant relationship to the court's adjudication of the defendant's competence, including the age and race of the defendant, the professional discipline of the evaluator (i.e. psychiatrist versus psychologist), the source of the referral (e.g., court, defense attorney, prosecutor), and the offense with which the defendant was charged. Indeed, the only variables that significantly differentiated defendants adjudicated competent (despite an evaluator's opinion to the contrary) from those adjudicated incompetent were the defendant's diagnosis and the fact that a second evaluation was performed. All 11 defendants diagnosed with an organic mental disorder were adjudicated incompetent to stand trial, while only about 60 percent of defendants receiving other diagnoses were so adjudicated ($(1, n = 79) = 4.8, p < .05$). Where a second evaluation was obtained by the court, the defendant was also significantly more likely to be found competent to stand trial ($(1, n = 100) = 4.1, p < .05$), even where the second opinion was in agreement with the first (that the defendant was incompetent).

It should not be assumed, however, that in cases in which the defendant was adjudicated competent despite an evaluation suggesting otherwise, the evaluator's findings were necessarily without influence. Even in these cases, clinical findings were often used by defense counsel to argue for a more favorable outcome for the defendant. In 19 of 24 cases in which the defendant was found competent and tried, clinical findings were used in the plea-bargaining process (evaluators's findings were also used to support plea-negotiation in 63 percent of cases in which the defendant was found incompetent, 32 of 49 cases in which charges were dismissed, and 12 of 21 cases in which the defendant was restored). In eight cases, the defendant was tried and convicted but still had treatment ordered as a condition of the

* Cases that proceeded to trial without a formal adjudication of the competence question (despite the law's requirement that such an adjudication be made post-evaluation) were considered analogous to those in which the court found a defendant competent. By proceeding to trial, the courts in these cases in effect resolved the question in favor of competence, and these cases are treated accordingly in the discussion that follows.

sentence (42% of those defendants who were ultimately convicted).

A second stage of analysis focused on differentiating those defendants whose charges were dismissed ($n = 55$) from those who ultimately were brought to trial ($n = 45$). Again, several factors bore no relationship to whether or not the case ultimately went to trial, including the age and race of the defendant, the professional discipline of the examiner, the source of the referral, and the diagnosis ascribed to the defendant. However, in cases in which the clinician opined that it was unlikely that the defendant could be restored to competence, charges were more often dropped, ($(1, n = 94) = 7.3$, $p < .01$). The seriousness of the offense charged was also related to dismissal of charges, with misdemeanor charges being dismissed at a greater rate than felony charges ($(1, n = 100) = 4.9$, $p < .05$). Finally, when a second evaluation was obtained, the defendant was significantly more likely to be brought to trial ($(1, n = 100) = 11.0$, $p < .001$).

Mental State at the Time of the Offense

Dispositional data were elicited for 110 cases in which an evaluation was conducted with regard to the defendant's "sanity" at the time of the offense, 46 cases (42%) in which the defendant was considered by the evaluator to meet Virginia criteria for an insanity defense and 64 cases (58%) in which the defendant was considered to have a major mental disorder but did not qualify as legally "insane." Regardless of the evaluator's opinion on the question of the defendant's legal sanity, however, clinical findings regarding the defendant's mental state at the time of the offense were used by defense attorneys in 100 of the 110 cases.

Clinical findings were used in 45 of the 46 cases in which a defendant was considered by the evaluator to have the basis for an insanity defense. Charges were dismissed in 10 of these cases (22%), and 36 cases proceeded to trial. Fifteen of these 36 defendants pled not guilty by reason of insanity (NGRI), and 12 were ultimately acquitted on this basis (33% of those evaluated as "insane" and tried; 80 percent of those so evaluated and presenting an insanity defense). As shown by Figure 2, only one defendant from this sample of 36 was found simply not guilty after trial (as opposed to NGRI), whereas 23 (64%) either pled to or were otherwise found guilty. Of the 23 convicted defendants (including those who pled guilty as part of a plea bargain), 5 were sentenced to some time in jail or prison (22%), 14 had treatment ordered by the court as an alternative to incarceration (61%), and 4 defendants received other dispositions (probation, community diversion, fines, etc.).

Among the 64 cases in which the defendant was considered by the evaluator to have a major mental disorder but not to meet Virginia criteria for an insanity defense, the evaluator's findings were used in 55 cases, and an insanity defense was offered in 6 cases. Charges were dismissed in 19 of these 64 cases (30%) and 45 cases proceeded to trial (70%). One of these 45 defendants was ulti-

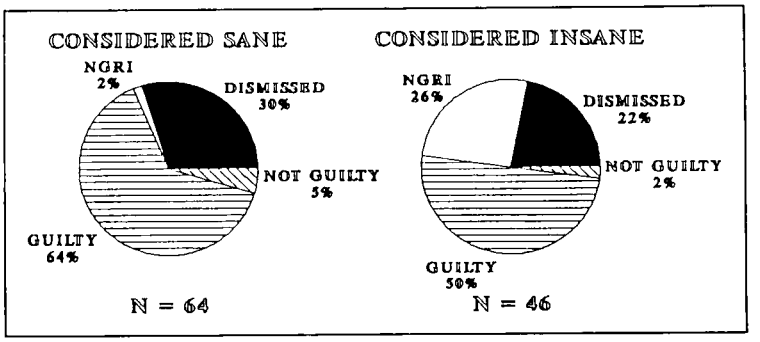

Figure 2. Disposition of defendants considered to meet criteria for legal insanity versus those considered mentally ill at the time of the offense but not considered legally insane.

mately found not guilty by reason of insanity (1.5%); three were found simply not guilty (5%); and 41 either pled to or were otherwise found guilty (64%). Nine of the 41 (22%) convicted defendants who were considered to have a major mental disorder (but not to be legally insane) had treatment ordered in lieu of incarceration; eighteen defendants (44%) had at least a partial jail sentence imposed; two (5%) were both incarcerated and ordered into mental health treatment; and 14 (34%) received dispositions other that incarceration (probation, community diversion, fines, etc.).

Clinical findings were used in roughly the same way whether or not the evaluator considered the defendant to satisfy the criteria for an insanity defense. Attorneys used these findings in plea negotiations in 48 cases (29 cases in which the defendant was considered insane and 19 cases in which the defendant was not); testimony was offered at trial in 11 cases (seven and four cases, respectively); and testimony was offered at sentencing in 14 cases (six and eight cases, respectively).

Defendants who were considered by the evaluator to be legally insane, but who were convicted nonetheless, were significantly more likely than their counterparts who were not considered legally insane to have treatment ordered as part of the case disposition and less likely to have a jail sentence imposed ($(2, n = 63) = 14.2, p < .001$). Not surprisingly, defendants considered legally insane also were significantly more likely to be found NGRI ($(1, n = 110) = 13.2, p < .001$). Again, no relationship was observed between the defendant's race or age or the evaluator's professional discipline and case outcome.

Defendants who had more than one evaluation of their sanity at the time of offense were significantly more likely to have a jail sentence imposed than defendants evaluated only once ($(1, n = 64) = 7.9, p < .005$). Sixteen of 22 defendants who had a second evaluation ordered by the court (73%) were sentenced to some time in jail or prison following conviction, whereas only 15 of 42 defendants who had only one evaluation (36%) were similarly sentenced.

Because of the apparent relationship

between second evaluations and case outcome, an effort was made to ascertain the factors that related to whether a second evaluation was ordered. These analyses also revealed no relationship between race, age, or diagnosis of the defendant and the court's request for a second evaluation. Seriousness of offense, however, made a significant difference. Defendants charged with misdemeanor offenses were significantly less likely to have a second evaluation ordered than those charged with felony offenses ($(1, n = 100) = 4.1, p < .05$). Only one-third of defendants charged with misdemeanor offense (17 of 50), but 27 of 50 defendants charged with felony offenses (55%), had a second forensic evaluation ordered.

Discussion

Several methodological limitations must be acknowledged that qualify the generalizability of these preliminary findings, most notably the statistical methods used to analyze these data. Because of the complex manner in which clinical findings are used in a criminal case, coupled with modest sample sizes in this study, missing data on several variables (e.g., diagnosis), and a lack of outcome data on "control" groups such as defendants considered competent to stand trial and/or not mentally ill, multivariate data analysis techniques could not be used. Therefore, with the relatively large number of statistical tests conducted, the possibility exists that some significant findings are due to chance. Conversely, some nonsignificant findings are likely due to the lack of statistical power associated with small sample sizes.

Despite these limitations, however, the pattern of findings that emerge lends support to the validity of these analyses. Similar patterns of significant and nonsignificant results were found in several different areas of analysis (e.g., findings of competence, dismissal of charges, case outcome). Although further research with larger sample sizes and multivariate (e.g., log-linear) statistical models would help to clarify the complex relationship between mental health evaluations and the criminal justice system, a number of findings reported here warrant notice.

One such finding is the large proportion of cases in which defendants considered incompetent by evaluators were ultimately brought to trial, either without a judicial hearing as to their competence, or who were considered competent by judges despite a clinical opinion to the contrary. It is possible that this finding reflects "incorrect" clinical opinions, although the sampling method used was more likely to generate a sample biased towards "correct" clinical opinions, since attorneys dissatisfied with a forensic opinion that was not accepted by the courts might be less likely to respond to a questionnaire. Therefore, while the sampling methods may be vulnerable to a positive bias (lawyers being more likely to respond to mailed questionnaires when a positive outcome resulted from the forensic evaluation) the study may actually *underestimate* the true proportion of cases in which a defendant considered incompetent to stand trial was tried without a competency hearing or

was found by a judge to be competent to stand trial.

A more probable explanation for the large number of defendants evaluated as incompetent and found by the court to be otherwise may result from a desire on the part of the judicial system to dispose of cases in the most expedient manner possible, having already accomplished the desired goal of involving the mental health system through forensic evaluation and/or mandated treatment as part of a plea bargain. This explanation is consistent with the "criminalization" hypothesis in which the criminal justice system has increasingly been used as a means of dealing with mentally ill individuals (Teplin, 1983).[13]

In reviewing the pattern of findings generated by these data, many of the variables that the authors anticipated would have an impact on case outcome (e.g., race and age of the defendant, professional discipline of the evaluator) failed to show significance in any of these analyses. Considerable controversy has been generated by findings that black defendants are treated differently in the criminal justice system than white defendants. Thus, the fact that no differential outcomes were found in this study with respect to the influence of forensic evaluations on case outcome is interesting and heartening. The professional discipline of the evaluating clinician, a factor that some might assume would be associated with level of ability to conduct evaluations or influence the trier of fact, also was not associated with case outcome in any analysis. This finding suggests a comparable level of perceived authority among mental health clinicians despite their divergent academic backgrounds.

Not unexpectedly, seriousness of the offense appeared to mediate case disposition in several important ways. Charges were often dismissed for defendants evaluated as incompetent to stand trial or mentally disordered at the time of the offense, with minor charges being dismissed at a greater rate than more serious charges. In cases that involved more serious offenses, a second forensic evaluation was often ordered when one evaluator found the defendant either incompetent or mentally ill. Even when both evaluators agreed that the defendant was incompetent to stand trial, these cases usually still proceeded to trial either immediately or after a period during which the defendant was treated and restored to competence. These findings highlight the importance of attorneys requesting evaluations in cases involving minor charges, as it is in these cases that mental health information appears most succinctly to impact on case outcome. As is discussed elsewhere (Warren et al., 1991),[7] however, this finding also supports theories of the "criminalization" of the mentally disordered and suggests that the ready availability of forensic evaluation services may actually promote this phenomenon.

Morris (1982)[14] and others have argued for years that the constructs of competency to stand trial and legal insanity provide an ineffective means of identifying offenders who require psychiatric treatment or other special accommodation because of mental abnor-

mality. And it is true, as our data and that of the other studies referenced herein indicate, that even among defendants diagnosed with major mental abnormality, it is the exceptional case in which the defendant is adjudicated incompetent to stand trial or acquitted by reason of insanity. That is not to say, however, that the input of mental health professionals on questions of competence or sanity is usually inconsequential. To the contrary, as this study shows, attorneys regularly rely on this input in negotiating cases and at trial, as well as at sentencing. Moreover, although this study included no controlled samples of defendants either not receiving evaluations or evaluated as normal, it would appear that the evaluators' input in these cases had a significant impact on case outcome, not only in those cases in which the defendant was adjudicated unrestorably incompetent or acquitted by reason of insanity. Thus, even in an era in which concepts of mental nonresponsibility/diminished responsibility have largely fallen out of favor (in the public's eye if not in the law's), the forensic evaluation, this study suggests, can be a powerful engine for justice for defendants with a mental disability.

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