

An Historical Review of the Legal and Personal Background to *Jackson v. Indiana*

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The landmark case of *Jackson v. Indiana* is well known to forensic psychiatrists, but little is known of the personal and legal background of this case. Mr. Jackson's state hospital records were reviewed, as were available transcripts and decisions of the Indiana court proceedings, before and after the U.S. Supreme Court decision, and local newspaper coverage, to understand how this case developed.

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In May 1968, Theon Jackson, who was 27 years old, was charged with two separate robberies. Mr. Jackson was found incompetent to stand trial and was committed to the Indiana Department of Mental Health (DMH) “to be confined . . . in an appropriate psychiatric institution” until “the defendant shall become sane.”¹ Mr. Jackson's attorneys appealed to the Indiana Supreme Court in 1970² and then to the U.S. Supreme Court in 1971, which handed down the landmark decision of *Jackson v. Indiana* in 1972.³

In the U.S. Supreme Court decision, Mr. Jackson was portrayed as very impaired, based on the testimony of the psychiatrists who examined him, but the Court also noted that he had been employed and had lived at home before his arrest. I therefore sought to determine the nature and extent of his impairments and the course of the legal proceedings involving his case, to gain a better understanding of the clinical and legal context of this landmark court decision.

Methods

Mr. Jackson was found still living in Indianapolis. With the assistance of the staff attorney for the present Indiana Division of Mental Health and Addic-

tion (DMHA), I contacted Mr. Jackson's sister, who is his health care representative, and asked for her permission to review his state hospital medical records. She was informed that I hoped to incorporate information from the medical records into an article to be published in the medical literature. She subsequently signed a written Authorization for Release of Health Information to allow me to review and copy Mr. Jackson's state hospital records, which were stored on microfilm in the Indiana State Archives. After I reviewed the documents, I again contacted her; she agreed to an interview about her brother, but declined to allow him to be interviewed. As I was preparing the manuscript, I contacted her for an update on her brother's status. During each telephone interview, I informed her that I hoped to publish an article based on information about her brother.

The state hospital records held in the Indiana State Archive were limited; they consisted of admission evaluations, typewritten annual reports, typewritten notes, four pages of handwritten progress notes, psychological evaluations, and copies of some court documents. The Indiana Supreme Court Archives held two case files, one for each of the underlying robbery charges; these contained 183 and 103 pages of material, respectively. Indianapolis had two major newspapers at the time, *The Indianapolis Star* and *The Indianapolis News*. Microfilm archives of these newspapers were reviewed for articles on Mr. Jackson's case.

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Trial Court Proceedings

The first incident that led to Mr. Jackson's arrest occurred on July 22, 1967, when he and another man allegedly beat a man and a woman, knocking the man unconscious. Mr. Jackson was described as drunk at the time and was identified by the victim from a police lineup. The second incident took place on July 28, 1967, when Mr. Jackson allegedly accosted a woman, threw her off her porch, breaking several ribs, and beat her until a neighbor pulled him off the victim. The victim and the neighbor both knew Mr. Jackson from the neighborhood.⁴ Mr. Jackson was formally charged with two counts of robbery on May 6, 1968, and was arrested and jailed. He was accused of robbing the first victim of five dollars and the second victim of four dollars.

An Indianapolis attorney, Mr. Melangton, took over Mr. Jackson's defense on July 31, 1968, and filed a motion for appointment of an interpreter from the State School for the Deaf on September 13, in which he wrote "it is apparent to counsel that the defendant is a deaf mute with very little education and is unable to understand, read or speak the English language."⁵ In an October 23, 1968, hearing, Mr. Melangton told the court that his client might not be competent to stand trial, and two psychiatrists, Drs. Louis Nie and Dwight Schuster, were appointed to evaluate Mr. Jackson.

Drs. Nie and Schuster simultaneously evaluated Mr. Jackson at the detention unit of the county hospital, with the aid of an interpreter from the Indiana School for the Deaf, "who had spent some hours with Mr. Jackson trying to learn his capacities."⁶ In their one-page report, dated November 8, 1968, they noted that "Mr. Jackson does not hear and does not communicate except through sign language and some pantomime." On the basis of this evaluation, they concluded that Mr. Jackson "has a moderately severe intellectual defect in addition to his communicating difficulties" and thus concluded that "he is mentally defective and coupled with his severe hearing loss and communication loss . . . he can neither understand the nature of the charge against him nor can he adequately participate in preparing his own defense."⁶

Dr. Schuster testified on December 18, 1968, that the two psychiatrists had tried to communicate with Mr. Jackson "through sign language, through drawings, through printed matter, through gestures" and "it seemed evident that his basic intelligence was very low, that he had only the rudiments of intellectual abilities," as he could read and write only his own name and used a "very limited number of the signs" used by the hearing-impaired. On cross-examination by the prosecutor, Dr. Schuster observed, "It was pretty much impossible to get through to him." On cross-examination by the defense, Dr. Schuster was asked only if Mr. Jackson's sanity (i.e., competence) could be restored; he replied, "I doubt it, I don't believe so."⁷

Dr. Nie testified that Mr. Jackson "could write his name with some difficulty, probably nothing more," and, when asked to make change, "revealed pretty definite and pretty severe limitations." As a result, "I felt we were unquestionably dealing with a man who presented a moderately severe mental deficiency, coupled with a communication defect." In response to the court's questions, Dr. Nie said Mr. Jackson would not be competent even if he were not deaf and mute.⁷

The defendant's mother testified that her son had been born deaf in Greenwood, Mississippi, and had never talked. When asked if he had gone to school, she replied "No, never did. He been sick all his days, I would just say all his days." She said her son "can sort of print his name, he can't write too good. He learned that since he has been here going to school." She said her son had worked with "a deaf and dumb teacher" for just over three years.⁷

The deaf interpreter, Mr. Olson, testified that he worked as a supervising teacher at the Indiana State School for the Deaf and had been a teacher of the deaf for 20 years. He met Mr. Jackson and Mr. Melangton four times before the psychiatrists' evaluation. Based on these sessions, Mr. Olson said Mr. Jackson had "a nebulous understanding of the nature of the charges. As far as being able to prepare or contribute with the defense, nothing. The man has no concept of time which is one of the most severe factors." Mr. Olson specifically evaluated whether Mr. Jackson was faking his deficits and "found no attempts of deceiving anything." Mr. Olson estimated Mr. Jackson had the comprehension of "about a three or four year old deaf child," did not know of any DMH facilities that could provide rehabilitation

for the defendant and felt the State School for the Deaf could do nothing for him. Mr. Olson thought neither he, nor anyone else, would be able to interpret court proceedings for Mr. Jackson.⁷

At the follow-up hearing on December 26, 1968, Mr. Melangton argued that his client “is not sick physically or mentally. . . . For all factual purposes his condition is permanent,” and, since “there is no possibility of his restoration to sanity,” commitment to DMH “would be committing him in effect for life,” in violation of his Fifth, Thirteenth, and Fourteenth Amendment rights. Nonetheless, “unfortunately, [such commitment] is the only provision we have in the State of Indiana.” The court suggested that the defense file a motion for a new trial, found Mr. Jackson incompetent to stand trial, and ordered him “committed to the Indiana Department of Mental Health to be confined by the Department in an appropriate psychiatric institution until such time as he shall be certified competent to stand trial.”⁸ The subsequent order read “to be confined until such time as the Division [sic] of Mental Health shall certify to this court that the defendant is sane.”⁹

State Hospital Course

Mr. Jackson was admitted to a state hospital in Indianapolis on December 31, 1968. The admitting physician noted that Mr. Jackson “had some training in sign language but, obviously, cannot comprehend questions” and concluded, “It is obvious that no accurate information can be gained from this man except by long tedious interview by someone who is well versed with the deaf and their sign language.”¹⁰ On physical examination, he was found to be blind in his right eye and deaf; his blindness was later found to be due to glaucoma. Lumbar puncture for syphilis was negative and an EEG was normal. Assessment in February 1969 revealed that Mr. Jackson had been cooperative since admission, but even “with two deaf interpreters present it was almost impossible to determine how well this individual understood what was said to him. He obviously cannot spell in sign language. Some things can be explained to him in pantomime.” Mr. Jackson’s formal diagnosis was entered as “without mental disorder.” He was never treated with psychiatric medication while in the state hospital.¹¹

State hospital social work staff reported that Mr. Jackson had been sentenced in Mississippi to 30 days in jail for petty larceny in 1956 (at age 14) and to

seven years in prison for assault with intent to commit rape in 1959 (at age 17). He was apparently paroled before completion of the prison sentence, as he came to Indianapolis sometime in 1965. He received two years of individual tutoring in sign language through the Indiana Department of Vocational Rehabilitation and was placed in a job as a janitor for two years. He was “an excellent worker, had little record of absenteeism, made a few friends and was able to carry on minimal conversation with sign language,” but was let go in 1967 when “his whereabouts were unknown.” A police detective familiar with Mr. Jackson said he “experienced a radical personality change while under the influence of alcohol.” When drunk, “Mr. Jackson would approach various women with romantic intentions and was always rejected,” which “cause[d] him to become extremely hostile and aggressive.”⁴

On psychological evaluation in June 1969, Mr. Jackson’s IQ was estimated to be 50 by the Leiter test and to be 73 based on the Wechsler performance subtest. The psychologist noted that “Mr. Jackson cannot communicate via sign language except to a very limited extent. All of his communications are one word. . . . Even very simple concepts cannot always be communicated to him. . . . A typical five or six year old deaf mute child with one year of schooling could communicate better than this patient.”¹²

Mr. Jackson’s March 1970 annual report noted “There is no way to communicate with him verbally or by writing.” Mr. Jackson had attended only one year of elementary school and had learned the “manual alphabet” but was unable to do simple calculations. He answered written questions “in the wrong way with unintelligible words,” but was cooperative with staff, had a girlfriend, and behaved normally on the inpatient unit.¹³

After a case conference in May 1971, Mr. Jackson was subsequently enrolled in an off-grounds rehabilitation program, because “he wanted very much to have work outside and to live in the hospital compound.”¹⁴ In November 1971, Mr. Jackson was seen in an intoxicated state on the grounds, but eluded security and later sexually assaulted a female patient. He was then put back on a closed unit but continued in rehabilitation.¹⁵

In February 1972, Mr. Jackson’s annual report described him as “pleasant, cooperative . . . neat, clean, and well-liked by the other patients.” It was noted that “he is believed to be somewhat mentally

retarded but his communication problems pose formidable difficulties in making a more or less accurate assessment of his intelligence.”¹⁶ In March 1972, Mr. Jackson completed a 60-hour “communicative skills program,” during which he used sign language in class, but staff noted he had not used sign language outside of class. Test results on completion of the program “indicated mental retardation, illiteracy, very poor communicative skills and proficiency in hand assembly.”¹⁷

Appellate Proceedings

Mr. Melangton filed a motion for a new trial in January 1969. In it he argued that because Mr. Jackson could not be restored and, by statute, could not be returned to court until his sanity was restored, “there is no provision for the release of the defendant from confinement . . . at any time. The defendant must, therefore, be considered to have been committed . . . for the rest of his life.”¹⁸ The motion was denied in February 1969.

Mr. Jackson’s appellate attorneys filed an appeal with the Indiana Supreme Court in May 1969, and in their brief they argued that Mr. Jackson had been denied due process, because his commitment was tantamount to a “life sentence” to the state hospital, given that he was unlikely to improve. They also argued that Mr. Jackson should have been committed to “an institute for the feebleminded.”¹⁹ In February 1970, The Indiana Supreme Court affirmed the trial court’s decision by a four-to-one vote.² The majority opinion focused on the statutory ability of DMH to determine which “appropriate psychiatric institution” the defendant should be committed to, but it did not address the constitutionality of indefinite commitment until the last paragraph of the decision:

Appellant’s argument, that the statute in question is unconstitutional because it imprisons appellant possibly for life, must fail. The legislature, under its police power may provide for the safety, health and general welfare. This necessarily includes the confinement, care and treatment of the mentally defective, retarded or insane.

The dissent, by Justice DeBruler, began by noting that Mr. Jackson had essentially been committed for life. Indiana law implied that the commitment for restoration of competence would be a temporary one, so, “when the defendant’s condition is permanent . . . then the defendant cannot be committed under this statute because the *purpose* of the commit-

ment cannot be accomplished.” Justice DeBruler further argued that “the existence of *unproved criminal charges* operates to keep appellant confined in a state institution for life. This is a blatant violation of the *due process clause of the 14th Amendment* and also a violation of the equal protection clause” (Ref. 2, p 519; emphasis in original). A petition for rehearing of the case by the Indiana Supreme Court was denied in May 1970, with two justices dissenting.

United States Supreme Court Decision

Mr. Jackson’s case was appealed to the United States Supreme Court, which unanimously determined, in June 1972, that Mr. Jackson’s commitment violated both the due process and equal protection clauses of the 14th amendment.³ The Court famously stated:

At the least, due process requires that the nature and duration of commitment bear some reasonable relation to the purpose for which the individual is committed.

We hold, consequently, that a person charged by a State with a criminal offense who is committed solely on account of his incapacity to proceed to trial cannot be held more than the reasonable period of time necessary to determine whether there is a substantial probability that he will attain that capacity in the foreseeable future. If it is determined that this is not the case, then the State must either institute the customary civil commitment proceeding that would be required to commit indefinitely any other citizen, or release the defendant [Ref. 3, p 738].

The Court declined to address Jackson’s contention that the charges against him should be dismissed. They noted that the Indiana Supreme Court had not mentioned the matter, and although “Jackson’s claim is a substantial one . . . we believe the issue is not sufficiently ripe for ultimate decision by us at this time” (Ref. 3, p 739). Instead, “the Indiana courts should have the first opportunity to determine these issues” (Ref. 3, p 740). The appellate attorneys praised the decision; one said he was “glad they (the Supreme Court) went that far.”²⁰

Mr. Jackson’s case was remanded to the Indiana Supreme Court in July 1972. Later that month, the court remanded the case to the trial court “to determine whether or not [Jackson] has been deprived of ‘a speedy trial’ and has been held beyond a reasonable period of time to determine whether there is a substantial chance of his attaining the capacity to stand trial” (Ref. 21, p 279). If not, the defendant was to be discharged “pursuant to the mandate of the United States Supreme Court” (Ref. 21, p 279).

Final Trial Court Proceedings

Mr. Jackson underwent psychological testing on August 10 and 11, 1972, nearly four years after admission, but two months after the U.S. Supreme Court decision. Clinical assessment showed no evidence of serious mental illness, as “he has always been described by hospital personnel as completely aware . . . [his] hospital adjustment, ability to get along with others and function within the system does [sic] not indicate defective intelligence.”²² The Weschler Adult Intelligence Scale (WAIS) was administered by a deaf interpreter who had previously worked with Mr. Jackson. The interpreter observed that Mr. Jackson’s “ability with sign had improved over the last three years but remained poor.” Mr. Jackson “attained an IQ of 82 on the performance scale of the WAIS.” In a separate session, Mr. Jackson showed a good attention span over 2.5 hours of testing, which yielded an IQ of 109; the tests included the Bender-Gestalt, Draw-a-Person, and Arthur Point Scale. The clinicians concluded that Mr. Jackson “is not mentally defective. . . . Due to his gross deficiency of communication skills, he has been unable to develop his intellectual potential. . . . [H]e is not suffering from any organic impairment due to brain damage.”²³

When Mr. Jackson was seen by a psychiatrist on August 11, 1972, “the attempted interview was far from satisfactory despite the capable assistance of [the interpreter] and the apparent willing cooperation of Mr. Jackson,” who was “attentive” and “attempted to reply promptly”; nonetheless, “his replies were of very poor quality.” However, because Mr. Jackson had adjusted well to hospital life, the psychiatrist concluded, “It is possible that Mr. Jackson may have reason to cause his communication abilities to appear much poorer when he knows he is being examined than when he uses pantomime for the simple communications needed for his life in the hospital.”²⁴

The trial court convened the hearing ordered by the Indiana Supreme Court on August 16, 1972. During the hearing, the judge and attorneys “engaged in hot dialogue which resulted in [two] recesses and motion for a contempt of court citation” against the prosecutor. The prosecutor sought to challenge the state hospital psychiatrist’s opinion that Mr. Jackson had been held longer than necessary to determine competence and sought to introduce evi-

dence that Mr. Jackson had made progress toward competence, but the judge sustained every defense objection. At the end of the contentious hearing, the prosecutor declined to pursue civil commitment, although he also refused to return Mr. Jackson’s medical record to the hospital superintendent without a court order.^{25,26}

The trial court announced its decision on September 6, 1972, in a “short but stormy session.” The prosecutor filed a motion for continuance, to appeal to the Indiana Supreme Court to widen the scope of the hearing to include Mr. Jackson’s current competence, but was overruled. When the prosecutor could not say if civil commitment had been filed, the judge ordered Mr. Jackson discharged, at which point the prosecutor was heard to say “it’s an outrage, an outrage.” Afterward, an interpreter “got through to Jackson and made him understand that he was free”; his attorney said Mr. Jackson would live in a halfway house while he continued “a program of communication therapy and industrial training.”²⁷ Mr. Jackson was released from the hospital that afternoon. His final progress note read, “Mr. Jackson is being discharged today, as per court order. He is once more a free man. Final diagnosis: deaf-mutism.”²⁸

Mr. Jackson’s Recent Status

In March 2009, Mr. Jackson’s sister confirmed that he had been deaf “all of his life” and had “never spoke a word all of his life.” He also “never went to school a day in his life” and used “homemade communication.” Mr. Jackson lived alone in an apartment and cooked simply for himself, although he was “very incapacitated” by his deafness and legal blindness. In July 2010, Mr. Jackson was “doing as well as expected”; he was completely blind and relied on his sister for meals but continued to live on his own because “he wouldn’t have it any other way.” His sister handled all of his finances and bills.

Discussion

The *Jackson* case highlighted two important issues, one with broad implications and the other with more limited impact. First, the *Jackson* decision brought to the fore the constitutional implications of a finding of incompetence to stand trial and the subsequent commitment for restoration of competence. These implications led to changes in many state statutes and continue to reverberate even today. Second, *Jackson*

brought into focus the difficulties faced by deaf defendants and the mental health professionals who are either asked to determine competence to stand trial or are ordered to try to restore or, on some occasions, establish competence. Both the initial examiners and the courts believed Mr. Jackson was significantly cognitively impaired and it was not until after three years in the hospital that he was determined not to be mentally retarded. Indeed, Mr. Jackson may have exaggerated the extent of his deficits when it served his purposes, meeting the definition of malingering. Mr. Jackson may also have fit the pattern described in a comprehensive 1999 study of deaf murderers, which noted that prelingual deafness could lead to a “deprived social, cognitive and linguistic state,” known as primitive personality disorder, which could make it very difficult for a deaf defendant to understand legal terms and concepts.²⁹ Miller³⁰ later estimated that up to 50 percent of deaf state prison inmates may not have received due process because of their linguistic incompetence to stand trial. In addition, Mr. Jackson’s prior legal history was consistent with the finding of an overrepresentation of violent offenses, especially sexual assault, among deaf state prison inmates.³¹

The first commentary in the medical literature on the *Jackson* case came in December 1972, in a “Law-Medicine Note” in *The New England Journal of Medicine* that focused on the legal distinction between mental illness and mental retardation.³² The *Jackson* decision was not reviewed in the *Bulletin of the American Academy of Psychiatry and the Law*, which was first published in 1973, or the *Journal of the American Academy of Psychiatry and the Law*, but has been on the list of forensic landmark cases since 1979 (Phillip Resnick, personal communication, July 26, 2010). The first law review article on the *Jackson* decision appeared in 1973; the author thought that the Court’s due process argument was stronger than its equal protection reasoning and argued for the use of provisional trials to determine innocence before commitment for restoration. He also predicted that the vagueness of the phrase “reasonable period” would be troublesome to the states.³³

The states indeed struggled with implementation of the intent of the *Jackson* decision. As an example, Vickory³⁴ noted that Florida changed its statute in 1973 to require defendants found unrestorable to be declared not guilty by reason of insanity and recom-

mitted as such, essentially ensuring an indefinite commitment. A full two decades after *Jackson*, Morris and Meloy³⁵ identified only 20 states that specified the length of time that an incompetent defendant could be held for attempted restoration, and 30 years after the decision, Miller³⁶ found that 21 states still had no effective time limit on the duration of competence restoration. It was not until 2009 that the Indiana Supreme Court, in *State v. Davis*,³⁷ finally resolved the question of the length of time a defendant could be held for restoration, which had been left to the states in the *Jackson* decision. The court held that a trial court judge may unilaterally dismiss the charges of a defendant who has been held in a state hospital as incompetent to stand trial for longer than the maximum sentence of the underlying charges.

Conclusions

The details of Theon Jackson’s journey through the nexus of the criminal justice and mental health systems illustrate the complexity and texture that underlie each forensic evaluation, whether the case is routine or goes on to establish a national precedent. Most important, Mr. Jackson’s case shows that assessment by skilled clinicians may not always be accurate, and extended evaluation and observation may be necessary for an accurate determination of a defendant’s status.

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