Evaluation of Competency to Stand Trial in Defendants Who Do Not Want to Be Defended against the Crimes Charged

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Implicit but significant assumptions made in the criminal justice system include beliefs that criminals do not commit crimes to be tried and convicted and that, once arrested, defendants' primary motives are to avoid or minimize the legal consequences of the charges they face. When those assumptions are not correct, clinicians and legal decision makers are faced with difficult tasks. The authors present three cases of defendants who were not primarily concerned with defending themselves against the charges they faced, but rather with using the criminal justice procedures to further personal goals, and discuss the problems involved for forensic evaluators and courts.

Although it has received less attention than the insanity defense, the process of evaluation for competency to stand trial affects far more criminal defendants each year than any other clinical evaluation in the criminal justice system.¹⁻⁵
Most defendants who eventually plead insanity are first evaluated for competency to stand trial, frequently before any treatment has been instituted. As will be discussed below, their mental state at the time of the crime itself is often relevant to the evaluation of their competency to stand trial, and must be considered independently of and before their criminal responsibility.

There have been a number of discussions of competency evaluation in the clinical and legal literature. Several authors have reported the typical demographic, clinical, and legal characteristics of defendants referred for competency evaluation.⁶⁻¹⁰ Others have offered checklists for evaluators in an attempt to standardize the evaluation process.¹¹⁻¹⁴ There have been criticisms that incompetency findings have been used to incarcerate defendants without having to convict them in trial.⁶,¹⁵⁻²⁸ Most of these criticisms date back to times before reforms in the 1970s that provided procedural protections for defendants whose competency was ques-
tioned and prohibited indeterminate commitments without review. After the reforms, there is less incentive for prosecutors to raise the issue of competency and little evidence for the continued use of competency commitments for covert incarceration.

There have also been criticisms that clinicians often confuse a need for treatment with incompetency and recommend hospitalization on clinical rather than legal grounds. There are few empirical studies on this issue, but several authors have argued and presented data that both clinicians and courts have used commitment for evaluation or treatment of incompetent defendants to avoid legal or economic barriers to involuntary civil commitment.

Although many of these authors discuss specific case examples, and some argue that competency is case and context specific, most legal and clinical authors assume that defendants, even those with mental disorders, want (or should want) an effective defense against the charges they face. However, there is little discussion of cases in which a defendant committed a crime specifically to gain access to the public forum provided by a criminal trial or to achieve some other goal not envisioned by the criminal statutes. We present three such cases to serve as the focus of discussion of the dilemmas they pose to evaluators and courts.

Case 1

Mr. A was a 39-year-old man who was committed for evaluation and treatment after having been found not competent to stand trial on charges of criminal destruction of property. He had thrown a hammer through the window of a building on a local university campus to dramatize his charge that a university official was part of an alleged murder conspiracy related to the Watergate affair. He had waited for the police and readily confessed to the act, saying that he wanted his "day in court" to make his protests about the alleged murders. He had a long history of psychiatric hospitalizations and arrests going back over a decade, usually connected with his continued protests over his conspiracy theories. On psychiatric examination, he had pressured speech and flight of ideas and stated that Eugene McCarthy was his biological father and that Annette Funicello was his girlfriend. There was no evidence of hallucinations, of loose associations, of ideas of reference, or of thought insertion or control. He had been diagnosed by the previous court examiner as suffering from paranoid schizophrenia; our diagnosis was major affective disorder, manic.

He clearly understood the legal procedures involved in his case, and he had the mental capacity to cooperate with his attorney, as required by Wisconsin Statutes. However, he continued to state, despite the advice of his attorney, that he wanted to plead not guilty in order to be able to use the criminal trial as a forum for his conspiracy charges. He knew that the court would not be receptive to his goals and that his public defender would not assist him, but persevered nevertheless. Staff were divided
on his competency; although all agreed that he had the required cognitive understanding of his legal situation and that the reasoning process by which he had decided to commit the crime to get into court was logical, his obviously manic behavior and the content of his conspiracy theory caused many to doubt his competency. The final report to the court, however, offered the opinion that despite the content of his protests Mr. A possessed the necessary capacity to understand the proceedings against him and to cooperate (if he so chose) with his attorney.

Based on this report, he was found competent by the judge, but because he had already been incarcerated nearly nine months (almost as much time as the maximal sentence for the misdemeanor charge) the charges were dismissed. The prosecutor later stated that he had not been motivated in his decision to drop charges by any desire to prevent Mr. A from presenting his theories in court, but rather stated that he had set the fire to force the federal authorities to investigate his charges that he was the victim of a murder conspiracy that had begun five years earlier when he claimed to have been intentionally given the wrong illicit drug by a pusher. He had been attempting unsuccessfully to force the police and state authorities to investigate the situation ever since and had begun to believe that those authorities might be themselves involved in the conspiracy. He believed that the upcoming trial would give him the opportunity to ensure that federal authorities would listen to his charges. He had been uncooperative with his public defender, who had not only insisted on discussing the arson charge his client faced rather than his conspiracy theories, but continued to advise his client that continuing to refuse to concentrate on his defense could result in a significantly longer sentence at trial.

Our report to the court indicated that Mr. B had the requisite capacity to un-
nderstand the nature of the proceedings against him and that he had the cognitive ability to defend himself, but that he had chosen not to exercise that capacity because of his desire to use the court proceedings to seek relief from the threat he felt against his life. In the initial competency hearing, no opinion was offered on the ultimate question as to whether Mr. B could have chosen to use his cognitive ability to defend himself, despite repeated attempts by the judge and prosecutor to elicit such an opinion. At the conclusion of the hearing, the judge granted the defense attorney’s motion for a continuance to seek an additional competency evaluation. The second evaluator agreed that Mr. B was competent and the court ultimately concurred with these evaluations.

The defense attorney obtained evaluations for criminal responsibility from two different clinicians, both of whom agreed that Mr. B had been sane at the time of his alleged crime. In any event, Mr. B refused his attorney’s advice to plead insanity because he wanted to present his viewpoint untainted by the implication of insanity. At trial, Mr. B was found guilty of arson and sent to prison.

Case 3

Mr. C was a 61-year-old man who had walked into FBI headquarters and confessed to a murder that had taken place 18 years previously. He went first to the Internal Revenue Service and attempted unsuccessfully to turn himself in for tax evasion before approaching the FBI. The trial court for the murder charge found reason to doubt his competency to stand trial and committed him to our facility. On admission, he stated that he had always “lived in the fast lane” but that his peripatetic lifestyle had caused continual criticism from his family and had resulted in the breakup of his five marriages. He had traveled all over the country until recently, when he said that he had become “fed up with my family and friends” and that he “didn’t want to be bothered anymore” with living on the streets. After confessing (in accurate detail) to the murder, he told his court-appointed attorney and our staff that he had not actually committed the murder but just wanted to “live the rest of my life in jail.”

He refused to elaborate on his denial and refused to cooperate with his attorney’s efforts to build a defense for him. He appeared to be quite suspicious of everyone and was fatalistic about his chances in court. Information from his parents indicated that, although he had supported himself independently for most of his life, he had always been a “loner” with no true friends or lasting relationships. As far as we could determine he had had no previous psychiatric evaluation or treatment, and there was no past or present history of any psychotic symptoms. He adamantly told us that he didn’t have any “nervous problems” and that he would not accept treatment under any conditions. He demanded to be sent back to jail, where the staff “don’t get in your face all the time.”

He was diagnosed as suffering from paranoid personality disorder and was
felt to understand clearly the nature of the proceedings against him. It was felt, however, that his suspiciousness and fatalism might hamper his capacity to cooperate with his attorney. No opinion was offered to the court on the ultimate issue of competency. We advised the court that there was no effective treatment for his condition, because he refused to cooperate with psychotherapy, and therefore continuation of the commitment would not be likely to enhance his ability to defend himself. The trial court found him competent to proceed. At his subsequent trial, at which he testified in a rather confused and at times incoherent manner, the jury was not persuaded by his confession and found him not guilty, much to his surprise and dismay.

Discussion

The commission of crimes for the purpose of gaining access to courts as a public platform is not new to jurisprudence. It became commonplace in the 1960s during the protests against the Vietnam War, when judges and prosecutors went to great lengths to prevent protestors from using the courts as a forum for their political views.

In Cases 1 and 2 presented above, the defendants committed criminal acts in an attempt to publicize their conspiracy theories. It was clear that the defendants had the cognitive capacities to understand the criminal justice procedures and to assist their attorneys should they choose to do so. The reasoning processes by which both defendants reached their decisions to commit criminal acts to seek access to the courts cannot be faulted.

The dilemma involves the evaluation of the reasoning processes by which they formulated their conspiracy theories. Although in neither case was the alleged conspiracy unequivocally delusional, both appeared to be the products of diagnosable mental disorders. It might appear at first glance that these issues belong in the evaluation of criminal responsibility rather than competency to stand trial. However, although the quality of the defendant’s reasoning at the time of the alleged crime is certainly relevant to criminal responsibility, it cannot be disregarded during competency evaluation, for several reasons.

First, the issue of criminal responsibility cannot even be considered until a defendant has been declared competent to stand trial, and therefore a defendant’s irrational beliefs at the time of an alleged crime, if they persist, may affect his or her competency to proceed. For example, a defendant who killed a priest under the belief that God had commanded it persisted in his belief that he was not mentally ill and that God would personally rescue him from any consequences of his act throughout his competency evaluation at our facility. Because of his beliefs, he rejected treatment that had proven effective for previous psychotic episodes and his attorney’s advice to enter an insanity plea, and in fact was totally unconcerned about his defense. After he was found to be incompetent to proceed, treatment permitted him to recover from his psychosis, at which time he recognized the irration-
ality of his former beliefs and readily accepted both continued treatment and his attorney's advice to plead insanity.

Second, if a defendant makes a rational decision to commit a criminal act to publicize an apparently irrational belief and persists in this desire to go forward to trial despite his or her admitted guilt and despite the risk of receiving a significantly longer sentence if convicted at trial as compared with plea bargaining, the issue of competency must be decided before consideration of what plea to enter. The relevant question then becomes whether the defendant possesses sufficient cognitive capacity to understand the criminal proceedings and to weigh the risks of so proceeding against the benefits of the access to the public forum, or whether the apparently irrational nature of the underlying beliefs is sufficiently strong to overcome his or her capacity to choose how (or whether) to defend himself or herself. It is precisely in such situations that evaluators and decision makers must be most on guard against allowing their own beliefs and value systems to effect their judgment about a defendant's competency.

One of the methods historically used by prosecutors to bar access to the courts for defendants who want to use them to argue political views has been a finding of incompetency to stand trial. Szasz\textsuperscript{17} and Robitscher\textsuperscript{28} discuss the cases of Ezra Pound and General Edwin Walker as examples of attempts to use incompetency proceedings to discredit defendants and prevent them from using the forum of a trial to publicize politically unpopular views. Robitscher also discusses a number of antiwar protestors whose competency was challenged to prevent them from using the courts to further political views that the state wanted suppressed. Such incompetency findings not only prevent defendants from publicizing unpopular views, but also serve to discredit the views themselves by \textit{ad hominem} attributions of mental disorder to their advocates. In none of the cases discussed by Szasz, Robitscher, and others did it appear that the defendants had significant mental disorders, and there were no allegations that their political views were in any way irrational.

Resnick\textsuperscript{38} discussed a case to focus on issues of competency to reject an insanity defense in a defendant who held 14 people hostage because of paranoid beliefs about policies of the company for which he worked. His patient did not present specifically political issues and did have a demonstrable mental disorder.

Although the cases we have presented are not as clearly political, at least from the state's point of view, as were those of Pound and Walker, the basic issues are the same. If defendants who wish to advocate views that appear irrational are barred from court, even though their behavior is otherwise rational, society is once again denying rights to the mentally disordered that are available to other citizens.\textsuperscript{39}

We are aware of no comprehensive data concerning the frequency of defendants who wish to use the criminal justice system to serve their own per-
sonal goals. But Treffert\textsuperscript{33} and Dickey\textsuperscript{34} report increases of between 40 and 200 percent in competency evaluations after civil admissions to state hospitals fell following passage of restrictive civil commitment statutes in Wisconsin, implying that a significant number of persons (both patients and public officials) were attempting to use the competency evaluation process covertly to secure hospitalization and treatment for mentally ill persons. Our experience at our forensic center over the past four years has been that approximately 10\% of persons admitted for competency evaluation have committed criminal acts either to be hospitalized or imprisoned (as was the case with Mr. C) or to gain access to the courts as a platform for their views.

Although by permitting such defendants to proceed to trial there remains a risk of conviction of individuals whose irrational beliefs preclude them from being able to defend themselves effectively, this risk must be balanced against the denial of the Sixth Amendment right to a speedy trial\textsuperscript{4,16,20,21} This right is particularly important to defendants such as Mr. A and Mr. B, whose chief goals were to get to court to publicize their conspiracy theories. When a defendant has rationally chosen to commit criminal acts to use that right, knowing the potential consequences of that decision, courts should be particularly careful in their determination of competency to stand trial.

One factor that should be given significant weight in the determination of competency with such defendants is the amount of risk assumed in choosing to proceed to trial. In the case of Mr. A, facing misdemeanor charges, he did not assume a much greater risk by insisting on trial than by pleading guilty. But for Mr. B, charged with a felony carrying a potential sentence of 20 years, the difference between pleading guilty to a reduced charge and standing trial on arson could have been quite significant. In these cases, courts and forensic evaluators need to be much more concerned with the consequences of competency findings that exposes defendants to such risks, and perhaps to require that defendants be held to a higher standard of competency than defendants who assume lesser risks.

Paradoxically, an extended commitment for evaluation of, or treatment to, competency would satisfy the needs of many of these defendants, who are mainly seeking custodial care and are not particularly discriminating about the providers of that care.\textsuperscript{30,41} It is clinically tempting to permit these defendants, many of whom suffer from chronic psychiatric disorders, to remain in hospitals when their clinical conditions appear to warrant it, even if their legal conditions do not.\textsuperscript{22,23} However, such practices simply facilitate the process by which access to appropriate civil hospitals is barred for a variety of ideological and economic reasons and reinforces the behaviors of many trial judges who shift responsibility for disposition to clinicians.\textsuperscript{4} (The trial judge in Case 2 stated during the competency hearing that competency was a clinical, not a legal issue, and became frustrated when the psychiatrist declined to make the decision for him.)
The authors of the Group for the Advancement of Psychiatry report outline the legal bases for requiring competency on the part of criminal defendants: (1) To safeguard the accuracy of criminal adjudications; (2) to guarantee a fair trial; (3) to preserve the integrity and dignity of the legal process; and (4) to be certain that the defendant, if found guilty, knows why he or she is being punished (p. 884). There is also an implicit assumption behind the evaluation of competency to stand trial—that the defendant's primary goal is to be acquitted. When that assumption is not accurate, as it was not in the cases reported here, the legal participants (particularly the defense attorney, who has the unenviable task of attempting to prepare a defense for an uncooperative client) often assume that the defendant is by definition not competent. In such circumstances, there is considerable pressure on evaluating clinicians to provide justification for a finding of incompetency.

Szasz has charged that clinicians involved in competency evaluations tend to assume that defendants are guilty of the charges they face, and Brakel argues that checklists for evaluation of competency devised by clinicians ascribe competency to proestablishment views and incompetency to views critical of the criminal justice system. While we disagree that all, or even a majority, of clinicians involved in competency evaluations are ideologically biased in the ways described, we do feel that they must be careful not to assume incompetency without clear evidence of significantly impaired reasoning. There have been too many cases in which apparently irrational beliefs have turned out to be correct to form such opinions lightly. If clinicians allow their desires to treat apparently disordered defendants to override their responsibility to provide relevant opinions to the courts, they permit judges to continue to abdicate their responsibilities for decision making and give further ammunition to critics who claim that psychiatrists usurp judicial authority by preempting decision making in civil and criminal commitment hearings.

References
14. Harvard Laboratory of Community Psychiatry: Competency to Stand Trial and Mental Illness. New York, Aronson, 1973
37. Wisconsin Statutes Chapter 971.14