The Judge's View of Competency Evaluations II

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Twenty trial court judges were surveyed to determine what information they considered pertinent in psychiatric examinations for competence. These judges showed a clear understanding of what they were asking for in ordering the examinations but also showed a significant tendency to use the competency exam to advise them about other issues in addition (e.g., dangerousness or the need for treatment). As a group the judges appeared to be eager for psychiatric input. Typical judges could be described as pragmatic in their views of psychiatry in the courtroom, having a relatively low level of expectation but a high degree of satisfaction with the psychiatric opinions they receive.

This paper is the second in a series of reports in which we attempt to clarify what the expectations of trial court judges are when they order psychiatric examinations of criminal defendants to determine their competency to stand trial. Our purpose is to address a problem that is widely documented in the forensic-psychiatric literature, namely the failure of effective communication, in both directions, between psychiatrists and the courts they serve. A number of reports have suggested that there is a lack of clarity on the side of the judges about what they are asking for when they order a competency examination (the expectation being quite common that courts often use the competency examination to achieve unrelated ends) and also that psychiatrists often fail to address the real concerns of the judges (which, of course, may not have been clearly articulated).

The setting for our work is the Forensic Psychiatry Clinic, which serves both the Criminal and Supreme Court for the Borough of Manhattan. The Clinic, like the Courts themselves, operates under considerable pressure, as one of the main purposes of the Clinic is to provide psychiatric opinions to the courts as expeditiously as possible, to avoid the delays that would result if most mentally impaired defendants had to be examined in the hospital.

While the previous survey was aimed at investigating the expectations of judges in the Supreme Court (the Supreme Court in New York being, not an appeals court, but the trial court for felony cases), this survey was directed toward the judges in the Criminal Court. There are major differences between

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these two courts, which might be expected to be reflected in differing attitudes in the two groups of judges toward the competency examination. The Criminal Court is a very high-volume lower court, which operates with a smaller number of judges and a much higher number of cases than the Supreme Court. The Criminal Court handles all arraignments (misdemeanors and felonies) and all the stages through pleading, trial, and sentencing for all misdemeanor cases in the Borough of Manhattan, while the Supreme Court deals only with the later stages of felony cases. There are relatively very few trials in Criminal Court, and the great majority of cases are disposed of by plea bargaining. Judges in Criminal Court are ordinarily working under tremendous pressure; according to a recent study by the Chief Administrative Judge, the judges spent on the average no more than 3.4 minutes on each Criminal Court Case (10).

Methods

As in the survey of Supreme Court judges, this investigation began with the distribution of a brief questionnaire to each of the 21 judges who was sitting in the Criminal Court. In the previous survey, one of the chief methodological problems lay in the possibility of sample bias, resulting from the fact that only 18 of 52 Supreme Court judges (35%) returned the questionnaire. In the Criminal Court 20 of the 21 judges completed the questionnaire, for a return rate of 95%. (This result was achieved by having the Supervising Judge of the Criminal Court send out the questionnaire with a request on his own letterhead that it be returned.) We were therefore able to eliminate, at least for the questionnaire, any likelihood that we were only obtaining the opinions of those judges who were most positively disposed to psychiatry to begin with.

The questionnaire contained multiple choice questions having to do with the judges’ reasons for ordering competency examinations and about the kinds of information that was wanted in the examination reports. Other questions dealt with the degree of satisfaction the judges had with the reports that they ordinarily received from the clinic. The questionnaires were followed up with telephone requests to each judge for a meeting in person to discuss in more detail the issues raised in the questionnaire. Of the original 21 judges, interviews were actually held with 11. This rate of about 52% again leaves open the possibility of sample bias. The reasons, however, why 10 judges were not able to be interviewed were not indicative of any lack of interest or hostility toward psychiatry: five of the judges were reassigned to other courts in other boroughs during the period when the interviews were being done and were not geographically available, one judge went on maternity leave, and only four judges failed to respond to phone messages. We therefore feel confident in concluding that the judges interviewed also constituted a fairly unbiased sample of lower court judges.

One additional source of possible bias, for which we were not able to control, resulted from the fact that the interviewers were currently associated with the clinic. Some judges may have responded
to what they thought the interviewers would want to hear. On the other hand, since the judges were given an unusual opportunity to voice their complaints directly to clinic administrators, some of them might also have been expected to be particularly critical, partially balancing out any such wish to please.

Results

This survey confirmed the finding of the previous investigation that the judges showed little if any uncertainty about what they were requesting and what they expected in ordering a competency examination. The responses of the Criminal Court judges were on the whole much more similar to those of the Supreme Court judges than might have been expected (Table 1). Like their counterparts in the Supreme Court, the Criminal Court judges cited most frequently the same two reasons for ordering the examination: a request by the defense attorney and the judge’s own observation of the defendant’s demeanor in court. A history of psychiatric illness was the next most prominent reason. There were no significant differences between the two groups in the total numbers of responses selected with regard to reasons for ordering the exam.

The two groups of judges also gave a similar profile of responses to a question about their priorities in what they wanted to find out in ordering the examination. The Criminal Court judges did tend to disregard the instruction on the questionnaire to prioritize their answers, with several judges picking multiple “first” choices (20 judges gave 32 “first” choices and only 15 second choices). However, the majority of judges in both groups clearly identified the strict legal criteria at issue in the competency examination and largely disclaimed any expectation of using these examination reports as a way of obtaining predictions about dangerousness, recommendations for treatment, or other extraneous matters. Thus, 18 of 20 Criminal Court judges and 17 of 18 Supreme Court judges considered it a first priority to know whether the defendant could understand the charges and court procedure.

The only significant difference between the two groups of judges was that a number of Criminal Court judges did acknowledge wanting to use the competency exam for what are, strictly speaking, irrelevant purposes. Four of the possible responses to question 2 (namely A,C,E, and F) are directly related to competence, while the other three (B,D,G,) are not. Whereas the Supreme Court judges had given a total of 48 responses to question 2, of which only three (6.25%) were “irrelevant,” the Criminal Court judges gave a total of 60 responses, out of which 15 (25%) were “irrelevant.” Seven judges included the need for treatment as a priority, another seven cited dangerousness, and one judge wanted to know why the defendant committed the act with which he or she was charged. This difference between the two groups is highly significant ($\chi^2 = 6.75, p < .01$).

If only the stated first priorities of the judges are compared, this difference disappears. Only five of 32 (or 15.6%) “irrelevant” responses were given as first priorities by the Criminal Court judges.
Table 1
Comparison of Criminal Court and Supreme Court Judges; Priorities in Ordering Competency Exams*

<table>
<thead>
<tr>
<th>Priority:</th>
<th>Criminal Court (N = 20)</th>
<th></th>
<th></th>
<th>Supreme Court (N = 18)</th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>1st</td>
<td>2nd</td>
<td>3rd</td>
<td>Total</td>
<td>1st</td>
<td>2nd</td>
</tr>
<tr>
<td>1. Which of the following are the most likely reasons for you to order a competency exam?</td>
<td></td>
<td></td>
<td></td>
<td></td>
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<td></td>
</tr>
<tr>
<td>A. Defendant has a history of psychiatric illness</td>
<td>1</td>
<td>5</td>
<td>6</td>
<td>12</td>
<td>4</td>
<td>3</td>
</tr>
<tr>
<td>B. The notoriety of the case</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>C. Defendant's behavior in court</td>
<td>7</td>
<td>7</td>
<td>3</td>
<td>17</td>
<td>8</td>
<td>4</td>
</tr>
<tr>
<td>D. Defense attorney requests exam</td>
<td>15</td>
<td>2</td>
<td>1</td>
<td>18</td>
<td>8</td>
<td>6</td>
</tr>
<tr>
<td>E. The nature of the offense (e.g., bizarre or sexual crime)</td>
<td>1</td>
<td>3</td>
<td>5</td>
<td>9</td>
<td>0</td>
<td>3</td>
</tr>
<tr>
<td>F. Other (please specify)*</td>
<td>0</td>
<td>1</td>
<td>1</td>
<td>2</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>2. Which questions do you most often want answered in the psychiatric report on a competency exam?</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>A. Is the defendant mentally ill?</td>
<td>3</td>
<td>2</td>
<td>4</td>
<td>9</td>
<td>2</td>
<td>3</td>
</tr>
<tr>
<td>B. Does the defendant need treatment?</td>
<td>2</td>
<td>1</td>
<td>4</td>
<td>7</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>C. Does the defendant understand the charges and court procedure?</td>
<td>18</td>
<td>1</td>
<td>0</td>
<td>19</td>
<td>17</td>
<td>1</td>
</tr>
<tr>
<td>D. Is the defendant dangerous?</td>
<td>3</td>
<td>3</td>
<td>1</td>
<td>7</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>E. Can the defendant control himself in the courtroom?</td>
<td>2</td>
<td>1</td>
<td>1</td>
<td>4</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>F. Can the defendant cooperate with his attorney?</td>
<td>4</td>
<td>7</td>
<td>2</td>
<td>13</td>
<td>2</td>
<td>10</td>
</tr>
<tr>
<td>G. Why did the defendant commit the act he is charged with?</td>
<td>0</td>
<td>0</td>
<td>1</td>
<td>1</td>
<td>0</td>
<td>1</td>
</tr>
</tbody>
</table>

* Each judge was asked to list a first, second, and third priority in response to questions 1 and 2. Columns do not add up to N because several judges in each group gave more than one first choice.
† The only other reason offered (by two Criminal Court judges) was “DA requests exam.”

while there were no “irrelevant” responses of 21 given by the Supreme Court judges (0%). This difference is not significant. Thus it appears that, although the Criminal Court judges were as aware as their Supreme Court counterparts of the strict criteria for competence and stuck to them as long as they were restricted to a first priority, they had a significant tendency to want to use the competency evaluation for other purposes in addition. They appeared to be willing to “piggyback” other issues onto the issue of competence in a significant minority of cases.

When asked to note which parts of the psychiatric report they were most likely to use as a basis for their findings, the Criminal Court judges again showed a pattern similar to their Supreme Court
counterparts. Eight of these judges stated that all parts of the report were useful and five others selected the “narrative description and mental status examination of the defendant” as most useful; thus a total of 13 of 20 judges considered the detailed clinical data to be important to them. Only one judge cited the diagnosis alone as most useful, while four judges indicated that they mainly relied on the psychiatrist’s conclusion about competency and two others used the diagnosis plus the psychiatrist’s conclusion as a basis for their findings.

Given the fact that the majority of the judges said that they would find the clinical data useful, a possibly anomalous result was obtained in answer to the question, “Do you frequently adopt the psychiatrist’s conclusion as to the defendant’s fitness regardless of the information contained in the narrative part of the psychiatric report?” Sixteen of 20 judges answered “Yes” to this question. Even more interestingly, the only judge who said that he “very frequently” found the psychiatrist’s conclusions incongruous with the data in the reports also answered “Yes” to this question. It may be that, while wanting the maximum information, judges were still reluctant to use that information to contravert the expert’s conclusion. These results are consistent with the recent report of Reich et al. that found a very low level of disagreement between court and psychiatrist in competency decisions: in only 1.7% of cases in their series did the court rule contrary to the psychiatrist’s recommendation.

Like the Supreme Court judges, the Criminal Court judges also had few complaints about the competency reports that they received from the clinic. Only three judges found the conclusions of the psychiatrist incongruous with their own observations of the defendants either “very frequently” or “fairly often”. The other 17 judges noted incongruous results “only occasionally” (six judges) or “rarely or never” (11 judges).

The results of the interviews with 10 of these judges were necessarily more impressionistic, but they did serve to provide a more complete picture of the thinking of the judges in the Criminal Court. Most of the judges were sympathetic to the difficulties involved in psychiatric diagnosis and decision making and generally appeared to appreciate the reasons that cases were assessed as they were. At the same time many of the judges clearly indicated that they were considerably less concerned with the issue of competence, which they viewed as often a more routine or less problematic issue, and much more concerned with obtaining more information from psychiatrists in the reports that were done as an aid to sentencing. While our surveys were originally designed to focus on competency examinations, those judges who agreed to be interviewed frequently would steer the discussion into the area that was their greatest concern, namely the sentencing process.

One other apparent difference between these judges and the Supreme Court judges emerged in the interviews in response to the question whether the Clinic set too low a threshold for competence (i.e., finding too many defendants competent who should have been found incompetent). Whereas in the Su-
preme Court six of 16 judges who were interviewed stated that the clinic found too many defendants competent, in the Criminal Court there was not a single judge who agreed with this statement, and seven of the 11 judges interviewed stated positively that this was not so. This difference was not subjected to statistical analysis because a number of the judges in both groups gave very equivocal answers that were difficult to rate; but the trend is perhaps a reflection of the fact that the "stakes" are lower in misdemeanor cases, and the Criminal Court judges set a correspondingly lower threshold for competence. In Supreme Court, a defendant accused of murder may spend months in jail awaiting trial, so that a finding of incompetence and the resulting hospitalization may appear relatively less consequential in the long run. In Criminal Court, where many defendants will never be sentenced to any jail time at all, a hospital commitment may then appear to the judge to be a major curtailment of liberty. One Criminal Court judge who would not offer an opinion about whether or not the Clinic found too many defendants competent maintained that the question was not worth worrying about in Criminal Court because any defendant who really wanted to "buy" a finding of incompetence in order to serve his short confinement in the hospital could do so merely by being very uncooperative. This judge appeared unconcerned about the problem because he did not consider it solvable and did not expect psychiatrists to be able to tell which defendants were malingering.

Based on the interviews the judges could be described according to two dimensions, namely, their level of expectation from the psychiatric examination and their level of satisfaction with the results received. Theoretically, at least, there might then be four different types of judges described by these two dimensions (i.e., those with high or low expectations and with high or low satisfaction).

The majority of the judges interviewed (six of 11) could be categorized as fitting into the low expectation/high satisfaction type. These judges emphasized their efficiency and the need to maintain control over their calendars and the flow of cases through their courtrooms. They appeared to be more able to live with the system, even with all its manifest faults, and to have more realistic expectations about what could or would be the prognosis for the defendants before them and for what psychiatry could or could not offer. These judges were generally very receptive and cordial, with few or no complaints about psychiatric reports, and, while not uninterested in psychiatric opinion, appeared to have placed psychiatric problems in perspective as one category among many in a wide panoply of social pathology. These judges did not tend to find fault with the psychiatric opinions given to them, at least in part, because they needed the opinions to keep the system operating as smoothly as possible.

An example of this type would be Judge A, who reported that he saw competency reports quite frequently—he estimated two to three times a week—and could recall only one case since he had
been on the bench when he disagreed with the psychiatrist's conclusion. In emphasizing his efficiency, he described how he would make an effort each day to clear his calendar by 1:30 p.m. to save the afternoon for other work. He was mainly interested in having the psychiatrist's conclusion and did not see a need for a detailed explanation of that conclusion except when one side or the other challenged the conclusion (which in fact happened infrequently). He noted that, of course, he sees cases in which the defendant is obviously mentally ill but that when he speaks to the person he can also determine for himself whether the person clearly knows what is going on in the case. He pointed out that the law sets a very low threshold for competency in New York, that this represents the intention of the legislature, and that it is not his job to change it. As a result it is also obvious that there are many sick people who pass through the court and need help, but it is not the purpose of the competency examination to solve all these problems. The judge added that he even takes it upon himself to explain to the defense counsel why the psychiatrist reaches his or her decision when the attorney does not understand why the client is considered competent—the standard being that defendants must have an adequate capacity to cooperate in their own defense, not that they must be healthy or normal. He expressed the belief that most judges were not disturbed by the conclusions reached by psychiatrists about competency but were rather frustrated with the lack of facilities for effective disposition of cases after sentencing, e.g., the mentally ill who will not cooperate with probation but for whom "jail won't do any good either."

Judges in the high expectation/low satisfaction group were those who were more impressed with the pervasiveness and seriousness of psychiatric disorder in the defendants they saw and consequently were more frustrated by the inadequacies of the mental health system to deal with the problem cases that are especially difficult for the court to handle. Judge B was the only judge interviewed who fell into this category. He recalled seeing few psychiatric reports on competency, but felt that the ones he saw were frequently not helpful. In contrast to Judge A, Judge B found the psychiatrists' conclusions and recommendations too stereotyped, and he wanted detailed background information more than a diagnosis and conclusion. Judge B was also more concerned with discussing problems with presentence evaluations and expressed great frustration with the lack of resources available for treatment and the lack of information from the clinic on where defendants could be referred for treatment. Judge B's expectations appeared to be in certain respects unrealistic, in that he wanted to be able to send defendants to residential facilities as an alternative to jail. At the same time he expressed a reluctance to send a defendant who was mentally ill to the forensic hospital, stating that he felt the hospital was "an awful place." Judge B was very interested in having some formal presentations from psychiatrists that would aid him in being able to recognize signs of mental illness in defendants.
The high expectation/high satisfaction judges were those who tended to take a very active or even parens patriae approach, concerning themselves with trying to ensure that mentally ill defendants received psychiatric attention, and finding the psychiatrists’ reports generally helpful toward that end. There were two judges who fit this category: given the enormity of the problems that these judges face it is probably difficult for a judge to maintain the degree of involvement in psychiatric issues that these judges showed, without soon shifting in the direction of one of the preceding categories.

Judge C, like Judge A, had very few complaints or disagreements with the examinations done by the clinic. Unlike Judge A, however, she felt that the detailed clinical information about the defendant was more important to her than the psychiatrist’s conclusion about competence, and she would like to have even more information than is usually offered. She also emphasized the importance of having the report before the court appearance, so that she would have time to read it carefully. She was more interested in discussing questions about the presentencing reports and the need for specific recommendations for treatment of convicted defendants. She expressed a high degree of confidence in the clinic’s opinions, noting that she depended on the psychiatric report because she felt probation reports were often skimpy or unreliable. She also noted that the District Attorney and Probation Officer may be in disagreement, so that she likes to have a “third opinion” from the psychiatrist. Like Judge A, she expressed an understanding of the reasons that an obviously mentally ill person could be found to be competent. She also noted that she could not pay too much attention to many cases because the stakes were low in a misdemeanor and often neither the prosecution nor defense would want the defendant to be found incompetent. With the more flagrant cases of obvious mental disturbance, she therefore orders the examination based on her own observation of the defendant’s demeanor in court, because no one else will raise the issue.

Judges with low expectations and low satisfaction would be those who felt the system had already broken down to the degree that nothing very effective was being done anymore. A judge in this category could be expected to be dissatisfied because of the intractability of the mental health problems seen in the courtroom, but would not expect much to be done about the situation. Judge D was the only example from the group who fit this description. (Given the pressures of work in the Criminal Court, it is perhaps remarkable that more of the judges did not take his very jaundiced view.) He was critical of the psychiatric reports he receives, feeling that the examination takes too long and that the reports are often too skimpy. He felt that he would like to have more background information and would not merely look at the psychiatrist’s conclusions and recommendations. In a somewhat contradictory way he first noted that the requirements for competence were not very great and that many defendants were of low intelligence, but he also felt that the psychiatric reports tended to
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“make everyone seem healthy.” Judge D's complaints about the performance of the clinic were relatively mild, however, in comparison to his frustration with the entire system. He noted the absurdity of the fact that in six years on the bench he had had only one hearing on a contested competency evaluation. He felt that the public defenders pay little attention to these cases and that the probation reports were also of no help. He was the only judge who admitted to ordering a competency examination instead of waiting for a probation report, because at least the psychiatric report would be more reliable and quicker. His general assessment of his function was that all he does is release defendants, because the whole system is overwhelmed by the volume of cases; he feels that these defendants suffer no consequences for their actions.

Conclusions

This survey confirms the major findings of the previous survey of Supreme Court judges, while correcting some of the methodological problems in that report. At the same time it suggests that there are differences in emphasis in the concerns of the Criminal Court judges. The Criminal Court judges generally showed no lack of clarity in their reasons for ordering competency evaluations, and they were also clear in their expectations of what the psychiatric report would tell them. Like the Supreme Court judges they showed little dissatisfaction with the quality of the reports they received. Although they also expressed a general interest in obtaining detailed clinical information, there was a greater tendency than in the Supreme Court to look principally at the psychiatrist's conclusions for purposes of making dispositions. The most important difference between the two groups of judges was that a significant minority of the Criminal Court judges did acknowledge using the competency evaluation to tell them about such issues as the defendant's dangerousness or need for treatment. A more subtle difference was that the Criminal Court judges appeared to accept a lower threshold for competency, probably because of the lesser seriousness of the charges and potential penalties in their courtrooms.

References