

Restoration of Competency to Stand Trial: A Training Program for Persons With Mental Retardation

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This article describes the development and use of a formal training tool for restoration of competency in clients with mental retardation who are incompetent to stand trial. The program was developed at Eleanor Slater Hospital within the Rhode Island Department of Mental Health, Retardation and Hospitals. This article describes the development of The Slater Method, the training tool format, the procedure for use of the Slater Method, and the duration of treatment to restore competency to stand trial in clients with mental retardation. Although the developmentally disabled population is not limited to persons with mental retardation, we have used the phrase mental retardation instead of developmentally disabled because the judicial system more commonly uses mental retardation.

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Nearly one-third of all admissions of mentally disordered criminal offenders to state and federal mental health facilities are for incompetence to stand trial (IST).¹ In most jurisdictions, IST defendants, including those with mental retardation (MR), are remanded to mental health facilities for a period of compulsory confinement and treatment to restore their competency to stand trial (CST). MR comprises 3 to 4 percent of the general population,² and studies have estimated the prevalence of MR in the criminal justice population to be between 2 and 9.5 percent.^{3–5} Warren et al.⁶ reported that 16 percent of 134 defendants recommended to the courts as IST in their study had MR.⁶ Although Nicholson and Kugler⁷ showed no significant correlation between a diagnosis of MR and competency status, defendants with MR are often judged IST. Consequently, significant minorities of persons mandated to receive competency restoration are believed to be affected by MR.

There has been an increase in research on treatment to restore CST, but there has been little work

that addresses competency restoration in persons with MR. Descriptions of various programs to restore competency do not explicitly consider the needs of defendants with MR.^{8–13} Programs that formally provide competency restoration in the non-MR population generally have a period of initial assessment of competency-related impairments. In addition to treatment with psychotropic medication, formal competency restoration efforts generally consist of didactic programs. For example, the educational program developed at the Mental Health and Developmental Center in Alton, Illinois consists of an inpatient group program organized into seven modules. Modules provide information to the participants and set expectations for the defendant's cooperation. Written information, videotaped vignettes, role-playing, and written tests assess the defendant's comprehension of the material and ability to organize thinking and communication.¹² At Atascadero State Hospital, California's major treatment facility for the mentally disordered defendant, the didactic program consists of an inpatient competency class. Written information, videotaped vignettes, written tests, and role-playing, including mock trials, are used to assess changes in competency-related abilities. Failure of a written examination or of a mock trial results in the referral of the defendant back to the treatment team for individual work on

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competency-related impairments. When the defendant successfully demonstrates competency in the class and the mock trial, he or she receives a final assessment by the program director, with input from the interdisciplinary treatment team. The final interview consists of an amalgam of prior assessment procedures. If the defendant successfully completes this procedure, he or she is referred back to the court as competent to stand trial; if the defendant fails, he or she is referred back to the treatment team for additional attempts at restoration of competency.^{10,13} Siegel and Elwork¹⁴ developed a structured educational program comprising one-hour weekly group sessions for seven weeks that included lectures, discussion sessions, role-playing, and videotapes. These programs informally observe that incompetent to stand trial mentally retarded (IST-MR) defendants can benefit from a period of training to restore competency.

Competency assessment instruments, such as the Competence Assessment for Standing Trial for Defendants with Mental Retardation (CAST-MR), appear to have good validity and reliability¹⁵ and can help an examiner assess competency-related impairments in defendants with MR. However, assessment instruments focus on a defendant's current knowledge base and are not designed to help an IST-MR defendant develop additional competency-related capacities over time. Anecdotally, mental health professionals mandated to restore competency in IST-MR defendants often rely on use of CAST-MR question stems or nonstructured competency-related questions during training sessions. Repeated use of question stems can invalidate further CAST-MR scoring, and training sessions fashioned in this manner may not be comprehensive. As a result, despite the mandate to restore competency, restoration of competency in IST-MR defendants can be informal and can inappropriately rely on assessment tools rather than a structured training program.

Impaired intellectual functioning is one of the hallmarks of MR. Such impairment affects a variety of cognitive domains. For example, persons with MR may not recall information as well or may not use organizational strategies and planning as well as persons with normal intellectual functioning. They may require multiple interactions with data to facilitate learning, they may find it difficult to recall information after time has passed, and they may often find it difficult to generate specific detailed answers to ques-

tions requiring the delineation of factual material. Thus, providing organizational strategies to persons with MR can improve recall, which may enable the individual to initiate and use the strategy.¹⁷ Some persons with MR can learn new information at a rate commensurate with that of persons without MR if exposed to proper stimuli and if taught with proper methods.¹⁸ Therefore, a training program must first consider these special learning needs.¹⁹ Second, research suggests that learning can be enhanced by use of multiple training sessions or rehearsal separated by time intervals (days or weeks) between learning opportunities.^{20,21} Third, provided that the training does not occur on a single day, the temporal separation between sessions (days or weeks) does not appear critical.²² Fourth, the use of interrogative strategies that require a subject to answer specific "what" or "why" questions also appears to facilitate learning,²³ perhaps because it encourages depth of processing, which seems to improve memory consolidation and retrieval.²⁴ Because of the problems exhibited by persons with MR in spontaneously creating strategies to improve memory,¹⁷ assisting them with covert strategies or providing structure and organization to the material may also produce a beneficial effect on learning and retention. Finally, some evidence has revealed that visual imagery with verbal elaboration (i.e., a verbal rendition of a subject's imaging) can enhance learning in an MR population.^{25,26} This finding suggests that visual, and not solely verbal, modalities may also augment learning, which provides some support for the use of pictures and role-playing. The training package described in this article uses multiple strategies to address a variety of needs in this population, to optimize learning in the face of multiple cognitive deficits.²⁷ These factors should be considered and included in the development of a restoration program with MR clients.

Rhode Island's change from inpatient CST assessments to outpatient CST screening assessments in 1993, as well as the closing in 1994 of the state's long-term residential facility for persons with MR, prompted a reexamination of CST assessment and competency restoration methods for persons with MR. We observed that persons with MR were being underdiagnosed during CST screening evaluations and that, as a result, competency-related impairments owing to MR were not always detected. After procedural changes were made to detect persons with MR and report competency-related impairments to

the courts, the authors focused on competency restoration efforts for IST-MR defendants. Because persons with MR can benefit from training, and because many competency restoration training programs, including our own, were not generally taking into account the needs of persons with MR, we designed a structured competency restoration program for IST-MR defendants.

A formal training tool was developed at Eleanor Slater Hospital within the Rhode Island Department of Mental Health, Retardation and Hospitals (MHRH) as part of a program designed to restore CST in IST-MR clients. The training program is also used in less restrictive settings than inpatient psychiatric hospitals. This article describes the development of The Slater Method, the training tool format, the procedure for use of the method and the duration of treatment necessary to restore CST. It concludes with a discussion of clinical and legal outcomes that we have obtained, some case examples, and areas for future development.

The Development of the Slater Method

After reviewing existing training programs for non-mentally retarded defendants, we received input from the Division of Developmental Disabilities (DDD) and other staff within MHRH, in our effort to develop a conceptual basis for training. A neuropsychologist reviewed the content of module-based training (discussed later), to ensure that language and vocabulary were appropriate for defendants with MR. Development efforts focused on instrument content, format, and usability. After questions were developed and the training tool was used with several IST-MR defendants, questions were added or revised when deemed necessary, based on anecdotal evidence and experience. The training tool is currently in its fourth revision. The tool has face validity, but its psychometric properties have not yet undergone formal reliability and validity studies. In its present state, it is used as a clinical tool. Further research is planned to determine inter-rater reliability and validity for both interviews and clients. While the Slater Method assesses certain capacities related to CST, it is not designed to be a formal competency assessment instrument. It is primarily used as a training instrument to restore competency.

In developing the training tool, we focused our efforts on four areas: the teaching ability of the trainer, the content of the material to be presented to

the defendant, the manner in which the material would be presented, and the usefulness to legal counsel of restoration efforts.

The Teaching Ability of the Trainer

Before focusing on efforts to teach the defendant, trainers should have an understanding of CST in general, an understanding of the IST-MR defendant's competency-related impairments, sufficient knowledge of aspects of the legal system relevant to any defendant's CST, and an understanding of how to conduct training sessions. An instructional manual and training sessions teach the trainer about these areas before competency restoration efforts begin.²⁸ For purposes of conceptualization, competency-related impairments of IST-MR defendants are divided into domains delineated by Appelbaum²⁹ in 1994: impaired communication skills, cognitive impairments, and emotional/behavioral impairments. This delineation provides a framework for the trainer to understand how the IST-MR defendant's impairments owing to MR affect his or her ability to stand trial. Cognitive impairments, including problems with attention and memory and impaired logical reasoning and problem-solving abilities are discussed in the training tool to illustrate how they can affect a defendant's competency-related abilities. Communication impairments, such as poor articulation skills, limited vocabulary, impaired syntax, and difficulty answering questions are identified and discussed in the training tool. Deficits in emotions and behavior, such as passivity and withdrawal or angry outbursts, are also discussed.

The training tool reviews techniques on interviewing persons with MR. A trainer can be any identified member of a mental health treatment team, including physicians, psychologists, social workers, and mental health workers. Trainers must have clinical expertise in working with persons with MR, and they must have the ability to follow the manual. Because training is performed on a one-on-one basis, manpower concerns can arise; however, we have found that one-on-one training works best with this population. IST-MR defendants receiving competency restoration through the Slater Method are often not involved in other types of competency restoration training. One exception to this is when the defendant is housed in the Forensic Unit of the Eleanor Slater Hospital and referred to a general competency group if the treatment team believes that he or she may

benefit at least minimally from group treatment. Trainers are encouraged to use simple language, to speak slowly and clearly, and to use concrete terms and ideas when discussing concepts with defendants; to avoid leading questions, ask open-ended questions, and repeat questions from different perspectives; to avoid using nonverbal cues that may inadvertently aid the defendant in answering questions^{28,29}; and to work with clients in many short sessions, rather than in a few long sessions, to aid in memory retention.

Instrument Content: the Content of the Material to be Presented to the Defendant

The meaning of CST is generally considered to be contextual; for example, the American Bar Association Criminal Justice Mental Health Standards describes competency as “functional in nature, context-dependent, and pragmatic in orientation.”³⁰ Thus, conceptual models for CST and contextual attorney-client decision-making were reviewed in the literature.^{31–39} As a result of this review, the Slater Method content is focused on two goals outlined by the MacArthur Research Network on Mental Health and the Law: competency to assist counsel and decisional competency.^{36,40} Although differing requirements are placed on defendants in different proceedings, the training tool should have a defined amount of information to ensure that the defendants receive adequate information over time, no matter where they are located within MHRH while training efforts are underway. The first goal of the content areas of the Slater Method is to provide defendants with adequate information regarding their legal situation and the process involved in assisting counsel in court.

In addition, defendants must have the capacity to understand and process this information. Legal criteria for CST were reviewed. Rhode Island’s version of the *Dusky* standard for IST is that a defendant “. . . is unable to understand the character and consequences of the proceedings against him or her or is unable properly to assist in his or her defense.”⁴¹ There is no evidence that Rhode Island courts have applied a different standard to persons with and without MR. Our assumption in addressing this population and their needs is that we must use the same standard for determining competency in persons with MR as is applied to persons without MR. It must be understood that the impaired capacity or capacities that make one incompetent derive from a

different clinical picture in those with MR than they typically do in persons without MR. Thus, while the standard for competency is the same, a program to restore persons with MR to competency must be tailored to their specific cognitive deficits and needs.

With regard to the first goal, competency to assist counsel consists of: “the capacity to understand the charges, the nature and purpose of criminal prosecution, and the basic elements of the adversary system; the capacity to reason with information about the case; and, the capacity to appreciate one’s situation as a defendant in a criminal prosecution.”⁴⁰ With regard to the second goal, decisional competence refers to “the ability to make the specific decisions regarding the defense that are encountered in the process of criminal adjudication.”⁴⁰

The MacArthur data show that there are three separate aspects to competency to assist counsel: the ability to understand the charges and court-related proceedings, the ability to understand one’s situation as a criminal defendant, and the ability to communicate relevantly with counsel.⁴⁰ It is important to understand that competence is decision specific. Defendants who are competent to assist counsel may nonetheless lack decisional competency. In addition, defendants impaired in one decision-making ability (understanding, appreciation, reasoning) are not necessarily impaired in others.⁴⁰ For example, a person may be able to understand the legal process and the role of the judge, but may be unable to appreciate the consequences of a plea bargain.

Because more than 90 percent of cases do not go to trial, there is particular emphasis on plea bargaining.⁴² IST-MR defendants are ultimately recommended as competent to assist counsel if they understand the nature and purpose of criminal prosecution and punishment, the nature of the adversarial process, the role of defense counsel, the criminal charge(s) and possible pleas, and their situation as defendants in a criminal prosecution and if they can recognize and relate pertinent information concerning the facts of the case to defense counsel.³⁶

The second goal of the content areas of the Slater Method is to determine the defendant’s decisional competence. A critical element of a defendant’s competency includes the ability to make meaningful, autonomous decisions that are necessary in the courtroom. Decisions that ultimately must be made by the defendant, not the attorney, include choosing a plea, and if the case goes to trial, deciding whether the

defendant will testify, whether the jury will be waived, and whether the defendant will serve as a witness.^{34,36} It is important for a person to understand not only the consequences that a particular decision will entail, but also to appreciate the significance of those consequences. It is not clear that a person can be trained to appreciate long-term consequences (T. Grisso, personal communication, July 1998).

Tests of decisional competence in criminal adjudication conceptualized by Bonnie³⁶ include a hierarchy of tests with successively more inclusive criteria in the following sequence: the ability to express a stable preference, or “expression of choice”; the ability to understand the nature and consequences of decisions, or “basic understanding”; the ability to express plausible reasons for making a decision, or “basic rationality”; the ability to understand reasons for alternative courses of action, signifying “appreciation”; the ability to appreciate the significance of the information in one’s own case, also signifying “appreciation”; and, the ability to use logical processes to compare and weigh risks and benefits of alternative courses of action, or “reasoned choice.” Training tool content areas are focused on helping the defendant understand decisions they are likely to make in the courtroom and assess whether he or she is able to make these decisions with some degree of autonomy.

It is important to remember that no one’s decision-making capacity is perfect. One goal of competency restoration in the criminal justice system is to improve decisional capacity impairments, if present, so that the defendant is able to participate adequately in his or her defense and to receive, ultimately, a fair trial. The question before the person who assesses competence to stand trial is not whether the defendant is perfectly competent in all spheres to the highest level measurable in all legal situations, but rather whether the defendant is competent enough to receive a fair trial given the seriousness of the charges. That is, the court must be sure that it has not erred at two extremes: that it has not allowed a very poor decision-maker to proceed through the criminal justice process, given the potential grave consequences (e.g., capital murder) and, conversely, that it has not prohibited a good enough decision-maker from proceeding through a less serious legal situation (e.g., trespassing). In general, as long as the IST-MR defendant makes decisions on advice of counsel, including entering a guilty plea, the test for decisional competence for the Slater Method was decided to be

no more demanding than having the IST-MR defendant demonstrate an “expression of choice” and a “basic understanding” regarding decision-making. Efforts are also made, if possible, for the IST-MR defendant to be able to express a basic rationality for making choices. When the charges are more serious, a higher threshold may be required. The reasoned choice standard of decisional competence is generally not in the best interest of many MR-IST defendants because it would deny them the advantages of plea bargaining.³⁶ In this model, it is assumed that all defendants recommended to the court as CST will proceed through adjudication with counsel. Decisional competence in the context of waiver of counsel and choosing to represent oneself is not addressed.

The trainer is available to be physically present in the courtroom to help determine whether the defendant is making decisions consistent with the training tool as the process unfolds, as well as whether the defendant understands the decisions he or she appears to be making. The representative from MHRH can play an active role in fostering discussion between the defendant and the attorney, unless the attorney objects because of attorney-client privilege. In some instances, there has been discussion with attorneys to clarify the legal issues involved. The trainer works as a facilitator but does not formulate an actual opinion regarding CST and does not function as an expert witness.

Instrument Format: the Manner in Which the Material Is Presented

In conceptualizing the manner in which the material would be presented to the IST-MR defendant, a distinction was made between the defendant’s knowledge of the material and the defendant’s understanding of the material. Non-MR defendants are often restored to competency with (or without) educational program materials used merely as adjuncts to psychiatric care. In contrast, some IST-MR defendants lack basic knowledge about the legal system or the courtroom process because they never learned the material in the first place.

Knowledge-based training is the first phase of training. It is defined solely as providing concrete information so that the defendant can state his or her charge, the role of courtroom personnel, and the like, but not necessarily understand each concept. Knowledge-based training (Phase I) provides the defendant with basic information about the courtroom process,

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Table 1 Summary of Slater Method: Training Tool Rationale

MR Impairment	Phase I Knowledge-Based Training	Phase II Understanding-Based Training
Cognition	<p>The client must learn:</p> <ul style="list-style-type: none"> • the purpose of training sessions (1)* • the charges (1) • possible pleas (1) • potential consequences (1) • the role of courtroom personnel (2) • the purpose of going to court (3) • the purpose of going to trial (3) 	<p>The client must understand that:</p> <ul style="list-style-type: none"> • this is an adversarial proceeding, and he/she is the accused (1, 3) • he/she cannot be punished just because he/she is accused (1, 3) • a plea is different from a finding (1, 3) • the case may go to trial, but it probably won't (1, 3, 4) • a plea bargain means giving up some rights (1, 3)
Communication	<p>The client must learn:</p> <ul style="list-style-type: none"> • the importance of speaking with his/her attorney (4) • the importance of listening in court (4) • the importance of not saying "yes" if he/she doesn't understand something (4) • how to testify appropriately (4) 	<p>The client must be able to:</p> <ul style="list-style-type: none"> • understand that the opposing counsel may try to trip him/her up • tell his/her story without self-incrimination • tell all details of his/her story to the attorney • resist leading questions and appreciate and be able to stick to a defense strategy
Emotions and behavior	<p>The client must learn:</p> <ul style="list-style-type: none"> • to display appropriate behavior (5) • not to display inappropriate behavior (5) 	<ul style="list-style-type: none"> • Role-playing sessions to assess ability to tolerate the stress of courtroom proceedings (1–5)

* Numbers in parentheses denote the main module number(s) where this information is reviewed (see Table 2).

without concern about whether the defendant fully understands the information provided.

Understanding-based training is the second phase of training. It is defined as working with the defendant so that he or she can begin to grasp the effect of the charge on his or her life. Understanding-based training (Phase II) reviews the material learned in Phase I and addresses the more complicated concepts of understanding, appreciation, and reasoning. Questions that assess understanding (Phase II) are placed in the manual after the basic knowledge questions (Phase I) because they require use of basic knowledge in a more sophisticated way.

Trainers are cautioned that by repeatedly going over the same questions and answers, they may not be testing appreciation of concepts, but rather may be demonstrating the defendant's knowledge of a greater number of details of the same basic information or testing the defendant's ability to memorize answers. This is a common dilemma in assessing a person's understanding.⁴³ It is important to remember that the ability to gain conceptual understanding in persons with limited abstract reasoning abilities may be modest. Our method seeks to optimize such learning by avoiding pure repetition and instead focuses on repetitive episodes of learning by changing the way a similar collection of material is presented to the patient. In this way, over time, many defendants will be able to internalize the understanding-based

training to formulate a more sophisticated understanding of their situations. However, while such internalization is the goal, it must be noted that many defendants, because of severe impairments in abstract reasoning, are never able to understand and internalize the necessary information well enough to be deemed CST. It simply is a fact that some persons, despite intervention over time, remain permanently IST. A summary of the Slater Method's training rationale is located in Table 1.

Usefulness of Restoration Efforts to Legal Counsel

In addition to teaching the trainer and teaching the defendant, competency restoration efforts are designed to demonstrate to legal counsel the utility of competency restoration training. The fairness of an MR defendant's legal proceedings often relies on the ability of the attorney to recognize the defendant's limitations, as well as the attorney's willingness to spend more time with the client to help compensate for the deficits.³⁴ However, the legal system does not always provide specialized training or experience in representing defendants with MR. In addition, the defendant's decisional abilities can affect attorney-client conferences or courtroom proceedings. If the defendant becomes stressed during proceedings, has difficulty communicating effectively, or appears to have difficulty making decisions, it can be difficult for the attorney. As a result of these two factors,

attorneys may not place great confidence in competency restoration efforts after an MR-IST defendant has been deemed restored to competency and returned to court.

Bonnie proposed two corrective arrangements to assist lawyers representing marginally competent defendants,³⁴ and both recommendations are incorporated into the Slater Method. First, the forensic report that accompanies the defendant to court describes the remaining competency-related impairments and includes recommendations to address these impairments. Second, a representative from MHRH is available to play an active role in fostering discussion between the defendant and the attorney. This can help the defendant make decisions along the way and can help the attorney assess whether the defendant understands the decisions he or she appears to be making.

Training Tool Format

The training tool consists of an instructional manual, a workbook, and answer sheets.

The Instructional Manual

The manual is written for a broad audience and includes a basic primer on competence to stand trial in general and on special problems with IST-MR individuals, such as competency-related impairments and decisional competency, and contains a discussion of the importance of interacting with legal counsel. It presents three domains of competency-related impairments in IST-MR defendants and outlines a rationale for approaching training to restore competency. There is no distinction between the DSM-IV diagnostic classifications of MR within this instrument. We do not make distinctions between mild and moderate MR because this is not how competency is determined by the courts.

The instructional manual and the workbook are each organized into five training modules. Module training includes the following content areas: the purpose of competency training; the charges, pleas, and potential consequences of the current charge; the roles of courtroom personnel; and the courtroom proceedings, trial process, plea bargaining, and consequences of entering a plea. Module training also includes instruction on how to communicate with the defense attorney and other courtroom personnel, how to give testimony, and how to assist in one's

Table 2 Module Training Topic Summary

Module 1:	Purpose of training: Review of charges, pleas, and potential consequences
Module 2:	Courtroom personnel
Module 3:	Courtroom proceedings, trial, and plea bargain
Module 4:	Communicating with attorney, giving testimony, and assisting in defense
Module 5:	Tolerating stress of proceedings

defense. It also reviews expectations and standards for behavior in the courtroom (see Table 2).

The Workbook

Similar to restoration training programs for non-MR defendants, this program is based on a systematic lesson plan called module-based training.^{10,12,13,14} Each module lists sample questions that the trainer asks the defendant. The trainer reviews the sample questions and modifies them to fit the particular aspect of competency being discussed. Examples of sample questions from each module are shown in Table 3. Examples of satisfactory answers to questions are listed after the questions. Because it can be difficult to distinguish whether IST-MR defendants are providing memorized answers instead of appreciating the concepts, trainers are urged to modify the questions and simply record the data. The final clinical assessment of competency is not conducted by the trainer. We deliberately separate the trainer's role from the assessor's role, as discussed in a later section. The use of hypothetical examples is encouraged to determine whether the defendant indeed appreciates the legal concepts in Phase II that were taught in Phase I.

The current version of module-based training uses role-playing, including mock trial sessions. For the sake of convenience, photographed vignettes of courtroom personnel are used instead of videotaped vignettes. Photographs of mock courtroom personnel foster discussion between the defendant and the trainer about what happens in court.

Unlike restoration training programs for non-mentally retarded defendants, module-based training does not occur in a group setting. Habilitation efforts are one-on-one because the type and level of competency-related impairments in this population is not homogenous, because we have anecdotally observed that clients best respond to individual educational efforts, and because the number of IST-MR defendants in Rhode Island is low. Other than the

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Table 3 Sample Questions from Each Module

Column A: Knowledge-Based Questions*	Column B: Understanding-Based Questions
Module 1: Purpose of Training: Review of Charges, Pleas, and Potential Consequences	
<p>What did the police say you did? On what date did this happen? About what time? [If client does not understand the concept of time, simply teach the date of the offense so it will be memorized for court.]</p> <p>What is a crime? (It's when you do something bad and break the law.)</p>	<p>How come you're in trouble? (Some people say I did something bad. They say I did a crime.)</p> <p>Just because you're in trouble, does that mean you go to jail? (No)</p> <p>How come? (Because I have to tell them I'm guilty or they have to prove I'm guilty before they can punish me. They have to prove it first.)</p> <p>Is it a crime to steal a candy bar? (Yes)</p> <p>Why? (Because you didn't pay for it. Because it's against the law.) <i>[Another way to ask this line of questioning at a later time may be: Is it a crime to buy a candy bar? (No) Why? (Because you paid for it.)]</i></p>
Module 2: Review of Courtroom Personnel	
<p><i>[Show the photos of the courtroom and ask who sits where. As he/she names the judge, jury, lawyer, ask the following questions]</i></p> <p>What is the job of the other side's lawyer? (Tries to convince the judge or jury that I did it.)</p> <p>Can you talk to the other side's lawyer? (Yes.) When can you talk to the other side's lawyer? (Only when he asks me a question when I am on the witness stand.)</p>	<p>How come the other side's lawyer wants to make you look bad? (His job is to try to make the judge or jury put me in jail.)</p> <p>Who is on your side in the court? (My lawyer, my family <i>[depending on the charge]</i>.)</p> <p>Who is not on your side? (The other lawyer. The judge and the jury are neutral. Some witnesses may not be on my side.)</p>
Module 3: Review of Courtroom Proceedings, Trial, and Plea Bargain	
<p>Having a trial is different from just going to court. There is a trial only if you plead not guilty (innocent). If you plead guilty or <i>nolo</i>, there is no trial; instead, the judge just give you the sentence.</p> <p>If you say you're guilty, is there a trial? (No)</p> <p>If you say (plead) innocent, is there a trial? (Yes)</p> <p>If you say [plead] <i>nolo</i>, is there a trial? (No)</p> <p><i>[Because these are yes/no questions, repeat from a different perspective to make sure the client knows. e.g. What are your possible pleas? (Guilty, innocent and nolo). Which plea would cause the client to have a trial?]</i></p>	<p>How come you have to go to court? (Because they say I did something wrong, and when they say you did something wrong, they give you a charge and they take you to court. Because that's how the law works to decide if I'm guilty or not guilty.)</p> <p>Why don't you need a trial if you plead guilty or take a deal? (Because they already have an answer to the question since I told them I'm guilty or that I did something bad.)</p>
Module 4: Review of Working with Attorney/Assisting in Defense	
<p>If you don't understand what is being said about you in court, who can you tell this to? (My lawyer)</p> <p>What do you say to him if you don't understand what is being said? (I say, "I don't know what is going on.")</p> <p>What are the things you need to tell your lawyer? <i>[Ask the client to tell you his story of what happened. If important parts are left out, help to make it fluent, but don't add new material and don't write down incriminating information. If you don't know what happened, contact the Forensic Service, and we will discuss the police report.]</i></p> <p>The other side's attorney may try to confuse you on the witness stand. When you are asked a question that you don't understand, what would be the wrong thing to say? (Yes, I understand.) What will you say instead? (I don't know what you are saying. Ask me again.)</p>	<p>Why is it important to tell your lawyer if you don't understand what is being said? (Everybody is here in court to talk about me. My job is to make sure that I know what people are saying about my case. I might miss something.)</p> <p>Let's talk about what you just told me <i>(client's version of what happened).</i> What are the most important things that you told me?</p> <p>Why are these things important? <i>[Take the client through several examples of leading questions. Try to get him/her to follow your lead, and then show how he/she is being led so that he/she will recognize the pattern. Then, work with the client to resist answering leading questions, and practice asking for clarification if he/she does not understand a question. The Forensic Service will go over specific examples with you before training.]</i></p>
Module 5: Tolerating Stress of Proceedings	
<p>How are you supposed to behave in court? (Be nice. Don't yell. Talk to my lawyer.)</p> <p>Can you laugh in court? (No) <i>[Repeat yes/no questions from a different perspective.]</i></p> <p>Is it good to sit quietly in court? (Yes)</p> <p>Does that mean you can never talk in court? (No. I can talk in court sometimes.)</p> <p>Can you tell jokes, yell etc., in court? (No) <i>[Repeat yes/no questions from a different perspective.]</i> Why not? (Because going to court is serious. Because I have to look good.)</p> <p>Is it good to talk quietly in court? (Yes)</p> <p>Can you get mad in court? (Yes, but I can't yell or scream.)</p>	<p>Why is it important to speak up in court? (Because they are talking about me. Because I have to stand up for myself. Because I have to understand what is going on.)</p> <p>Why is it important to not stand up and move around when court is going on? (It would make me look bad. I need to look good to help my case.)</p>

* Questions are examples; elaborate on them or add new questions to foster discussion. Samples of acceptable answers are in parentheses.

multiple training sessions contained in the manual, additional organizational strategies are not given to the defendant because we believe such persons do not generally benefit from handouts. Defendants are usually not provided with written material because the illiteracy rate is so high in this population.

The Answer Sheets

A separate set of answer sheets is used to record the defendant's responses to questions and assesses the quality of the defendant's response. Answer sheets document the progress the defendant is making and help identify persistent deficits that need additional work.

The coding system allows for answers to be noted as poor, fair, or good. An answer is rated as poor if the defendant does not answer questions, erroneously articulates a concept, or says "I don't know" or "I don't remember" in response to questions. An answer is rated as fair if the defendant is able to give a limited description of the concept, or gives replies that are mixed up or somewhat understandable. An answer is rated as good if the defendant gives a generally complete and understandable answer to the question. The trainer is taught how to code during supervision sessions.

Procedure for Use of The Slater Method

IST-MR defendants are identified at the time of their CST screening evaluation. Initial phases of competency restoration include psychopharmacologic treatment of comorbid psychiatric symptoms, if present. This is followed by the use of the educational training tool. Formal consent to training is not an option, because the client is under forensic commitment. All persons who are believed to have MR are assigned to the program unless they refuse to participate. If a client refuses, we seek an alternate method of competency restoration and notify the court of the client's refusal. Since competency restoration training is often a part of the larger treatment plan, defendants generally assent to this ongoing, structured learning program. Before the period of training begins, a baseline CAST-MR score is obtained. This instrument is not used to determine whether the IST-MR defendant is competent, but it is sometimes used six months or a year later to help determine progress. Care is taken to not repeatedly administer the CAST-MR, however, to avoid the possibility of invalidating further scoring.

At the time of the screening evaluation or after an initial period of stabilization, the Forensic Service assesses whether the defendant can be maintained in the community or requires inpatient commitment for competency restoration. Training occurs either on the Forensic Unit of Eleanor Slater Hospital, Rhode Island's most restrictive forensic facility, or in less restrictive placements, such as the civil wards of the Eleanor Slater Hospital, group homes, or private homes. Efforts to educate the defendant in the community can decrease the defendant's anxiety during the period of restoration training. Outpatient training also allows MHRH's DDD staff to work with defendants. This is advantageous because the defendant usually knows the staff already and because DDD staff has skill in working with and teaching MR clients in other realms.

Identified trainers receive a copy of the screening CST evaluation, which includes relevant functional impairments of the IST-MR defendant. Trainers also receive a copy of the educational tool and have at least one initial training session by the Forensic Service before they use the tool. Individual trainers interact with members of the Forensic Service, and information concerning the defendant's clinical condition and behavior is shared. A six-month period of training is conducted by staff, with Forensic Service contact as required and as needed.

During the training process each of the five modules is presented in sequential order over a variable period. Trainers meet with defendants one to five days per week, and each session lasts from a few minutes to an hour. Module-based training follows the flow sheet shown in Table 4. Each module is reviewed with the defendant a minimum of three times, because this seems to be the minimum number of times that it takes to ensure retention. Similarly, the defendant's progress is initially assessed after reviewing all of the material three times.

As discussed earlier, in Phase I (knowledge-based training), defendants are given basic information about the legal system for them to learn by rote. In Phase II (understanding-based training), each module is again presented in sequential order but understanding-based questions are added to the knowledge-based questions. We determine how the defendant can state important details about the alleged criminal incident to the attorney by using the police report and witness statements. However, the ultimate determination of whether the defendant

Training Program for Restoration of Competency

Table 4 Flow Sheet for Using the Workbook

Step 1:	Phases I and II, Modules 1–5: Ask and record knowledge-based training (Column A) and understanding-based training (Column B) for all modules to obtain a baseline.
Phase I: Knowledge-Based Training	
Step 2:	Phase I, Module 1: Knowledge-based training only (Column A) Go through this module a minimum of three times. When all answers are fair or good, move to the next step.
Step 3:	Phase I, Module 2: Knowledge-based training only (Column A) Go through this module a minimum of three times. When all answers are fair or good, move to the next step.
Step 4:	Phase I, Module 3: Knowledge-based training only (Column A) Go through this module a minimum of three times. When all answers are fair or good, move to the next step.
Step 5:	Phase I, Module 4: Knowledge-based training only (Column A) Go through this module a minimum of three times. When all answers are fair or good, move to the next step.
Step 6:	Phase I, Module 5: Knowledge-based training only (Column A) Go through this module a minimum of three times. When all answers are fair or good, move to the next step.
Step 7:	Call the Forensic Service to discuss results of Phase I training.
Phase II: Understanding-Based Training	
Step 8:	Phase II, Module 1: Knowledge-based understanding-based training (Columns A and B) Go through this module a minimum of three times. When all answers are fair or good, move to the next step.
Step 9:	Phase II, Module 2: Knowledge-based and understanding-based training (Columns A and B) Go through this module a minimum of three times. When all answers are fair or good, move to the next step.
Step 10:	Phase II, Module 3: Knowledge-based and understanding-based training (Columns A and B) Go through this module a minimum of three times. When all answers are fair or good, move to the next step.
Step 11:	Phase II, Module 4: Knowledge-based and understanding-based training (Columns A and B) Go through this module a minimum of three times. When all answers are fair or good, move to the next step.
Step 12:	Phase II, Module 5: Knowledge-based and understanding-based training (Columns A and B) Go through this module a minimum of three times. When all answers are fair or good, move to the next step.
Step 13:	Contact the Forensic Service when you believe that your client is ready for a “dress rehearsal” in mock court.

will be recommended as competent is made by the competency examiner, who evaluates the defendant at six-month intervals, rather than by the trainer. After the defendant completes both the knowledge-based and understanding-based training portions of all modules, he or she proceeds to role-playing sessions to assess further the ability to tolerate the stress of courtroom proceedings.

Every six months, there is a follow-up evaluation of the defendant’s CST. The final recommendation of CST communicated to the court is made by the Forensic Service, not by the individual trainer. If the defendant continues to be recommended to the court as IST, he or she is sent back to work with the trainer for a minimum of an additional six months. In this

instance, answer sheets help demonstrate to the court deficits that could not be adequately improved. If the defendant is recommended to the court as competent to stand trial, answer sheets help document the progress the defendant has made.

The restoration program has a flexible training period of up to two years, as discussed in the next section. There has been one case in which restoration was extended for a three-year period because the defendant was making slow but steady progress (see case example). As with all evaluations of CST, malingering is always given consideration in the competency assessment, restoration, and reassessment phases. Documenting areas of improvement and areas of continued deficits over time helps the Forensic

Service recommend whether the impairments in the defendant's CST are restorable or nonrestorable within the maximum period of any placement order.

Duration of Treatment

Restoration to competency within a reasonable period is necessary to retain a client on an IST commitment.⁴⁴ Under Rhode Island law, an IST individual with mental retardation cannot be forensically committed on an inpatient or outpatient basis for a period equal to two-thirds of the maximum term for the most serious offense with which he or she is charged.⁴¹

Competency restoration efforts can be time-consuming in many cases, and some defendants have been discharged from the training program because they did not make sufficient progress within the maximum time allowed. The extent to which a defendant may benefit from a competency restoration program depends generally on his or her overall intellectual functioning (IQ) and proficiency of memory, which is related, in part, to IQ. It is difficult to predetermine how much time is necessary for a defendant to learn the material. Trainers who have extensive experience in working with the MR population already understand the difficulty that learning new skills can pose for such persons. Trainers who have less experience with this population may initially misunderstand the way persons with MR learn. Such misunderstandings are resolved by continued training and supervision as restoration efforts proceed.

More systematic research is needed to establish the specific relationship between general intellectual functioning and rate and capacity of learning with this training module. Generally, however, a prognostic indicator could be the degree to which a defendant exhibits some minimal learning after several exposures to the information. That is, if a defendant does not exhibit any recognition or learning of the material after multiple training sessions, then the likelihood of restoring competency may be decreased. Conversely, any new learning or increased familiarity with the material over time would suggest a greater likelihood of restoring competency. Given the significant variability of abilities in this population and in the absence of empirical data, it would be ill advised to suggest specific time frames for determining that a defendant will not benefit from training.¹⁹ Our limited experience with the use of the training tool is that some persons can be restored to

competence within a few months, others do not make significant gains before a period equivalent to two-thirds of the maximum sentence has elapsed (prompting dismissal of the charges), and others have been deemed nonrestorable after two or more years.

Clinical Outcomes and Case Examples

Since 1997, 15 defendants with MR have received competency restoration training with the Slater Method. It has also been used on approximately 20 IST defendants with other clinical impairments that necessitate a structured approach to training (e.g., borderline intellectual functioning, reversible dementia, traumatic brain injury). The tool has been used in inpatient and outpatient settings. Of the 15 individuals who met diagnostic criteria for mental retardation, 5 ultimately benefited from the method, were recommended to the court as CST, and were adjudicated CST without contest. One was recommended to the court as restored to competency with the use of the Slater Method, but was not adjudicated CST (see case example). Four were recommended to the court as not restorable prior to the maximum period of any placement order. Five are currently receiving competency restoration training but have not yet been restored to competency.

So far, no trainer has served as an expert witness regarding a defendant's competency. We believe this has not occurred because of our separation of the trainer's role and the forensic examiner's role. If a trainer were requested to testify at a future hearing, MHRH would argue that the trainer is not able to give an expert opinion regarding the defendant's competency capacities.

So far, no defendant recommended to the court as CST after restoration by the Slater Method has gone to trial; all have entered plea bargains. If a trainer was present at court and believed that a defendant did not understand information presented at trial, the trainer would recommend that the attorney ask for a recess so that the trainer could work with the defendant to assess whether he or she was able to proceed. If it were believed that there had been a change in the defendant's clinical situation or that the defendant may have forgotten aspects of what was covered, it would be recommended that the attorney either request more time to confer with the client or ask for another CST evaluation.

Case Example 1

Ms. G. was a woman with MR who was admitted to Eleanor Slater Hospital for competency restoration. After her screening evaluation, she was recommended to the court as IST because she became emotionally overwhelmed when discussing court-related proceedings. She would become tearful and so upset that she would run out of the room. Despite this behavior, she was generally pleasant and interacted well with staff when not discussing her case.

Ms. G. was treated with the Slater Method, and after about three months, she was able to tolerate a discussion of her case without becoming overwhelmed and distraught. After her emotional impairments improved, the focus of restoration changed to address her cognitive impairments. However, she was never able to have a cogent discussion of her charges, despite being significantly calmer. Because the charges were misdemeanor, it was ultimately recommended that she would not become CST before the dismissal of the charges prior to the maximum period of any placement order (in her case, she could be forensically committed only for competency restoration for up to eight months). The charges were dropped, and she resumed living in a supervised apartment.

Case Example 2

Mr. S. was a man with MR who was admitted to Eleanor Slater Hospital for competency restoration because he appeared to be too anxious to discuss the nature of his legal situation. Over the course of about 10 sessions of competency training in a four-month period, Mr. S.'s anxiety related to discussing the case began to decrease. Within six months, he was recommended to the court as CST. Despite this recommendation, he was adjudicated IST and permanently unrestorable. This adjudication resulted in a civil commitment by reason of developmental disability. Because an adjudication as CST would probably have resulted in incarceration, it was believed that the adjudication as permanently IST was based more on Mr. S.'s placement needs than on the improvement in his competency that was brought about with the use of the Slater Method.

Case Example 3

Mr. T. was a man with MR who was admitted to Eleanor Slater Hospital for competency restoration. During the course of his hospitalization, he remained

emotionally withdrawn, particularly when discussing his legal charges. He also had significant cognitive deficits. For example, he had an impaired understanding of concepts such as statements, rights, and allegations.

Mr. T. was ultimately transferred to a group home for continued competency restoration with the Slater Method after he had maximally benefited from inpatient psychiatric treatment. Over the course of time, he became more emotionally able to tolerate a discussion of his charges and was able to learn more about the legal system and his current legal situation. Because he was making steady progress, competency restoration efforts continued for three years. He was ultimately recommended to the court as CST. His case was adjudicated with a plea bargain.

Conclusion and Recommendations

This training program provides information to defendants in a structured format, sets expectations for cooperation and participation in the competency restoration process, provides the trainer with information about the defendant's competency-related impairments, and helps defendants return to court as quickly as possible. Regular feedback to the trainers allows modification of the training program and assists them in progressively narrowing the functional impairments that affect each defendant's ability to stand trial. Because all information is presented orally, literacy is not necessary for defendants to acquire understanding.

The authors believe that this tool provides a useful structure for restoration of competency in those with MR and that it is useful for other clinical situations that require a structured approach to competency restoration, such as borderline intellectual functioning. It is possible that the tool can be considered for use in youth transferred to adult court whose incompetency is due to developmental immaturity and in youth whose incompetency in delinquency proceedings is due to developmental delays.

Further research is planned to address inter-rater reliability of acceptable versus unacceptable answers, the validity of the training tool, and reliability studies. Empiric testing of the IQ variable with the training tool may also help make possible a predictive determination of the degree of competence restorability in individual cases. Another possible future component of the Slater Method would be the addition of ways of assessing malingering or exaggeration of cognitive deficits with the training tool.

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