

absence of a direct nexus between the illness and the action, as required in the guilt phase of affirmative mental defect defenses, the effects of a severe mental illness are pervasive in a person's life and can alter circumstances that may be relevant in death penalty considerations.

In Mr. Bigby's case, the broadened definition of mitigating evidence allowed the relevance of paranoid schizophrenia to be considered by the jury, regardless of its connection with the crime in question. A jury may decide that a life sentence is more appropriate, given this information. To give effect to this type of mitigating evidence, the forensic psychiatrist has a significant role in educating the jury about the effects of mental illness on thinking, behavior, and judgment and in translating professional jargon into comprehensible information that is useful to its deliberations. As in this case, psychiatric evidence presented in the guilt phase may prove to be useful data in the sentencing phase.

Alicia A. Romeo, MD
Resident, Department of Psychiatry
Yale University School of Medicine
New Haven, CT

Competence for Waiver of Appeals in the Death Penalty: Timing, Standard and Standing

Competency to Forgo Postconviction Relief in a Death Penalty Case

In *Corcoran v. State*, 820 N.E.2d 655 (Ind. 2005), the Indiana Supreme Court upheld the trial court's ruling that the defendant was competent to waive review of his murder conviction and denied his request for a dismissal of the appeal court's decision to allow him to pursue postconviction relief (PCR).

Facts of the Case

Joseph E. Corcoran, who had a diagnosis of paranoid schizophrenia, was sentenced to death after conviction for four murders committed in May 1999. He appealed the death sentence but did not challenge the convictions. In March 2003, the Indiana Supreme Court affirmed the 2002 sentence and denied a petition for a rehearing.

In April 2003, within 30 days of the decision, as required by Indiana law, the state public defender

requested that the Indiana Supreme Court extend a stay of execution of the death sentence to petition for PCR. The court granted the request, and, according to procedure, directed the trial court to submit a case management schedule requiring that the petition, signed by the petitioner, Mr. Corcoran, be filed by September 9, 2003.

Mr. Corcoran refused to sign the PCR petition, indicating that he believed that he should be put to death for his crimes and that he wanted to waive any further reviews of his case. On September 9, 2003, the public defender filed with the trial court both the PCR petition without Mr. Corcoran's signature and a request for a competency evaluation of the defendant. The trial court rejected the unsigned PCR petition and scheduled a competency hearing, held in October 2003. In December 2003, the trial court ruled on competency and found Mr. Corcoran competent to waive further challenge to his sentence and to be executed. The state public defender petitioned the Indiana Supreme Court to review the trial court's decision. That court accepted the request, ruling that the public defender had standing to appeal only the competency decision and no other.

While the appeal was before the state supreme court, Mr. Corcoran filed a request to dismiss the appeal on the competency decision because he wanted to recant his waiver and intended to pursue PCR, which would render the issue of his competence to waive PCR moot.

Ruling

The Indiana Supreme Court denied the request to dismiss the appeal of the competency ruling as moot because Mr. Corcoran had not previously filed for PCR within the 30-day deadline and, with one justice dissenting, affirmed the finding that Mr. Corcoran was competent to forgo PCR.

Reasoning

The Indiana Supreme Court addressed the three arguments proffered by the state public defender: (1) the trial court had failed to use the proper competency standard found in *Rees v. Peyton*, 384 U.S. 312 (1966), in which the Supreme Court held that a capital defendant may withdraw a petition for *certiorari* only after it determined whether "he has capacity to appreciate his position and make a rational choice with respect to continuing or abandoning further litigation or on the other hand whether he is suffering from a mental disease, disorder, or defect which may substantially affect his capacity in the premises"; (2)

Mr. Corcoran was incompetent to waive postconviction review under any competency standard; and (3) Mr. Corcoran's incompetence prevented him from knowingly or voluntarily waiving his right to PCR.

The state argued that the proper standard for determining Mr. Corcoran's competency to waive his right was set forth in *Dusky v. United States*, 362 U.S. 402 (1960), in which the Supreme Court held that a defendant is competent "if he has sufficient present ability to consult with his lawyer with a reasonable degree of rational understanding—and has. . . a rational as well as factual understanding of the proceedings against him."

The Indiana Supreme Court found very little difference between the standards enunciated in *Dusky* and *Rees*, citing *Godinez v. Moran*, 509 U.S. 389 (1993), which held that the difference between both standards is not readily apparent and may only be one of terminology. The court also noted that federal courts have been unwilling or unable to distinguish between the two standards, as both tests highlight the constitutional necessity that a criminal defendant understand the proceedings and be capable of aiding his legal counsel. The court further ruled that neither test considers the presence or absence of mental illness or brain disorder in itself to be a determinant of competency or incompetency. Both tests require that mental health factors be considered in balance with other evidence. The court considered the trial court's determination of Mr. Corcoran's competency under both standards and affirmed the decision under both.

In response to the petitioner's argument that Mr. Corcoran was unable to form a rational understanding of his decision to waive his challenge of his sentence, the court critiqued the testimony of the three mental health professionals called as defense experts for the competency hearing. All of the experts concluded that Mr. Corcoran suffered from paranoid schizophrenia and had delusions about prison guards torturing him through an ultrasound machine that produced pain and uncontrollable twitching. All three opined that the defendant's decision to forgo PCR was predicated on his desire to be relieved of the pain the torture was producing. The Indiana Supreme Court ruled that the expert testimony about Mr. Corcoran's delusions was inferential, since Mr. Corcoran had made no direct statement about the delusions to the expert witnesses. The court also emphasized that records indicated that the defendant's psychotic symptoms were controlled by medications.

Mr. Corcoran's testimony to the trial court played a critical role in the state supreme court's decision. The supreme court found that Mr. Corcoran spoke directly to his reasons for not pursuing PCR when he stated

[I want to] waive my appeals because I am guilty of murder. . . . I should be executed for what I have done and not because I am supposedly tortured with ultrasound. . . . I believe the death penalty is a just punishment for four counts of murder, and I believe that I should be executed since I am guilty. . . .

The court also reviewed records that indicated that Mr. Corcoran was aware of his legal position and the consequences of his decision to forgo any further PCR. The court concluded that his awareness of his legal position and his ability to formulate a rational justification for forgoing further PCR rendered him competent under either the *Dusky* or *Rees* standard.

The supreme court considered the issue of automatic PCR in cases in which defendants refuse to endorse the petition and concluded that automatic review on direct appeal had been afforded Mr. Corcoran and that interest in achieving finality outweighed the benefits of mandating further review. It declined to extend automatic PCR to capital litigants who fail to seek PCR within the time limits set forth by the Indiana Rules of Criminal Procedure.

Justice Rucker dissented, finding the court's reliance on Mr. Corcoran's statements concerning his waiver of PCR flawed, based on the experts' observation that he was reluctant to admit to having a psychiatric illness.

Discussion

Competency determination in complex cases challenges the forensic psychiatrist as well as the judicial system, in part because of the complexities of the variously applied legal standards for competency. In this case, the public defender argued that the trial court had inappropriately applied the *Dusky* instead of the *Rees* standard in determining Mr. Corcoran's competency to forgo PCR. The court, however, concluded that there was no substantive difference between the two standards and that the defendant had met criteria for competence under both.

It is interesting that not all of the justices agreed. Justice Rucker argued that the ability to consult with one's lawyer and to have an understanding of the legal proceedings against one as outlined in *Dusky* is not quite the same as the ability to make a rational choice as outlined in *Rees*. He further ar-

gued that even if the two tests were indistinguishable, the fundamental requirement underlying any notion of competency must still be one of rationality.

Justice Rucker's position is understandable to forensic psychiatrists. The capacity to make a rational choice free from the intrusion of delusional beliefs is substantively different from understanding proceedings and consulting with an attorney when delusions are present. The *Rees* standard offers a broader model than does the *Dusky* for examining an inmate's mental capacity, because it addresses rational decision making.

All three mental health professionals in the current case based their conclusions on whether Mr. Corcoran's mental illness affected his ability to make a rational choice, even though his capacity to understand and to consult was intact. An irrational analysis or purpose within a rational plan is one of the complex characteristics of a paranoid disorder. It is often that characteristic that challenges explanation in state-of-mind defenses when, for a delusional reason, the defendant has carried out a well-orchestrated plan. As evident in this case, that same paranoid characteristic complicates the assessment of competency. Of course, the ultimate complication is that Mr. Corcoran's was a capital case, in which the finality of the decisions and the action is absolute.

Vinneth Carvalho, MD
Forensic Psychiatry Fellow
Yale University School of Medicine
New Haven, CT

Involuntary Medication Administration Standards for Restoring Competency to Stand Trial

Appellate Court Refines the Sell Criteria for Involuntary Medication of Defendants

The Constitution's Fifth and Fourteenth Amendments liberty interest affords defendants the right to refuse psychotropic medications. For the liberty interest to be overcome, thus allowing such medications to be given involuntarily, four specific criteria laid out in *Sell v. U.S.*, 539 U.S. 166 (2003) must be met; these criteria constitute the so-called *Sell* test.

In *U.S. v. Evans*, 404 F.3d 227 (4th Cir. 2005), the U.S. Court of Appeals for the Fourth Circuit was asked to determine if the "*Sell* test" had been met by the government, thereby allowing the defendant to be medicated against his will for the purpose of rendering him competent to stand trial.

The defendant appealed the trial court's finding that prosecuting him represented an important government interest (*Sell* criteria one), that involuntary medication would significantly further this interest (*Sell* criteria two), and that the administration of the medication was medically appropriate (*Sell* criteria four). The defendant did not challenge the trial court's finding on *Sell* criteria three, the state's need to show that involuntary medication is "necessary" to further the government's interest.

Facts of the Case

Herbert Evans, 74, went to the Rural Development Agency (RDA) office in Wytheville, Virginia, in November 2002, to complain about a housing loan. He became "extremely angry and loud" according to the agent with whom he spoke and allegedly made threats involving terrorist acts with chemical and biological weapons. He was later arrested and charged with a misdemeanor charge of "assaulting, resisting or impeding" a federal employee under 18 U.S.C.A. § 111(a)(1) with a maximum penalty of one year's imprisonment. At his detention hearing, the government's motion for a psychiatric examination was granted, and Mr. Evans was transferred to the Federal Correctional Institution in Butner, North Carolina (Butner). Mr. Evans was evaluated and determined to be incompetent to stand trial, but he refused medications to restore his competency. During the time of his pretrial confinement, the U.S. Supreme Court decided *Sell v. U.S.*, and, under the strictures of this ruling, the government moved to have Mr. Evans medicated against his will for the sole purpose of rendering him competent to stand trial on the misdemeanor charge.

An evidentiary hearing in October 2003 reviewed the reports of the Butner medical staff concerning Mr. Evans' competence to stand trial, an evaluation concerning his need for involuntary medication (IM report), and the report and testimony of Dr. Margaret Robbins, a forensic psychiatrist who testified for the defendant. At that hearing, the government's motion to medicate Mr. Evans involuntarily was denied. The court held that the importance of bringing him to trial was not enough to outweigh his liberty