Intelligence, Psychosis, and Competency to Stand Trial

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The finding as to whether a criminal defendant is competent or incompetent to stand trial is a critical one for the accused. A decision that the defendant is competent to stand trial allows for further procedure through the criminal courts, consistent with the right to a speedy trial even if mentally ill. If the defendant's present state of mind is so impaired as to result in a finding that he is incompetent, the defendant cannot stand trial until he becomes competent and is often diverted toward involuntary hospital treatment.

Over the years many controversial aspects of the competency evaluation and the disposition of incompetent defendants have been encountered. These have concerned the definition and degree of incompetence, as well as the due process rights of mentally ill defendants. There has also been some persistent confusion in the distinction between the legal concept of present competency and criminal responsibility at the time of the act.

Competency to proceed focuses on present or anticipated state of mind at the time that the individual is to be brought before the Court. Criminal responsibility, on the other hand, focuses on a prior time when the defendant is alleged to have perpetrated the act or acts.

As noted by Sabot,[1] the matter of criminal responsibility "arises in the most publicly and emotionally charged aspect of the legal process, the trial phase." By contrast, the issue of competency to proceed appears to be less publicized and less emotionally charged than the defense of not guilty by reason of insanity. However, criminal responsibility may not be as important as present competency since most defendants do not get to the stage where the issue of responsibility or insanity could legally be raised; criminal cases are frequently concluded in the pretrial phase either by dismissal or by

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a guilty plea. While criminal charges against mentally ill persons sometimes result in their pretrial dismissal, mentally ill persons do have a right to a speedy trial unless they are so impaired as to meet the legal standards for incompetency to proceed.

Within the previous decade, considerable variation has existed regarding the criteria to be used in determining competency.[2–4] This variation reflected the lack of agreement about uniform clinical criteria for the determination of competency. To deal systematically with the clinical assessment of competency, various clinical checklists have been devised.[4,5] Although the court does consider clinical findings pertaining to present state of mind, the degree and type of impairment of the accused must be assessed according to specific legal criteria or guidelines.

Robey offers the following definition reflecting the legal guidelines for determination of competency to proceed in the face of criminal charges, which were spelled out by the U.S. Supreme Court in the Dusky decision:[6]

> to be considered competent to stand trial, an individual must possess sufficient capacity to comprehend the nature and quality of the proceedings against him and his own position in relation to these proceedings. Further, he must be able to adequately advise counsel rationally in the preparation and implementation of his own defense.... (p. 28).

In an attempt to further define and explore the concept of competency, numerous articles have been written by lawyers and clinicians alike. Despite the Dusky standard and the landmark Jackson v Indiana[7] decision, confusion and inequity continue to be encountered. Rosenberg,[8] in reviewing a book on the subject of competency to stand trial, stated that "The standards of competency remain vague and controversial, even though couched in terms of the capacity of the defendant to consult with his attorney and to understand the charges and proceedings against him." According to Stone,[9] many psychiatrists still do not understand the distinction between competency and criminal responsibility, they continue to equate insanity with psychosis, and furthermore, they assume that being insane includes being incompetent to stand trial. The American Psychiatric Association's glossary has continued to perpetuate the error and confusion:

> Insanity: a vague term for psychosis, now obsolete in psychiatric usage. Generally connotes: (a) a mental incompetency, (b) inability to distinguish right from wrong, etc. (from Stone).

More recently, Stone[10] commented on the fact that judges still may be unfamiliar with or not understand the recent changes in laws in the mental health area, including those that pertain to the competency issue. According to Stone, "For some, not only is psychiatry arcane, but so is the law applicable to the mentally disabled."

Among several areas of consideration that we believe require further clarification with respect to competency to proceed are the matters of intelligence and mental retardation. Person[11] suggests a potential strategy in helping to alleviate the existing confusion. He notes that a subaverage measure of intelligence (falling below an IQ of 70) can be an indication of

"maladaptive social behavior" and can serve as a signal for raising the issue of competency. Bearing this in mind, we suggest that any information related to both the levels of cognitive functioning and motivation or "appropriate affective appreciation" of the criminal proceedings should be weighed by the Court in a pretrial competency decision.

As previously stated, the legal test of competency to stand trial is whether the defendant has the capacity to understand the nature of the charges against him and to participate in his own defense. The legal test is duly and widely verbalized, and the clinical psychiatric determination of present state of mind is specifically aimed at ascertaining the defendant's ability to meet the legal standards for competency and not whether or not he is psychotic. Both psychiatrists and Courts sometimes have failed to distinguish psychosis from the specific criteria required for a finding of incompetence to stand trial. If the accused is psychotic or retarded, this does not preclude trial unless the defendant is also and specifically incompetent according to the legal standard.

Be that as it may, two criteria stand out as being relevant for a determination of competency to stand trial: the presence of psychosis and/or the presence of mental retardation. Each, or combinations of these may impair the capacity of the defendant "to comprehend the nature and quality of the proceedings against him and his own position in relation to these proceedings" and his ability to "advise counsel rationally in the preparation and implementation of his own defense."[12]

The present study seeks to examine the role that these two variables (psychosis and low intelligence scores) play in the clinical assessment of the defendant's competency to stand trial.

Method

The Temple University Unit in Law and Psychiatry has provided psychiatric and psychological consultation to the Philadelphia Court of Common Pleas since 1966. Consultations include pretrial competency evaluations and presentence evaluations and recommendations.

The data reported here resulted from an ongoing research study of criminal offenders and defendants referred to the Psychiatric Division of the Adult Probation Department, Philadelphia Court of Common Pleas. The study was conducted from 1969 through 1975 inclusive. During the data collection period, 13,288 pretrial competency and presentence evaluations were given by the Court Clinic. Of the total evaluations, a representative sample of 300 reports per year were randomly selected and studied for a variety of clinical, developmental, and criminal factors. The resultant 2,100 mental health evaluations, representing 2,019 individuals, comprise our total data base (74 offenders and defendants had more than one evaluation). This paper is concerned only with the pretrial competency subsample.

The pretrial competency subsample was composed of 410 psychiatric and psychological competency reports. All reports were written by Temple

University affiliated psychiatrists and psychologists, after which the reports were coded for a variety of variables. There were 369 males and 41 females, with an age range of 14-74 years (mean 30.1 years).

In all cases, the clinician made a formal diagnosis of the defendant. For the purpose of this study, primary or major clinical diagnoses were categorized as psychotic or nonpsychotic. Defendants who were regarded as borderline or grossly defective on a clinical basis were referred for psychological testing. In addition, a number of defendants who appeared to be clinically borderline with reference to psychosis or whose pathology appeared to be organically based, were referred for a psychological evaluation, which included psychometric testing. Of the 410 defendant reports included in the sample, records revealed that 47.8 percent had their intelligence tested using standard intelligence tests, such as the Western Personnel Test for the most part, and the Weschler Adult Intelligence Scale (WAIS) for those who were either apparently illiterate or those who scored poorly on the Western Personnel Test. These 410 case reports constituted the sample used for the present study.

Results

Of the 196 case reports (approximately 48 percent of the total sample of 410 pretrial competency evaluations) in which an intelligence test score was available, 63.8 percent scored in the average range (90-109), 10.7 percent were above 109, and 25.5 percent fell below 90. Only 11.7 percent scored borderline or retarded (scores below 79).

As expected, defendants diagnosed as psychotic were more likely to be evaluated as incompetent to stand trial than were those diagnosed as nonpsychotic. Table 1 shows that 43 percent of the 65 defendants with a clinical diagnosis of psychosis were assessed incompetent to stand trial as opposed to only 9 percent of those diagnosed as non-psychotic. (It is interesting to note that for the total sample of 410 pre-trial defendants, 50 percent of those diagnosed as psychotic were evaluated as incompetent to stand trial compared to only 13 percent of those diagnosed as nonpsychotic.)

Table 1. A Finding of Competency and Incompetency Among Psychotic and Non-Psychotic Defendants

Psychosis	Competent		Incompetent		Total Competent and Incompetent	
	No.	%	No.	%	No.	%
Psychotic	37	(57)	28	(43)	65	(100)
Non-psychotic	119	(91)	12	(9)	131	(100)
	156	(80)	40	(20)	196	(100)

$x^2 = 28.7$, df = 1, p = 0.001

The relationship between intelligence test scores and an evaluation of incompetency to stand trial is shown in Table 2. Defendants were more likely to be evaluated as incompetent if their intelligence test scores were low.

Table 2. Intelligence Test Scores Among Competent and Incompetent Defendants

IQ	Competent		Incompetent		Total Competent and Incompetent	
	No.	%	No.	%	No.	%
>110	16	(76)	5	(24)	21	(100)
90-109	108	(80)	17	(14)	125	(100)
80-89	22	(81)	5	(19)	27	(100)
70-79	9	(50)	9	(50)	18	(100)
<70	1	(20)	4	(80)	5	(100)
	156	(80)	40	(20)	196	(100)

$x^2 = 8.68$, df = 2, p = 0.02

The relationship between psychosis and intelligence test scores in defendants assessed as competent or incompetent to stand trial is shown in Table 3. All defendants (100 percent) with both retarded/borderline test scores (an intelligence test score below 79) and a diagnosis of psychosis were evaluated as incompetent to stand trial. Of those diagnosed psychotic but not retarded or borderline, 31.5 percent were evaluated as incompetent to stand trial. Of those retarded/borderline and diagnosed as nonpsychotic, 16.7 percent were evaluated as incompetent to stand trial. Finally, of those who were diagnosed as nonpsychotic and nonretarded/borderline, only 8.4 percent were evaluated as incompetent to stand trial.

Table 3. The Intelligence Test Score and Psychosis of Criminal Defendants Evaluated For Pre-Trial Competence

	Competent (n=156) Diagnosis	
IQ	Psychotic (% of n=156)	Non-psychotic (% of n=156)
>110	3 (1.9)	13 (8.3)
90-109	27 (17.3)	81 (51.9)
80-89	7 (4.5)	15 (9.6)
70-79	0 (0.0)	9 (5.8)
<70	0 (0.0)	1 (0.6)
	37	119

	Incompetent (n=40) Diagnosis	
IQ	Psychotic (% of n=40)	Non-psychotic (% of n=40)
>110	1 (2.5)	4 (10.0)
90-109	12 (30.0)	5 (12.5)
80-89	4 (10.0)	1 (2.5)
70-79	9 (22.5)	0 (0.0)
<70	2 (5.0)	2 (5.0)
	28	12

Discussion

The findings of this study indicate that a diagnosis of psychosis is strongly associated with an evaluation of incompetency to stand trial. Similarly, an intelligence test score below 79 is associated with an evaluation of incompetency to stand trial. In fact, 100 percent of defendants diagnosed as psychotic and mentally retarded/borderline were assessed as incompetent to stand trial.

It should be noted that among those evaluated as incompetent to stand trial, ten defendants were neither psychotic nor mentally retarded/borderline (with intelligence scores below 70). What were the clinical bases for their incompetency assessment? The case records were examined; some typical cases are briefly described.

Case 1: A 33 year old black male, with a 12th grade education, stood accused of sodomy, murder, and forcible rape. The diagnosis was deferred in the clinician's report, which noted a "possible organic brain syndrome". The defendant was a heavy drinker. The defendant's intelligence test score was measured as average. While the defendant denied hallucinations and delusions, the examiner believed he was delusional. The examiner also believed that the defendant's anger rendered him incapable of assisting his attorney in a defense. However, the examiner did consider the defendant able to understand the charges and possible penalties.

Case 2: A 19 year old white male, charged with felonious possession of narcotics, was diagnosed as "hysterical personality disorder with underlying paranoid ideation." The defendant's intelligence was scored as bright-normal, and he understood the nature of the charges against him. He was suspicious of his family retained lawyer, whom he felt was on the side of society and his father. The defendant was evaluated as incompetent to stand trial because of his inability to assist counsel in his defense.

In Case 1 and Case 2, the examiner assessed the defendant as incompetent to stand trial. Both defendants had average intelligence test scores or better, and no diagnosis of psychosis. Both had substantial affective disturbance without psychosis. Both defendants were unable to cooperate in a defense, one because of anger, and one because of suspicion directed against his attorney. Apparently nonpsychotic affective disturbance such as suspicion and anger can interfere with a defendant's ability to cooperate in a trial defense. The Dusky standard allows for a finding of incompetency when affective disturbance is extensive.

Case 3: A 52 year old black male, accused of aggravated assault and battery, was diagnosed as "chronic organic brain syndrome secondary to alcoholism." His memory was described as "poor," his judgment "deficient," and he was found to be "irritable and hostile" as well as "vague and confused" about the charges he faced. The defendant was evaluated as incompetent to stand trial and recommended for long-term, protective nursing care.

Case 4: A 70 year old black male was charged with aggravated assault and battery. Subject to episodes of confusion, he was diagnosed as "organic brain syndrome, chronic type, associated with senility". The defendant's intelligence was in the average range, and he denied psychotic symptoms, such as hallucinations and delusions. While the defendant seemed aware of the charges against him, he was assessed as incompetent to stand trial based on "a strong degree of organicity most likely related to senility . . .impaired judgment and impaired memory, both recent and remote." He manifested no overt symptoms of psychosis. The defendant was recommended for a live-in situation with a member of his family.

In Case 3 and Case 4, there was doubt as to the defendant's competency to stand trial because of such findings as inappropriate affect, memory impairment, judgment deficiencies, and episodes of confusion, without a formal diagnosis of psychosis. In these cases, the examiners were so impressed with the defendant's clinical impairment as to recommend clinical treatment in an institutional setting for Case 3 and the care of a home setting with follow-up at a community mental health center for Case 4.

In light of the Dusky[13] and subsequent Jackson v Indiana[14] decisions, the legal guidelines for a finding of incompetency include cognitive elements (ability to understand the nature of the charges), as well as other impairments that would render the defendant incapable of assisting in his or her own defense or of cooperating with counsel. The latter may include nonpsychotic but disabling disturbances manifesting themselves, for example, in such overwhelming rage, hostility, or suspiciousness as to render the defendant incapable of effective communication with counsel.

Because of the extensive time during which the present data base of mental health reports was accumulated (1969 thru 1975), there was significant progress and change in the effectiveness of communication between clinicians, lawyers, and courts. This era was also one in which landmark court opinions were handed down of interest to both mental health and legal professionals and discussed as high-priority issues in the journals of both professions. However, despite the rapid changes in forensic psychiatry during the data base years of 1969 to 1975, the essential Dusky criteria for capacity to proceed remain unchanged.

The major conclusion from the present study is that there is not a perfect correlation between a clinical diagnosis of psychosis, a low intelligence test score and an assessment of incompetency to stand trial. Although in the present study all defendants diagnosed as psychotic and with an intelligence test score of 79 or lower were assessed as incompetent to stand trial, this may not always be the case in other samples and in other settings. Furthermore, the absence of a diagnosis of psychosis and an intelligence test score of 80 or higher is not a guarantee of an assessment of competency to stand trial.

The need for greater coordination of clinical findings (including the defendant's present problem-solving ability or intelligence) and legal con-

cepts with respect to present state of mind (including the degree of mental impairment that warrants a finding of incompetence to proceed) requires further interdisciplinary exploration and communication.

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14. See note 7.