

An Analogue Study of the Factors Influencing Competency Decisions

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Forensic psychiatrists who were members of the American Academy of Psychiatry and the Law analyzed case histories to make a competency or incompetency decision. The case histories were created to alter background information, diagnostic information, information about the defendants' understanding of the adversarial process, courtroom behavior, and the nature of the crime. The information that had the most influence on the decisions of the forensic psychiatrists included the cognitive status of the defendant, psychotic features, courtroom behavior, and understanding of the adversarial process. Relationship with the lawyer, alcohol/drug use history, psychiatric history, and criminal history had less influence. The forensic psychiatrists tended to "error" toward a decision for competency unless compelling evidence was presented to the contrary.

The requirement that an individual must be competent to stand trial had its origin in England in the 17th century.¹ The modern legal definition of competency to stand trial was established in 1960 by *Dusky v. U.S.* in which the court held that "the test must be whether he (the defendant) has sufficient present ability to consult with his attorney with a reasonable degree of rational understanding and a rational as well as factual understanding of proceedings against him."² This decision helps ensure the fairness of the adversarial process, safeguards the accuracy of the adjudication

process, maintains the dignity of the court, and tries to guarantee that the defendant, if punished, knows the reason for this punishment.³ The decision to evaluate a defendant as competent or incompetent is one of the most frequent reasons for referral to a forensic psychiatrist.⁴

Earlier research^{5,6} on competency decisions using a computerized assessment methodology showed that the decision of an expert forensic psychiatrist and his colleagues could be predicted by four major variables. These variables were: (1) the cognitive status of the defendant, (2) the presence of psychotic features in the defendant, (3) the defendant's statement's about appropriate courtroom behavior, and (4) the defendant's understanding of the adversarial process.⁶

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Other variables, which had been expected to have some influence on the competency decision but proved less significant in the earlier research, were (5) the defendant's relationship with his lawyer, (6) alcohol and drug use history, (7) psychiatric history, and (8) criminal history. In this paper, the first four variables will be known as the Group A variables, and the second four will be described as the Group B variables.

To test the generality of the Group A variables in predicting the decisions of forensic psychiatrists, the study was designed using an analogue methodology. In this methodology, clinical information about defendants in criminal trial process was simulated to control the types of information that were available. More specifically, case histories were written to allow the manipulation of the Group A and Group B variables. The case histories then were sent to a national sample of forensic psychiatrists. The systematic manipulation of the Group A and Group B variables allowed a broader test of how important these variables were on the decisions of forensic psychiatrists. Analogue studies have an extensive history in other areas of clinical decision making,^{7,8} but this methodology has not been applied to decisions about competency to stand trial.

To be more specific about the design of the study, four case histories were created. With two of the case histories, the Group A variables were written to be positive, therefore suggesting that the defendant was incompetent. For the other two cases, these same variables

were written to be negative, suggesting competency. The Group B variables were also varied to be positive or negative. Thus, the four cases represented a 2×2 combination of the Group A and Group B variables. This set of four case histories was sent to a national sample of forensic psychiatrists who were asked to read the cases and make a decision about the competency/incompetency of the persons described in the case histories. If the Group A variables were indeed major factors that influence the competency decisions, the two case histories that were positive for these variables should be declared incompetent significantly more frequently than should the other two case histories that were negative on these variables. In contrast, the Group B variables were expected to have a nonsignificant effect on the decisions of the national sample of clinicians.

Method

Subjects Four hundred eleven forensic psychiatrists who were members of the American Academy of Psychiatry and the Law (AAPL) were sent the materials for this study. Two hundred eleven of these psychiatrists were board certified in forensic psychiatry. The other 200 psychiatrists were randomly selected from the 1,138 psychiatrists residing in the 50 states who were non-board certified in forensic psychiatry and who were members of AAPL. Five of the packets were returned for wrong addresses, reducing the total number of psychiatrists contacted to 406.

Materials Each case history con-

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tained 22 paragraphs, was 4 pages in length, and averaged about 1,400 total words (an example is available on request). The format for the case histories followed the structure of a CADCOMP report. This report was a structured, prose report created by a computer program used in the assessment of defendants who are being evaluated for competency to stand trial.⁵ The paragraphs in the case histories contained one of three types of information: (1) neutral* background information; (2) information relevant to the four Group A variables; and (3) information concerning the four Group B variables. The paragraphs designed to be neutral regarding the competency decision concerned demographic information, legal record account of crime, defendant's account of crime, defendant's adjustment since arrest, and medical history.

The four Group A variables that were predicted to be influential regarding the incompetency decision were cognitive status, psychotic features, courtroom behavior, and understanding of adversarial process.

The four Group B variables that were predicted to not influence in the competency-incompetency decision were relationship with lawyer, alcohol and drug

use history, psychiatric history, and criminal history.

Because there were two sets of variables being manipulated in this study (Group A versus Group B), there were four case histories sent to each psychiatrist: (1) one with both sets of variables positive, (2) one with the Group A variables positive and the Group B variables negative, (3) one with the Group A variables negative and the Group B variables positive, and (4) one with both sets of variables negative.

In addition, to control for the possible context effect of the background information, two completely different sets of case histories were created in which a different background information was assigned to the four conditions described above. Half of the psychiatrists were sent one set of four case histories; the other half were sent the second set of four case histories. The crimes associated with these four cases were battery, armed robbery, second-degree murder, and sexual battery (of a child). All four cases were about male defendants, two of whom were black. The background information was arbitrarily switched across the two sets of cases. For instance, for the first set of cases, the case that was positive for both Group A and B variables was about a black male charged with second-degree murder. For the second set, the same case was associated with a white male charged with armed robbery.

Manipulation Checks Two manipulation checks were performed on the materials used in this study. The first was a check on whether the background information was considered neutral.

*The designation of the above five variables as "neutral" is somewhat arbitrary. All five could contain information that a clinician might find relevant to making a decision about competency. For instance, a medical history of severe cardiovascular problems with repeated strokes might suggest the possible diagnosis of an organic mental disorder. This diagnosis could influence a decision about competency to stand trial. However, in the case histories created for this study, an attempt was made to keep the information in the paragraphs listed above as neutral as possible.

Originally six different cases with background information were created, each containing a factitious name, demographic information, accounts of the crime, adjustment since arrest, and medical history. Seven forensic fellows, residents and faculty who attended a seminar on forensic psychiatry at the University of Florida, were asked to rank order the six sets of background information according to how likely the individuals described by the information were to be incompetent. The two cases that most of these raters judged as likely to be incompetent were eliminated. The remaining four sets of background information had mean rank orderings of 3.0 to 4.5, with 1 being the case ranked most likely to be incompetent and 6 being the case most likely to be competent.

The second manipulation check was to ensure that the paragraphs representing the Group A and B variables in fact did contain the relevant information for these variables. Two raters (the second author and a graduate student working with the first author) read both sets of four case histories and checked whether the specific information relevant to the eight variables was present or absent. The agreement rates between these raters concerning the presence/absence of the information per manipulated variable was good (kappa statistics per case ranged from .83 to .95). Any paragraph for which the raters had more than minor disagreements about the presence of the manipulated information was changed.

Procedure One set of case histories was sent to half of the board certified

and half of the randomly selected, not board certified forensic psychiatrists. The other set of case histories was sent to the remaining subjects.

The four case histories had factitious names assigned to the background information. In addition, a unique case number was assigned to each version of the case histories so that the responses of the subjects could be recorded and correctly assigned to the appropriate condition in the study design.

The subjects were asked to read the case histories and decide whether the defendants described in the cases were competent or incompetent. In addition, the subjects were asked to list the paragraph numbers for the two paragraphs that the subjects felt were most influential in their decision.

Results

Forensic Psychiatrists One hundred thirty-six packets were completed, giving a return rate of 33.5 percent. The return rate of the board certified psychiatrists was slightly higher than the return rate of the other forensic psychiatrists (34% versus 31%). The mean age of the total sample was 52.3 ± 10.5 years. Eighty-eight percent of the psychiatrists in the study were men. The psychiatrists reported an average of 15.2 years' experience in forensic evaluations. They had seen an estimated 43.9 forensic cases during the last year. Fifty-five percent of the returns were from psychiatrists on the East Coast of the U.S., 24% from the central U.S., and 21% from the West Coast.

Incompetency Decision The per-

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percentages of psychiatrists declaring each of the case histories to be *incompetent* are shown in Table 1. Using the procedure CATMOD from SAS to analyze binary dependent variables, the Group A variables were found to have significant effect on the incompetency decision ($\chi^2 = 81.8$, $df = 1$, $p < 0.0001$). The Group B variables also had a significant effect, although the size of the latter effect was much smaller ($\chi^2 = 7.71$, $df = 1$, $p < 0.006$). Background information did not have a significant effect ($\chi^2 = 1.13$, $df = 1$, not significant (NS)). As a result, for the remainder of this paper, the influence of background information will be disregarded.

As shown above, Group A variables had a larger effect on the incompetency decision. When these variables were written to be positive (Cases 1 and 2 in Table 1), 66 percent of the psychiatrists decided that the cases reflected incompetency, whereas only 4 percent of the psychiatrists called the cases "incompetent" when the same variables were negative (Cases 3 and 4 in Table 1). In contrast, there was a smaller effect on

the incompetency decision as a function of the Group B variables (42% versus 28%).

The decisions regarding incompetency by the forensic board certified versus the forensic nonboard certified psychiatrists were compared. No significant effect was found ($\chi^2 = 1.00$, $df = 1$, NS).

The forensic psychiatrists participating in this study appeared to "error" toward deciding that a case history was competent. This "bias" in favor of competency as the decision was evident in three ways. First, even for the condition in which the cases should have been called incompetent (case 1 in Table 1), 23.5 percent of the psychiatrists in this study decided that this case actually was competent. However, in contrast, very few psychiatrists called cases (3 and 4) that were designed to be competent as anything other than competent. Second, 16.9 percent of the psychiatrists in this study decided that all four case histories should be called competent. In contrast, none of the psychiatrists believed that all four cases should be called incompetent. The third evidence of bias toward

Table 1
Percentage of Psychiatrists Deciding that the Case Histories Indicate Incompetency

Case	Number of Subjects	Status of Group A Variables	Status of Group B Variables	Charges (Background)	Percent of Clinicians Judging Defendant to be Incompetent
1a	76	Incompetent	Incompetent	Second-degree murder	81.6%
1b	60	Incompetent	Incompetent	Armed robbery	70.0%
2a	76	Incompetent	Competent	Sexual battery	56.6%
2b	60	Incompetent	Competent	Battery	53.3%
3a	76	Competent	Incompetent	Battery	6.6%
3b	60	Competent	Incompetent	Sexual battery	6.7%
4a	76	Competent	Competent	Armed robbery	2.6%
4b	60	Competent	Competent	Second-degree murder	0.0%

the decision for competency was contained in the prose feedback by the psychiatrists. Many of the psychiatrists wrote that they would decide in favor of competence unless there was overwhelming information to the contrary (e.g., "My own bias has always been that, in the interest of justice and fairness to the defendant, the trial should proceed unless there is likelihood of a flagrant impairment in the quality of the defense").

Probably the most interesting cases in the study were the two versions of the case that were written to be positive on the Group A variables and negative on the Group B variables (Cases 2a and 2b in Table 1). For these two cases, the psychiatrists were split almost 50-50 regarding the incompetency decision. Whether the psychiatrists were board certified had no influence on the decisions on this case; neither did the clinicians' years of experience nor the volume of forensic cases that these psychiatrists saw.

The major significant difference that did occur regarding the two versions of case 2 involved the paragraphs that the psychiatrists chose as most influencing their decisions. The psychiatrists who judged these two cases as *incompetent* chose paragraphs from the mental status exam (51%), the defendant's awareness of adversarial roles in court (74%), and the defendant's comments about courtroom behavior (53%). Few other paragraphs were marked as being informative by these psychiatrists. Psychiatrists who declared these cases to be *competent* noted the same three groups of para-

graphs as influential (33%, 30%, and 23%). However, these psychiatrists also noted that paragraphs on the defendant's relationship with lawyer (designed to be negative for these cases, 51%) and the charges facing the defendant (designed to be neutral, 38%) had an influence on their decisions. The last of these is interesting because the nature of the charges was considered background information in these case histories. However, some authors have argued that the type of crime can influence the complexity of a trial process, thus influencing a decision of whether a given defendant can contribute to his or her defense.⁸

The other factors that probably influenced why so many of the psychiatrists decided that the two versions of Case 2 were competent can be gleaned from the informal prose feedback by the psychiatrists. A number of psychiatrists suggested that the case contained possible internal inconsistencies (e.g., the mental status exam suggested a significant mental disorder, but psychiatric history was negative). Hence, these psychiatrists "erred" toward deciding that these cases were competent. In addition, some felt that the available information, particularly regarding the mental status exam and the relationship with the lawyer, was not convincing. Hence, these psychiatrists also "erred" toward deciding for competency.

Discussion

The central finding in this study is that the variables found to be significant (Group A) in our earlier research^{5,6} did prove to be good predictors of the com-

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petency decision as made by this national sample of forensic psychiatrists. The cognitive status of the defendant, whether there were psychotic features present, the defendant's statements about courtroom behavior, and his understanding of adversarial process all had a major impact on whether the defendant was viewed as competent or incompetent to stand trial.

A second interesting result is that the nonsignificant (Group B) variables from our earlier studies also proved to have some predictive value regarding the competency decision. The defendant's relationship with his or her lawyer, his or her alcohol and drug use history, his or her psychiatric history, and his or her criminal history influenced the decisions of the forensic psychiatrists, but not as greatly as did the Group A variables.

When the results were examined case by case, it is interesting to note that there was good agreement among this national sample of forensic psychiatrist regarding when a defendant is *competent*. For Cases 3 and 4, virtually all of the clinicians (more than 93%) believed that the defendants described in these cases were competent. In calling these cases competent, the psychiatrists were demonstrating adherence to the general standards of *Dusky v. U.S.*, i.e., the mental status exams in these cases were negative and the defendants showed evidence of understanding both appropriate courtroom behavior and the adversarial process.

The agreement among forensic psychiatrists regarding Cases 1 and 2 (both cases were expected *a priori* to be rated

as *incompetent*) was less impressive. Even for Case 1, which was written to be the clearest representation of incompetency, nearly 25 percent of the psychiatrists decided that the defendants in the two versions of this case were competent. A major reason for these results was the tendency of the forensic psychiatrists to decide that a defendant was competent unless confronted with compelling evidence to the contrary. In their prose feedback about the study, the psychiatrists occasionally questioned the internal consistency of the information that they had been given. For instance, some of the forensic psychiatrists noted that the defendants in both versions of Case 2 had findings on a mental status exam that suggested a mental disorder. However, the psychiatric histories of the defendants for this case were negative. In the face of this potentially inconsistent information, the psychiatrists wondered about the believability of the information that the defendants had provided. Hence, many of the psychiatrists decided that the defendants associated with Case 2 were competent.

Another important result from this study was the failure of background information to influence the judgments of the forensic psychiatrists. This point is important because analogue studies in social psychology have shown that when people make judgments about other people, those judgments often are influenced by contextual information (e.g., gender, race, the likability of the person being judged, etc.).⁹ This contextual information is particularly likely to exert influence when the people making the

judgment are uncertain about their judgments.¹⁰ In contrast to what was expected from the literature of social psychology, the results in this study did not show any influence of contextual background information. In particular, for Case 2, in which the competency/incompetency judgment was the most uncertain, the results appeared virtually identical across the two versions of this case.

Regarding the limitations of this study, one concern was the use of a computerized report to format the presentation of the case histories. The structure of the computerized report used in this study may not represent the way in which some forensic clinicians would prefer to present information about defendants. A second limitation of this study is that the eight variables were not manipulated individually. Instead, the eight variables were altered in blocks of four (Group A versus Group B). Thus, although the results of the study showed that the variables found to be significant in our earlier research did influence the decisions made by a national sample of forensic psychiatrists, it is not known which of these variables, if any, was the most influential. In future research, an

attempt will be made to assess the influence of individual variables on the competency decision of forensic clinicians.

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