Competence to Stand Trial Should Require Rational Understanding

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Rationality is explicit in the United States Supreme Court's *Dusky* standard but not in most U.S. CST standards. It is hard to imagine that the legal purposes of competency to stand trial (CST) determinations are served if a defendant's understanding of the proceedings is irrational (e.g., delusional or psychotically confused) or if the defendant cannot consult rationally with counsel. Most insanity tests include a rationality criterion. In *United States v. Timmins*, the Ninth Circuit emphasized the importance of rationality in CST in an opinion that also illustrated that the district court applied the federal standard, which does not mention rationality, without considering rationality. With its recent decision in *Panetti v. Quarterman*, the United States Supreme Court now requires rational understanding for competence to be executed. If there had been any doubt that unqualified understanding is not invariably taken to mean rational understanding by trial and appellate courts, the legal history of *Panetti* now dispels this misapprehension. The time is ripe for recognition of a uniform standard of CST that requires rationality.

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One interpretation of the United States Supreme Court's 1960 *Dusky*[1] decision is that competence to stand trial (CST) requires rational understanding. It is sometimes stated that most state and federal standards for CST require rational understanding, but actually most do not, and after *Dusky*, the Supreme Court itself seemed ambiguously to allow a standard that does not require rational understanding. The argument to be made in this article, that the understanding required for CST should be explicitly and uniformly qualified as rational, is strengthened by comparing the importance of rationality in criminal responsibility and competence to be executed. Although this argument could be expanded to seek rationality for all variants of adjudicative competence, the focus here remains with CST. In the 2007 decision in *Panetti v. Quarterman*,[2] the Supreme Court found rational understanding to be constitutionally required for competence to be executed. If understanding is to be meaningful in competence to stand trial, like the understanding needed for criminal responsibility and competence to be executed, the understanding must be rational.

Before I address whether understanding for purposes of CST should be rational, a brief review of the purposes of CST determinations is in order. They serve to safeguard the accuracy of criminal adjudications, guarantee a fair trial, preserve the dignity and integrity of legal processes, and ensure that the defendant knows why he is being punished if he is found guilty.[3]

Rational Competence Required by the Supreme Court

The common-law standard for competence to stand trial in the United States was two-pronged: The defendant must be able to understand the proceedings against him and to assist in his defense. This standard, although logical, was broad and subject to differing interpretations and applications. In 1960, the United States Supreme Court in *Dusky v. United*

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States[1] established the constitutional necessity of at least applying this minimal common-law standard. For this particular Supreme Court case, following the U.S. Solicitor General's suggestion, the standard for CST must be whether the defendant "has sufficient present ability to consult with his attorney with a reasonable degree of rational understanding and whether he has a rational as well as a factual understanding of the proceedings against him" (Ref. 1, p 403). The *Dusky* standard meant that psychotic distortion of the proceedings, even with the presence of factual information about the proceedings, would amount to incompetence. This ruling was logical, because factual information is not meaningful if understood and acted on in a delusional or psychotic manner.

In *Dusky*,[1] the Supreme Court instructed the trial court to apply this, the Solicitor General's recommended standard. Subsequently, this *Dusky* standard must have seemed to be the one standard that was constitutional, because the Court required it in this trial and cited the standard verbatim in its brief (two-page) opinion. The appearance of universality of this standard in the United States explicitly requiring rationality was enhanced by three results. First, several state legislatures adopted verbatim the *Dusky* standard with its requirement for rationality in their codes of criminal procedure. Second, federal courts were credited with having adopted the *Dusky* standard.[4] Third, text books in forensic psychiatry and mental health law routinely cited this standard, if any, verbatim in chapters on competence to stand trial.[4–7] (Incidentally, in both its *Pate*[8] and *Drope*[9] decisions, the Court noted the importance of irrational behavior in prompting a CST evaluation.)

The 1961 decision in *Wieter v. Settle,*[10] by the U.S. District Court for the Western District of Missouri, is hailed as having operationalized and clarified the *Dusky* criteria.[6] With regard to rationality in CST, the *Wieter* criteria actually confused the issue. Of the eight criteria given in the *Wieter* decision for CST, none uses the word rational. The sixth criterion seems to imply that lack of rationality is not relevant to CST:

> The defendant understand[s] that he is expected to tell his lawyer the circumstances, to the best of his mental ability (*whether colored or not by mental aberration*) the facts surrounding him as to the time and place where the law violation is alleged to have been committed [Ref. 10, p 322, emphasis added].

Having established a standard for CST that was improved over the previous common-law standard, especially in recognizing the importance of rationality, the Supreme Court itself then added to the confusion as to whether rationality is to be considered after all. In *Drope v. Missouri*, the Court noted that it had "approved a test of incompetence" and it cited verbatim the *Dusky* standard with its rationality requirement (Ref. 9, p 169). In this same decision, the Court cited Missouri's statutory standard,[11] which contains the two common-law criteria without reference to rationality, with Constitutional approval.

In *Godinez v. Moran*[12] the Court seems to have reaffirmed two of its own standards that contradict one another with regard to rationality. The *Dusky* standard with rationality is followed in the very next sentence by the *Drope* standard without mention of rationality: "[A] person whose mental condition is such that he lacks the capacity to understand the nature and object of the proceedings against him, to consult with counsel, and to assist in preparing his defense may not be subjected to a trial" (Ref. 12, p 397, citing *Drope v. Missouri*, Ref. 9, p 172). By citing its two tests, one of which omits rationality altogether, without commenting on this inconsistency, the Court seems to have conveyed without stating so that rationality is unimportant in CST. In its concluding section, the majority states concisely and tellingly, "Requiring that a defendant be competent has a modest aim: It seeks to ensure that he has the capacity to understand the proceedings and to assist counsel" (Ref. 12, p 403). Justice Kennedy's separate opinion cites the "*Dusky* rationality standard," without commenting on the majority's juxtaposition of the Court's two standards, one without rationality.

In the recent decision in *Indiana v. Edwards*,[13] Justice Breyer, joined by all but two justices, coupled the *Dusky* rationality standard with the *Drope*[9] non-rationality standard, just as Justice Thomas had done in *Godinez*.[12] Once again, the Court referenced these two standards as though they were essentially one and the same and did not comment on the difference regarding rationality.

The *Dusky* rationality standard was a progressive step with widespread influence. Sadly, its significance is fading, even as the standard itself maintains familiarity. Its important requirement for rationality is slipping into oblivion with nary a word.

Timmins: A Case in Point

An excellent example of a case that illustrates the ambiguity created when the critical element of rationality is not explicit in the competence standard is *United States v. Timmins*,[14] reported in *The Journal* by Osinowo and Pinals in 2003.[15] Dennis Timmins had been convicted and sentenced on three counts of unarmed bank robbery, one count of armed bank robbery, and a firearms offense in violation of Title 18 of the federal criminal code.[16] The federal competence to stand trial standard,[17] not to be confused with the U.S. Supreme Court's *Dusky* standard, is mute on the matter of rationality:

> At any time after the commencement of a prosecution for an offense and prior to the sentencing of the defendant, the defendant or the attorney for the Government may file a motion for a hearing to determine the mental competence of the defendant. The court shall grant the motion, or shall order such a hearing on its own motion, *if there is reasonable cause to believe that the defendant may presently be suffering from a mental disease or defect rendering him mentally incompetent to the extent that he is unable to understand the nature and consequences of the proceedings against him or to assist properly in his defense* [Ref. 17, emphasis added].

While serving sentence for his offenses, Timmins appealed, making among other claims, the contention that when tried and convicted, he was incompetent to stand trial. United States Court of Appeals for the Ninth Circuit, upheld his claim, holding, "Because the district court inquired inadequately into Timmin's ability to assist properly in his own defense, we remand for determination whether Timmins' decision to go to trial rather than to accept an offered plea bargain was made competently" (Ref. 14, pp 975–6). This overruling hinged on the question of rationality.

Timmins had been evaluated for competence to stand trial by a psychiatrist, Dr. Esther Gwinnell, and a psychologist, Dr. Richard Frederick. Their two reports were similar in regard to Timmins' mental condition, yet they came to contrasting opinions on competence, based on different applications of Timmins' irrationality to the question of his competence. Dr. Gwinnell's primary Diagnostic and Statistical Manual of Mental Disorders, Fourth Edition (DSM-IV)[18] diagnosis was delusional disorder, grandiose and persecutory subtype, but she also considered probable schizophrenia, paranoid type, together with other diagnostic conditions, including history of methamphetamine abuse. Dr. Frederick's diagnoses were methamphetamine abuse and schizophrenia, paranoid type, chronic. Both experts agreed that Timmins showed "persecutory and grandiose delusional beliefs including the perception that he was being harassed by police because they were jealous of him" (Ref. 14, p 977). Dr. Gwinnell explained that Timmins had:

> . . . irrational beliefs about how his case should be defended that are not only outside of the ordinary legal process, but which have more to do with the process of his mental illness than any appropriate defense. He does not have the capacity [to] make a reasoned choice among the alternatives available to him because he has no insight into his illness and completely believes his delusions. . . . His irrational demands and paranoid ideation make it unlikely that he can appropriately assist in his own defense [Ref. 14, p 977].

Dr. Frederick, too, recognized Timmins' irrationality in regard to his case:

> [Timmins] probably will not rationally consider a plea agreement in this matter. We predict that he will dismiss any consideration of a plea agreement and that his reason for doing so will be based primarily in psychosis. A secondary consequence of his delusional belief is that he may fail to provide his attorney with some useful information that could otherwise result in an acquittal [Ref. 14, p 977].

Dr. Frederick seemed to minimize the relevance of rationality by concluding, despite his finding of irrationality, "the preponderance of evidence supports the conclusion that [Timmins] is competent" but "there is room for disagreement" (Ref. 14, p 977).

Dr. Gwinnell provided an updated report in 2000 that was similar to her first. In addition, she concluded:

> [Timmins'] irrational beliefs clearly prevent him from appropriately understanding the likely outcome of a trial, and prevent him from understanding the consequences of his decisions regarding plea agreements or being found guilty at trial. Simply put, his delusions lead him to believe that he will be acquitted of all charges, regardless of the evidence presented at trial [Ref. 14, p 978].

In testimony in district court, Dr. Gwinnell iterated Timmins' irrational decision-making, but noted that he understood "the nature of the charges against him" and "the roles of the parties in court" (Ref. 14, p 978). The district judge found Timmins to be competent to stand trial on the basis of the view of Timmins' counsel that Timmins was "able to aid and assist the defense" (Ref. 14, p 979).

The Ninth Circuit held that:

> [T]he district court's inquiry into Timmins' competency was fatally flawed. That flaw stems from the district court's belief, without further input from the mental health professionals that the February 8 appointment of new counsel somehow cured Timmins' earlier-demonstrated delusional

> mindset that prevented any rational decision as to what course to take [Ref. 14, p 981].

Of course, the district court had not expressed a belief that appointment of new counsel cured Timmins' delusional thinking. Rather the Ninth Circuit was somewhat sarcastically criticizing the district court for over-reliance on the defense attorney's opinion and for disregarding professional assessments that found that because of his mental illness, Timmins was unable to analyze rationally the question of whether to accept the government's plea bargain offer, as the Ninth Circuit went on to explain in its conclusion:

> . . . because it found that the district court's inquiry into Timmins' competency was inadequate, [the Ninth Circuit] VACATE[D] his conviction and REMAND[ED] for a fresh determination of whether his decision to reject the government's plea bargain offer was made competently in the statutory sense prescribed by the second prong of Section 4241(a)" [Ref. 14, p 985].

As noted previously, the federal standard of § 4241(a)[17] makes no mention of rationality. Yet, the Ninth Circuit emphasized rationality throughout its discussion and in its holding. Moreover, the Ninth Circuit cited the *Dusky* standard verbatim with its rationality requirement for CST (Ref. 14, p 979). The Ninth Circuit clearly expected rationality to be implicitly understood, even though not mentioned in the federal standard. In contrast to the Ninth Circuit, the district court had apparently not understood the standard to require rationality. The defense attorney's explanation supporting competence, on which the district court based its finding, made no mention of rationality. In any event, the district court did not consider rationality to the extent that the Ninth Circuit would require. Osinowo and Pinals observed, "Courts often find the factual understanding aspect of competence the easiest to comprehend; yet as [*Timmins*] demonstrates, rational decision-making is an important aspect of competence to stand trial" (Ref. 15, p 263).

Neither the district court nor the Ninth Circuit criticized either the *Dusky* standard or the federal standard in § 4241(a).[17] Neither court commented on the discrepancy that the *Dusky* standard includes rationality, whereas the federal standard does not. Perhaps the district court's approach would have required rationality if rationality had been explicit in the federal standard. Even though not observed by either court in *Timmins*, or by courts in general for that matter, *Timmins* illustrates the confusion that can arise when rationality is not explicit in the standard.

Incidentally, the Ninth Circuit faulted Dr. Frederick, Counselor Gallagher, and the district judge for not considering whether Timmins could rationally assist in his defense. Curiously, the Ninth Circuit faulted no one for not considering whether Timmins' understanding of the proceedings against him was rational. Timmins apparently had a factual understanding of the charges, but both the federal and *Dusky* standard require an understanding of the proceedings. In any event, it is the failure of the federal standard to correspond to the *Dusky* standard and explicitly require rationality in both prongs that allowed the inconsistent application of the federal standard in the case of *United States v. Timmins*.[14]

Rational Competence in the States

Despite the *Dusky* decision, the adoption of the *Dusky* standard with its explicit requirement for rationality was not universal in the United States. It is sometimes said that most United States jurisdictions follow the *Dusky* standard.[4,7] This assumption is true only if the *Dusky* standard is loosely equated with the two-pronged common-law standard that preceded *Dusky* and lacked any mention of rationality. Based on the table in the American Academy of Psychiatry and the Law (AAPL) Practice Guideline on Forensic Psychiatric Evaluation of Competence to Stand Trial,[19] only eight states have adopted the *Dusky* standard verbatim, including the two-pronged requirement for rationality. The standards in two additional states are like the *Dusky* standard, in that they require rationality for both prongs, but without iterating the *Dusky* standard verbatim. Alabama's standard[20] would make 11, if its substantially different wording were considered to be a rough approximation of the *Dusky* standard: A defendant in Alabama is not CST if he, "cannot consult with counsel with a reasonable degree of rational understanding of the facts and legal proceedings."[20] By far the most common standard in the United States is the two-pronged common-law standard that is used by 29 states. It is the common-law standard without rationality that is used as the federal and military standards—rather paradoxical, when *Dusky* is sometimes referred to as the federal standard. Nine states have what might be called a common-law standard with some inclusion of rationality. Typically, the rationality in the modified common-law standard pertains explicitly only to as-

sisting in one's defense or consulting with one's attorney, but not in understanding the proceedings. In exception to this, three states incorporate the Robey terminology, to be discussed later in the article. A defendant is incompetent to stand trial (ICST) if he "cannot understand the nature and object of charges, *comprehend condition in reference thereto*, or cooperate with counsel to conduct a rational, reasonable defense" (Me. Rev. Stat. Ann. tit. § 15, 101-B (1990), emphasis added).[21,22] Nebraska uses the same phrase as that italicized,[23] whereas the North Carolina statute's expression is "comprehend situation in reference to proceedings."[24] In failing to specify the two prongs, Georgia's standard arguably falls short of even the common-law standard. In Georgia, a defendant is not CST if the defendant "cannot . . . participate intelligently in defendant's trial."[25] Questionable is whether "intelligently" is a fair proxy for "rationally." Most state CST statutory standards do not explicitly require rationality for either prong of the common-law standard. Forensic experts must therefore not assume, without checking, that *Dusky* is the standard within their jurisdiction.

Missouri is an excellent example of where standards for CST are conflated concerning rationality and therefore potentially confusing. The Missouri statutory standard is devoid of any mention of rationality:

> No one who as a result of a mental disease or defect, lacks capacity to understand the proceedings against him or to assist in his own defense may be tried, convicted or sentenced for an offense during the period of incapacity.[11]

Without further explanation, the Missouri statutory standard for CST, which does not specify that the understanding be rational, stands in contrast to Missouri case law, wherein the rationality requirement is explicit.[26,27] The *Missouri Criminal Practice Handbook*[28] appears to attempt to resolve this discrepancy by using the *Dusky* standard with its two-pronged rationality requirement, on which the case law requirement for rationality was based. It then unraveled its own clarification. As though rationality did not exist in this standard and much like the U.S. Supreme Court's treatment of CST, the *Handbook* adds, "In other words, the defendant must be able to understand the nature of the proceedings against him and assist in his own defense" (Ref. 28, § 11.8, 4a, p 139). Again, the ambiguity: is rationality invariably implicit, or is it not important enough to be included in the *Handbook*'s final formulation (i.e., the statutory standard)? Illinois illustrates a similar discrepancy between its statutory standard and the rational *Dusky* standard required by state appellate courts.[29] Other states could well harbor a similar unaddressed incoherence in CST jurisprudence—if not now, then in the future.

Missouri's statutory CST standard pertains not only to CST, but also to competence to be sentenced. As will be seen in a later section, the U.S. Supreme Court now requires rationality for competence to be sentenced. Thus, for states similar to Missouri that apply a common standard to CST and competence to be sentenced, the need to resolve discrepancies in meaning with respect to rationality is especially urgent.

Rational Sanity: An Obvious Tautology

Unlike CST and competence to be executed, the United States Supreme Court has not found that the insanity defense is constitutionally required. Nonetheless, most states have an insanity test and most insanity tests in the United States are variations of the M'Naughten or American Law Institute (ALI) tests for insanity, respectively, both of which involve rationality. Thus, nearly all insanity tests in the United States have minimally as an excusing condition the presence of irrationality produced by a mental disorder. To be fully clear, these cognitive prongs do not include terms such as rational, as does the *Dusky* CST standard. However, the requirement that the defendant understood that the alleged act was criminal or wrong, essentially adds a layer of understanding that requires rationality, beyond a mere factual knowledge of the event in question and the law that was allegedly violated. Morse,[30] who emphasizes the central importance of rationality to insanity tests in the United States, explains that a mental disorder does not excuse a crime even though the disorder caused the offender to commit a crime. Rather, the disorder produces irrationality concerning the criminal act, and it is this irrationality, however defined, that is the excusing condition. For the forensic psychiatrist, however, establishing the disorder of which the irrationality is symptomatic is an important step in determining the presence of irrationality. Irrationality without cause or psychological context could as well be established by laypersons but with far more questionable validity and reliability.

Rationality for the insanity defense inures in the functional element of the M'Naughten test and the

cognitive prong of the ALI test. Following the M'Naughten test, if the defendant did "not know the nature and quality of the act he was doing," then he lacked both factual and therefore rational understanding. If he knew what he was doing but did not know the act to be wrong, this, too, was lacking in rationality, especially because this misunderstanding flowed from "such defect of reason, from disease of the mind."[31]

According to the cognitive prong of the ALI test, a defendant who "lacks substantial capacity . . . to appreciate the criminality of his conduct . . . as a result of mental disease or mental defect," is "not responsible for criminal conduct."[32] Granted, the volitional prong of the ALI test does not involve rationality. The point is that, considering M'Naughten and ALI standards, a test of rationality is present in most insanity tests. Unlike the *Dusky* standard for CST, none of the insanity tests include the term rational in describing the quality of understanding needed for a cognitive test of sanity. To know or appreciate the wrongfulness or criminality of an act is to possess some rationality of understanding, beyond a more factual awareness of the act and contextual circumstances.

For centuries, going back into early English law, from which American common law is derived, criminal intent was the core element of *mens rea*. Intent was the product of the will, which relied on reason to function properly.[33] Thus, rationality was recognized as critical to sanity by eminent jurists spanning over half a millennium of Anglo-American jurisprudence.[34,35]

Rational Competence to Be Executed

In *Ford v. Wainwright*,[36] the United States Supreme Court held that the Eighth Amendment to the Constitution prohibits execution of an insane offender. The Florida standard for competence to be executed was whether the condemned person "has the mental capacity to understand the nature of the death penalty and the reasons why it was imposed on him."[37] As was pointed out more recently by Justice Thomas in *Panetti*,[2] the majority in *Ford* did not offer a standard for competence to be executed. In his separate opinion in *Ford*, concurring in part and concurring in the judgment, Justice Powell recommended a standard that would bar the execution of persons "who are unaware of the punishment they are about to suffer and why they are to suffer it" (Ref. 36, p 423). In neither of these standards nor other standards in *Ford*, is the requisite awareness or understanding explicitly qualified as rational.

In 2007, the Supreme Court essentially held that the condemned person's understanding must be rational for the individual to be competent.[2] Scott Louis Panetti was convicted of capital murder. Found competent to stand trial by a jury and competent to represent himself by the judge, he was convicted of capital murder. When he asserted his incompetence to be executed, the Fifth Circuit applied its own earlier standard, whether the individual is aware "that he [is] going to be executed and why he [is] going to be executed."[38] The finding of competence was upheld by the court of appeals. The Supreme Court overturned the decision, holding that the court of appeals' finding was based on an erroneous interpretation of *Ford*. The appellate court's standard was too narrow and the rationality of Panetti's understanding should have been considered.[2]

Experts for Panetti stated that he believed that the reason that the state wanted him to be executed was not the real reason: the real reason was to stop his preaching. The state's expert witnesses noted that Panetti understood certain concepts and at times appeared to be clear and lucid. The Fifth Circuit concluded that a delusional misunderstanding of the state's purpose in having Panetti executed was irrelevant if Panetti was aware that the state had connected his crime with his punishment. The Supreme Court disagreed. Panetti submitted that, "he suffers from a severe, documented mental illness that is the source of gross delusions, preventing him from comprehending the meaning and purpose of the punishment to which he has been sentenced. This argument," the Court held, "should have been considered" (Ref. 2, 960).

The Supreme Court acknowledged and addressed a potential problem in the concept of rational understanding. It is subject to diverse interpretations. Failure to understand can result from reasons other than a severe mental illness: extreme callousness, misanthropy, and amorality of character (Ref. 2, pp 959–960). These conditions are not at all what the court had in mind. Gross delusions spawned by a serious mental illness can prevent rational understanding of the purpose of punishment. Much more clearly stated and strongly emphasized than for competence to stand trial, the understanding for competency to be executed must be rational. In this discussion, we

do not consider execution as a public policy to be or not to be justified or whether psychiatrists and psychologists should participate in deciding competence to be executed. Our sole interest is the logic of the standard. Justice Kennedy's majority opinion in *Panetti* drew support from the Court's *Ford* decision in requiring that the standard include rational understanding, whereas Thomas' minority opinion found no reference to rational understanding in *Ford*. This point was a legal, semantic debate and is not integral to the present analysis. The justifying principle in support of the *Panetti* requirement for rational understanding is the retributive purpose of criminal punishment and capital punishment in particular. If retribution is to be served, the condemned must know why he is being punished, and if his awareness/knowledge/understanding as to why he is being punished is irrational, it is meaningless. Without becoming distracted by the moral justification or lack of justification for retributive capital punishment, if "understanding" is itself to be meaningful, we should add, it ought to be rational and not distorted by psychotic thought processes. To our point, if retribution requires rational understanding for competence to be executed, then retribution ought similarly to require rational understanding for CST for capital and noncapital felonies. The possibility of serious criminal punishment warrants, at the minimum, this level of procedural fairness.

Perspectives From Psychiatry

In its criticism of the Supreme Court's *Dusky* decision, the Group for the Advancement of Psychiatry (GAP) did not fault the Supreme Court for requiring rational understanding.[39] Rather, ambiguity arose from the failure to define "*a reasonable degree* of rational understanding" (Ref. 39, p 891; emphasis supplied by GAP). Reasonable degree, more than rational understanding, contributed to the unclarity that was thought to subject this standard to various interpretations in individual cases. GAP found the common-law standard, without reference to the rationality of the ALI's Model Penal Code draft of 1962, to be equally vague.

Heller and colleagues[40] reported from their study of 196 evaluations of competence to stand trial conducted at Temple University Unit in Law and Psychiatry in Philadelphia, that most reports of defendants who were psychotic and most of those whose intellectual functioning was below average supported a finding of incompetency. Psychosis and mental retardation are relevant, but are not by themselves determinative of incompetence. Their discussion of the legal criteria for CST illustrates the potential for confusion regarding the role of rationality. As though presenting a single unified test, they restate the ante-*Dusky*, two-pronged common-law test, without rationality. They also cite the definition proposed by Robey,[41] suggesting this to be more or less equivalent to the *Dusky* standard itself:

> 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 . . . [Ref. 40, p 268, emphasis added].

This is not exactly the same formulation as the *Dusky* standard, but it preserves rationality in the second, more functional prong. "Sufficient capacity to comprehend the nature and quality of . . . his position in relation to these proceedings" is ambiguous. It is no clearer than the terminology in the CST standards in Maine, Nebraska, and North Carolina that were noted previously. Although Robey proposed this formulation in his two articles in 1965[42] and 1966,[41] he did not elaborate on its meaning in either discussion. This formulation could simply mean that the defendant understands factually that the charges and so forth pertain specifically to the defendant himself. The defendant could have this factual understanding and meet this element of competence, but at the same time be motivated by a delusional overlay. More broadly construed, this wording recaptures the rational element in the first, cognitive prong of the original *Dusky* formulation.

When explicitly stating that psychosis and/or mental deficiency are relevant to CST, Heller and colleagues[40] then cite the Robey formulation: "Each or combination 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' " (Ref. 40, p 269).

If the authors had linked these conditions to the original *Dusky* standard instead of the Robey formulation, one might conclude that they simply conflated the *Dusky* standard, the pre-*Dusky* common-law standard, and the Robey formulation. That may still be the case. In any event, Heller and colleagues[40]

give importance to rationality, even if they do not recognize its precise usage in the *Dusky* standard.

Although it is beyond the scope of this analysis to review all the studies on CST assessments, the study by Robbins *et al.*[43] usefully illustrates the importance of incorporating rationality into the standard, even though this was not the aim of their study of 66 CST reports in the states of Nebraska and New Jersey to determine to what extent the reports were relevant, sufficient, and confined to the consultant's appropriate role. Several lists of relevant criteria or areas of inquiry were used, including the functional, contextual, causal, and interactive characteristics set out by Grisso[44]; 20 factors identified in case law for the state of Nebraska[45]; and the statutory standard for CST in New Jersey that includes seven cognitive components of the defendant's comprehension.[46]

Both the *Guatney*[45] factors in Nebraska and the statutory cognitive factors in New Jersey[46] included the *Wieter* criteria,[10] but neither set of factors includes the *Wieter* disqualifier that the understanding required for CST is sufficient, even if colored by mental aberration. Among the *Guatney* factors in Nebraska, several, non-*Wieter* factors that were added touch on rationality: The defendant should "[Factor] 11 . . . [have] the ability to meet stresses without his rationality or judgment breaking down, "[Factor] 12 . . . [have] at least minimal contact with reality, "[Factor] 16 . . . [be able to] divulge facts without paranoid distress" (Ref. 45, p. 482, Appendix B). The common-law standard[5] of Nebraska and the specific cognitive factors made no mention of rationality.

Both the Nebraska reports ($n = 16$)[45] and the New Jersey reports[46] most often used the Competency Assessment Instrument's functions of the abilities to "3) relate to attorney," "5) understand the roles of various participants in the trial," and "7) appreciate the charges," none of which requires rationality, unless "understand" and "appreciate" presuppose rationality, which is not necessarily the case. The *Guatney* factors[45] that were addressed most often in the Nebraska reports included two (Factors 11 and 12) of the three that pertained to rationality.

Even these factors imperfectly capture the rationality required by the *Dusky* standard. To lump rationality and judgment together diffuses the significance of each function. *Dusky* would not restrict the need for rationality to times of stress. Even defendants with compelling delusions have "at least minimal contact with reality," so this factor is meaningless in applying the rationality of *Dusky*. In New Jersey,[46] about half of the reports addressed all of the statutory components for CST, none of which explicitly requires rationality. Because the factors themselves do not mention rationality, one cannot conclude that total compliance with and relevance to the statutory standard indicated that the reports addressed the rationality requirement of *Dusky*.

Regardless of how many factors are added by courts and legislatures, there is no guarantee that even operational factors will result in a consistent interpretation and application of the *Dusky* rationality requirements. Many of the reports in the study by Robbins and colleagues[43] described the symptoms of paranoid schizophrenia but without explaining how these symptoms did or did not pertain to the abilities needed for competency. An explicit requirement for rational understanding would have provided a most important link among disorder, dysfunction, and incompetence.

Perspective of the American Bar Association

The American Bar Association's *Criminal Justice Mental Health Standards*[47] recommended the *Dusky* standard for competence to stand trial with its emphasis on rationality. (The ABA's only modification to the *Dusky* standard was the addition of the phrase "and otherwise to assist the defense" to ". . . whether the defendant has sufficient present ability to consult with defendant's lawyer with a reasonable degree of rational understanding.") The ABA's standard includes a paragraph listing conditions that can give rise to ICST (Ref. 47. Part IV, Standard 7-4.1). The ABA's Standing Committee on Association Standards for Criminal Justice recognized that lists of the operational criteria, such as that proposed by the federal district court in *Wieter*,[10] proposed by courts and by mental health professionals, do not address the fundamental question of the "defendants' rational assessment of the criminal trial process . . ." (Ref. 47, pp. 170–172). In advancing the discussion on this point, the committee recommended that assessments for CST investigate five areas in particular, the first two of which pertain directly to the matter of rational understanding. Discussion of the first area reflects the importance of rational understanding, even if the term is not used in the standard:

> 1) Defendants should have a perception of the process not distorted by mental illness or disability. Whether phrased in terms of (a) an *ability to perceive rationally and without distortion* (Mickenberg, 1981)[Ref. 48], in terms of an "understanding" of the process (Steadman, 1979) [Ref. 49], in terms of "awareness" of the charge and possible verdicts (Robey, 1965) [Ref. 42] or (d) couched in the codified requirement that the defendant understand that there is a judge on the bench, a prosecutor who will try to convict and a defense attorney who will defend against criminal charges, the thrust of the requirement is that the defendant understand the nature of the process and their functions as participants within that process free from undue perceptual distortion [Ref. 47, pp 173–174].

Rather curiously, the concluding distortion of concern is perceptual, not cognitive. Perception is "the process of converting sensory stimuli [presented by objects in the environment] into symbolic representations encoded within neuronal patterns of the brain . . ." (Ref. 50, pp. 489–490). This is the narrow, technical meaning of the term. In psychology and psychiatry, sensory illusions and hallucinations are examples of perceptual distortions, whereas delusions and bizarre misinterpretations of reality are cognitive distortions. Perception has other meanings that render the term ambiguous in a nontechnical context.[50] In popular usage, perception can include interpretation and understanding of things and events. Specific types of perception in psychology and philosophy can add to the confusion about the meaning of undefined perception. For example, with nonepistemic perception, one can see the judge in the courtroom without believing this individual to be the judge. With epistemic perception, one cannot see the judge in the courtroom without coming to know that the judge is in the courtroom (Ref. 51, pp 654–658). From the above passage, the ABA understood any standard for CST to imply perception and implicitly understanding beyond simply recognition of facts, regardless of whether the standard used the term rational understanding. In this regard, the ABA went beyond the *Wieter* criteria[10] in the direction of requiring rational understanding. From legal experience (e.g., *Timmins* and *Panetti*),[2,14,38] courts do not invariably infer rational understanding where it is not explicit in the standard. Thus, the first ABA guideline raised another key term in need of definition and, though helpful, the ABA standard still falls short of an unambiguous statement on the need for rational understanding.

The second area of interest identified by the ABA pertains to the *Dusky* requirement that the defendant "has sufficient present ability to consult with his lawyer with a reasonable degree of rational understanding":

> 2) Defendants require a capacity to maintain the attorney-client relationship, embracing an ability to discuss the facts of a case with counsel "without paranoid distrust," [42] advise and accept advice from counsel, to elect an appropriate plea, and to approve the legal strategy of the trial. The relationship requires an *ability to consult rationally* about a pending case which is something more than a superficial capacity to converse with others [Ref. 47, p 174, emphasis added].

In this second area, the ABA explicitly iterates the *Dusky*-required capacity for rational consultation with one's attorney and by way of a footnote (Ref. 47, Footnote 30) with coherence as well. All five areas of inquiry subserve the main objective of setting a standard for assessing the defendants' "functional" abilities as defined in *Dusky* (Ref. 47, p 172). Unfortunately, rationality and rational understanding are left undefined, except as the total discussion of the five areas to be investigated subserve determination of the defendant's rational assessments.

The Meaning of Rationality

Rationality is commonly understood to mean the exercise of reason when thinking. Reason itself is subject to various interpretations such as judgment and logic, often assessed subjectively by one person in another. Differences in religious and political beliefs, values, and interests can cause reasonable individuals to disagree on what is reasonable, as it were.

Another common meaning of rational is "sane, lucid" (Ref. 52, p 1094), or as "opposed to insane" (Ref. 53, p 804). Psychological definitions of rational are dichotomized by the use of reason (logical thought), on the one hand, and as sane and lucid on the other.[54] Unqualified understanding can simply mean knowing the facts (without connoting rationality in any sense) or appreciating the meaning of (connoting at least some level of rationality). Rationality helps to characterize the quality of understanding needed but the meaning of rationality itself in the context of CST is in need of clarification.

The qualifier rational in CST is useful: it distinguishes the requisite understanding from that which is merely factual. Rational understanding, however defined, presumes the requisite factual understanding. In *Panetti*[2] the Supreme Court helped to clarify by providing examples of what rational understanding is not and by indicating that a delusional misunderstanding, even when accompanied by a factual

knowledge of the proceedings, could amount to an insufficient rational understanding. Psychotic understanding of the proceedings would be irrational. Understanding colored by cultural beliefs and personal preferences would not. As a rule, the relative impairment in judgment and executive functions of personality-disordered defendants would not be sufficiently irrational to render a defendant incompetent. Similarly, the characteristic narcissism and diminished trust of a psychopathic defendant would not by itself leave the defendant unable to cooperate with his attorney with a reasonable degree of rational understanding. A *bona fide* delusion that the attorney is persecuting the defendant, however, would. Intermediate gray areas require consideration of other relevant spheres of psychological functioning, the legal, situational context, and must be addressed on a case-by-case basis.

The Practice Guideline on Forensic Psychiatric Evaluation of Competence to Stand Trial[19] concisely distinguishes factual from rational understanding for purposes of CST. Two examples are given to illustrate the difference. A defendant "may have an accurate factual understanding of the legal process as it applies to 'ordinary' humans" (Ref. 19, p S46). Because he harbors a grandiose religious delusion that an earthly court cannot impose a punishment on him, he lacks a rational understanding that if found guilty he would be subject to imprisonment. A defendant can be psychotic, but if delusions do not affect his rational understanding of the proceedings, his understanding may remain quite sufficient for CST.[19]

Similarly, irrational thought processes may or may not affect a defendant's ability to assist in his own defense. The defendant may be able to parrot the role of his defense counsel, but if he at the same time holds a belief that his attorney is an FBI agent who is serving the prosecution and this belief impairs his ability to collaborate with his defense counsel, then he lacks the functional ability to assist needed for CST. Voluntary failure to cooperate that is not due to the irrationality of a mental disorder may represent a flaw in judgment without affecting CST.[19]

By way of descriptors and hypothetical examples, the Supreme Court in *Panetti*[2] and the AAPL Guideline[19] usefully distinguish rational from irrational understanding. A rational understanding is simply one that is grounded in reality and not distorted by pathological delusion or confusion in a way that could affect the defendant's decisions and actions in preparing for and standing trial.

With this definition of rationality, and therefore of irrationality in mind, it should be self-evident that both factual and rational understanding are equally important if the purposes for CST are to be served. Returning to those purposes, if the defendant's understanding of the proceedings is confused or deluded, the accuracy of criminal adjudication, fairness of the trial, and his understanding of the purpose of his punishment if he is found guilty are all diminished or at risk for substantial compromise. Irrational understanding, perhaps even more than insufficient factual understanding, can compromise the defendant's capacity to cooperate so as to preserve the dignity and integrity of the legal processes, because the meaning that a defendant attaches to whatever facts he may possess are just as likely to affect his contribution to his defense and to his understanding of the procedures and outcome as are his memory of the facts alone. Moreover, even with accurate and detailed memory of relevant facts, psychotic irrationality can distort, embellish upon, and affect realistic, adaptive application of those facts in ways that further bring into question the fairness of the legal proceedings.

Restoring Rationality in the Understanding Needed for Competence to Stand Trial

Rather puzzling is why rationality was discarded in the Supreme Court's *Drope*[9] decision. Because the Court is known for the extraordinarily studied attention that it gives to the meaning of words and terms, it is even more remarkable that its own CST standards, with and without rationality, would be juxtaposed in landmark cases on CST without comment on this striking difference in the two standards. We cannot divine the Court's logic regarding this glaring inconsistency, but several possibilities bear mentioning. Perhaps the rational understanding in the *Dusky* standard was just inconsequential window dressing and, as such, could be readily discarded. Perhaps CST opinions were written by different justices who did not wish to bring attention to the "less serious differences" and concentrate on the issues that separate majority from minority opinions. Perhaps the justices on the Court took notice of the Group for the Advancement of Psychiatry's criticism of the *Dusky* standard that terms like "reasonable degree of ratio-

nal understanding"[39] were too vague and therefore confusing. Rather than attempting to define the terms, the Court simply deleted them the next time it restated the common-law standard for CST. Finally, the Court may have assumed that rationality is sufficiently implicit in the term understanding that to add the qualifier rational would have seemed superfluous.

From our perspective and experience, unqualified understanding is more ambiguous than rational understanding and therefore is likely to be applied with greater variation. If there were any doubt that unqualified understanding does not necessarily imply rational understanding, it was made abundantly clear in *Panetti*,[2] wherein the issue was competence to be executed, and in the district court's finding in *Timmins*,[14] which concerned CST itself. In Illinois[29] and Missouri,[11] where the statutory CST standards do not explicitly require rational understanding, appellate court decisions have required rationality. Practitioners are not uniformly aware of the discrepant standards between state legislatures and court decisions and rely on the statutory standard. The meaning of rational understanding is clearer than that of mere understanding, especially when further defined by example as the Supreme Court did in *Panetti*[2] and by the AAPL Guideline on CST.[19]

Conclusions

Just as rationality is the common denominator of most insanity standards and now is constitutionally required of competence to be executed, so too should rationality be uniformly but also explicitly integral to standards for CST. Irrational understanding of proceedings and irrationally assisting one's counsel are both oxymoronic and inconsistent with the legal purposes for CST determinations.

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