

COMPETENCY TO STAND TRIAL. Ronald Roesch and Stephen L. Golding. Univ. of Illinois Press, Urbana, IL, 1980. \$19.95.

Reviewed by Walter Bromberg, MD

An objective review of this book by two forensic psychologists presents difficulties for a forensic psychiatrist because of its emphasis on the psychiatric expert's faulty technique in testifying on competency to stand trial. In many places throughout the work, the authors complain that psychiatric opinion as to competency is idiosyncratic and heavily weighed in favor of psychopathology rather than *functional* findings of incompetency. Comments such as, "The psychiatric community has a well-deserved reputation for testifying in conclusory, mystique-producing ways, clouding the uncertainties of their conclusion," abound (p. 83). For example, the authors, in discussing Ziskind's critique of psychiatry in the courtroom, which to the author's credit they find "one-sided," state, "We are not unsympathetic with some of Ziskind's goals: we, too, would like to see unsupported and generally erroneously psychiatric testimony roundly attacked."

It seems to this reviewer that statements like, "Reports from psychiatric examiners . . . should not focus primarily upon symptom description or diagnosis . . . (such as) . . . unqualified descriptors as "inappropriate affect," "incoherent" . . . "confused" . . . "with no behavioral support should be avoided at all costs" (p. 83), are intemperate and inaccurate. Certainly, members of the Academy of Psychiatry and the Law, and most certainly Diplomates in Forensic Psychiatry, are aware of the need for factual backing for their psychiatric analyses in competency reports to the courts.

Accepting the contentious tone of this book, I will proceed to relate their research and conclusions.

The early chapters, after a thorough review of *Dusky*, *Jackson*, *Pate* and relevant legal comments, indicate how the notions of competency and responsibility for crime are often regarded as the same. They quote judicial comments and case material to show the distinction between competency and responsibility is confused by "mental health professionals and psychiatrists in particular" (p. 16). There follows a full discussion of such relevant issues as drug-induced competency, amnesia, incompetency motions, as part of legal strategy, etc.

Instruments for measuring competency—McGarry's Competency Assessment Instrument and Robey's checklist—are discussed, but found wanting. The authors note that the usual judicial acceptance of psychiatric reports, without testimony, provides evidence of undue influence by

psychiatry. At one point, they write (p. 69), "... One must note the sad state to which this court has sunk when it... accepts the defendant's 'proper' diagnosis" as indicating incompetency" in *Bruce v. Estelle*, Fifth Cir. Ct. of Appeals, 1976.

The main body of this book, however, is a detailed statistical analysis of cases judged competent or incompetent with a view to establish *functional* criteria as opposed to psychiatric ones. The analysis covers the effect of such determinations on real legal problems—the right to bail, self-incrimination, right to a speedy trial, the effect of prolonged treatment of incompetents before returning to court, etc. The statistical work is detailed and undoubtedly accurately done, based on figures from all the states of the Union, with particular reference to North Carolina's procedures at the Dortha Dix Hospital, Raleigh. This detailed study leads to recommendations for a more realistic procedure for judging incompetency, the Model System.

The chief purpose of the Model Plan the authors advance is to defeat attorneys' strategy to delay trial, to save money for the state and uphold defendant's rights since most competency examinations result in findings of competency. The Model System proposed starts with a screening panel composed of a lawyer and two mental health professions which makes a recommendation to the court, the Competency Hearing (p. 207). Then a Probable Cause hearing is recommended for "questionable cases." Treatment for incompetents is then instituted for a three month period. At the end of the treatment period, a Provisional Trial would be held by the court which apparently covers the alleged crime. This, the authors recognize, can be construed as a negation of statutory privileges, i.e. one incompetent to be tried cannot be tried; however, the authors feel the use of "contemporary knowledge" contributed by the panel, knowledge of the defendant at or near the time of trial permits improved justice to defendants, whether competent or incompetent (p. 214). What they propose is a community opinion rather than a hospital opinion established by a hospital staff as is the routine in most jurisdictions.

The detailed statistical analyses of the factors related to incompetency hearings, are to my untutored eye, carefully done. The idea of a Model System, which broadens the base of competency examinations is arresting; however, the screening panel, probable cause hearing, in addition to competency trial and provisional trial apparently held with contemporary knowledge available (this means, I take it, that a trial on the merits goes forward *without* a final finding of competency) seems unduly cumbersome. Still, one cannot deny such a system reduces long periods of hospitalization that many incompetent defendants now suffer before appearing in court. This indeed is a point worth considering.

The book advances this notion as a trial balloon. The idea may be revolutionary as is claimed, but its acceptance by the legal and psychiatric profession is quite problematic. Among others, Judge Tomson's lucid analysis of competency tests, *Peo. v. Valentino*, 356 NYS 2nd 962, 1974, is not mentioned in this book. □