

- 1 **Criminal Competencies**
June 4, 2008
- 2 **Criminal Competencies**
 - Competency evaluations very common (60,000/year)
 - The most important psychological input in criminal cases
 - Capacity/competency is ambiguous
 - Competency is dependent upon the facts of the case
- 3 **Purposes of Competency Doctrine**
 - **to maintain fairness in the legal system**
 - threatened when mental incapacities reduce ability to meet demands of defendant's role
 - **to insure accuracy of trial's results**
 - defendant must recognize relevance of certain information that would be important for the court to hear in order to reach a "correct" verdict
- 4 **Ways in which demands of trials vary**
 - *complexity and multiplicity of charges facing defendant.* Are charges being tried separately?
 - *events associated with alleged offense.* Were accomplices involved (who might have different stories)?
 - *range of possible penalties for this alleged offense.* Does the offense allow for one fixed penalty, minimum-maximum, life, death?
 - *range of types of evidence available to counsel without defendant's cooperation.* Were witnesses present? Will physical evidence make it easy to raise reasonable doubt?
 - *simple or complex legal defenses available?* Will a lot of witnesses or evidence be presented?
- 5 **Sources of Legal Rules for Competency**
 - **state statutes**
 - offer *definitions* of "incompetency" and *rules defining the legal process* one must go through in order to address the issue
 - **case law**
 - appellate rulings on disputes concerning interpretation of law
 - **administrative law**
- 6 **Dusky v. United States**
 - "The test must be whether [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 the proceedings against him**"
 - If present, the incapacity must be a **product of a "mental disease or defect"** or "mental disorder"
- 7 **Legal Process for Competency**
 - **Raising the issue** (anyone can raise, so should not assume "probably incompetent")
 - **Evaluation** (most states recognize psychologists, psychiatrists, and other qualified MHP's)
 - **Hearing** (procedures vary)
 - **Disposition** (next step depends on findings)
 - **Remediation/Re-Evaluation**
- 8 **Legal Competency is NOT:**
 - 'mental illness'

- can be 'mentally ill or defective' but not incompetent, though the opposite is not true
- **need for treatment**
 - goal of treatment is to restore competency
- **criminal responsibility**
 - distinction between competency and MSO
- **result of competency evaluation**
 - results are open to challenge

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10 Objectives of Competency Evaluations

- **functional description** of specific abilities
- **causal explanations** for deficits in competency abilities
- **interactive significance** of deficits in competency abilities
- **conclusory objective** (competent or not?)
- **prescriptive options** if incompetent, what must be done to remediate?

11 Functional Description of Competency Abilities (competency to stand trial)

- understanding/appreciation of trial process
- ability to manifest **appropriate courtroom behavior**
- understanding and reasoning about defense
- ability to remember, process, and communicate information
- **Understanding, Reasoning, Appreciation dimensions of MacCAT**

12 Functional Description

- often requires **behavioral assessment** of competency related abilities
- **informational and interactive components**
- evaluation should be **task-specific** and may vary depending on type of competency at issue
- specific assessment devices available

13 McGarry's Competency Functions

- consider realistically possible legal defenses
- manage one's own behavior and avoid disruptions
- relate to attorney
- participate with attorney in planning legal strategy
- understand the roles of various participants in the trial
- understand court procedure
- appreciate the charges
- appreciate the range and nature of possible penalties
- perceive realistically the likely outcome of the trial
- provide attorney with available pertinent facts concerning the offense
- testify relevantly
- be motivated toward self-defense

14 Florida Statutes (916.12): Mental Competence to Proceed

- Does not have present ability to consult with attorney with a reasonable degree of rational understanding or if the defendant has no rational, as well as factual understanding of the proceedings against him
- First, determine if mentally ill, then determine if criteria are met
- Specific criteria, from McGarry etc.
- Determine treatment
- Medication issues – patient isn't automatically "incompetent" if needs meds to meet criteria

15 Florida Statutes (916.12): Mental Competence to Proceed - Criteria

- Appreciate changes or allegations
- Appreciate range and nature of possible penalties

- Understand adversarial nature of the legal process
- Disclose to counsel facts pertinent to the proceedings at issue
- Manifest appropriate courtroom behavior
- Testify relevantly

16 **Causal Explanations for Competency Deficits**

- mental disorder
- mental deficiency
- ignorance of legal standards
- situational states (drug hallucinosis, fatigue)
- **Malingering (controversial)**
 - Competency as “delivered”
 - Capacity vs. willingness

17 **Prescriptive Options**

- are the deficits remediable?
- if so, **what treatment** is required?
- **how long** is remediation likely to take?
- is the treatment available locally?
- are **restrictive conditions** likely to be needed after placement?
- **least restrictive option** preferred

18 **Instruments/Procedures for Determination of Competencies**

- **Functional Objective**
 - Semistructured Interviews
 - Competency Assessment Instrument
 - Interdisciplinary Fitness Interview
 - McArthur Competence Assessment Tool - Criminal Adjudication (MacCat-CA)
 - **Structured Stimulus Materials**
 - Competency Screening test
 - Trial Process Videos
 - **Archival and Observational Data**

19 **Competency Assessment Instrument: Description of Functions**

- *Appraisal of Available Legal Defenses*
 - “How do you think you can be defended against these charges?”
- *Unmanageable Behavior*
 - Direct: observation
 - Indirect: “What do you think would happen if you spoke out or moved around in the courtroom without permission?”
- *Quality of Relating to Attorney*
 - Direct: observation
 - Indirect: “Do you have confidence in your lawyer?”
- *Planning of Legal Strategy including Pleading*
 - “Is there anything that you disagree with in the way your lawyer is trying to handle your case, and if so, what are you going to do about it?”
- *Appraising the role of defense counsel, prosecutor, judge, jury, defendant, witnesses*
 - “In court, what is the role of the ...”

20 **CAI Function Descriptions (cont'd)**

- *Understanding of Court Procedure*
 - “After your lawyer is finished asking you questions on the stand, who can ask you questions?”
- *Appreciation of Charges*
 - “Do you think people in general would regard you with some fear on the basis of such a charge?”
- *Appreciation of Range of Possible Penalties*
 - “If you're found guilty as charged, what are the possible sentences the judge could give you?”
- *Appraisal of Likely Outcome*
 - “How strong is the case against you?”
- *Capacity to Disclose Pertinent Facts to Attorney*
 - “Tell me what actually happened, what you saw and did and heard before, during, and after you are supposed to have committed this offense”

21 **CAI Function Descriptions (cont'd)**

- *Capacity to Realistically Challenge Prosecution Witnesses*
 - "Suppose a witness against you told a lie in the courtroom. What would you do?"
- *Capacity to Testify Relevantly*
 - No example questions
- *Self-Defeating vs. Self-Serving Motivation (legal sense)*
 - "Suppose the DA made some legal errors and your lawyer wants to appeal the guilty finding in your case -- would you accept that?"

22 **Competency Screening Test Items**

- The lawyer told Bill that _____
- When I go to court the lawyer will _____
- Jack felt like the judge _____
- When Phil was accused of the crime, he _____
- When I prepare to go to court with my lawyer _____
- If the jury finds me guilty, I _____
- The way a court trial is decided _____
- When the evidence in George's case was presented to the jury, they _____
- When the lawyer questioned his client in court, the client said _____
- If Jack has to try his own case, he _____
- Each time the D.A. asked me a question I _____
- While listening to the witnesses testify against me, I _____

23 **CST Items (Cont'd)**

- When the witness testifying against Harry gave incorrect evidence, he _____
- When Bob disagreed with his lawyer on his defense, he _____
- When I was formally accused of the crime, I thought to myself _____
- If Ed's lawyer suggests that he plead guilty, he _____
- What concerns Fred most about his lawyer is _____
- When they say a man is innocent until proven guilty _____
- When I think of being sent to prison, I _____
- When Phil thinks of what he is accused of, he _____
- When the jury hears my case, they will _____
- If I had a chance to speak to the judge, I _____

24 **MacCat-CA**

- Foundational v. decisional competency
- Criterion-based scoring
- Hypothetical vignettes – may require examiner to additionally assess specific case scenario because competency is case-specific
- Does not address the specific link between mental illness and deficit in capacity

25 **Instruments/Procedures for Determination of Competencies**

- **Causal Objective**
 - Archival data (past diagnosis)
 - Current diagnostic instruments
 - Objective, projective instruments
 - Structured interviews (SCID, SADS, DIS)
- **Interactive Objective**
 - Assess competencies in relation to trial demands
 - talk to attorneys about what they need

26 **Instruments/Procedures for Determination of Competencies**

- **Prescriptive Objective**
 - need to correlate psychopathology with available treatments (psychological and pharmacological)
 - likelihood of improving
 - 12-18 month window
 - goal: restore to competency (different from what is typical in MH settings)

27 **Reports in Competency Evaluations**

- Purposes and methods
- Background on defendant
- Describe competency abilities and deficits
- Describe causes and significance of deficits
- Offer treatment recommendations
- Summary and conclusions

28 Reports (cont'd): Some Tips

- Be definitive
- Stay problem-focused
- Strike a balance on detail
- Avoid jargon
- Remember invasion of privacy issues
- Target your client (trier of fact)
- Remember: competency is specific
- Issue: should we avoid ultimate opinion?