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## Competency to Stand Trial What Forensic Psychologists Need to Know

By Amanda M. Beltrani, Patricia A. Zapf and Jerrod Brown

What are the most frequent criminal competency evaluations forensic psychologists conduct? What is the process for conducting such an evaluation? What does the population of individuals look like who undergo these evaluations? All of these questions contain core elements that are helpful in the evaluation and adjudication of a defendant's competence.

The origins of competency to stand trial can be traced to Babylonian Talmud and early Judeo-Christian texts (Nussbaum, Hancock, Turner, Arrowood & Melodick, 2008) along with English common law that emerged at some point prior to the 14th century (Otto, 2006). A defendant's right to a fair trial is one of the core principles of the United States' criminal justice system, which strives to provide all defendants with objective and dignified proceedings (Pirelli, Gottdiener, & Zapf, 2011). This requires that all defendants maintain a basic level of competence to proceed (Murrie & Zelle, 2015). Within the context of adversarial proceedings, competence refers to a defendant's *present* ability to meaningfully participate in his or her defense and comprehend the trial process. Competency to stand trial (CST) is a doctrine of jurisprudence that allows for the postponement of criminal proceedings should a defendant be unable to participate in his or her defense on account of mental disorder or intellectual disability. Issues of competency may be raised at any point during the proceedings and, if a *bona fide* doubt exists regarding competency, the issue must be formally considered, thus requiring a forensic evaluation. Approximately 60,000 defendants are evaluated for trial competency annually, making this the most common forensic issue evaluated (Morris & DeYoung, 2012; Pirelli, Gottdiener, & Zapf, 2011). Current research indicates that this number has been steadily increasing over time (Zapf, Roesch, & Pirelli, 2014). Base rates of incompetency vary by jurisdiction and setting, but approximately 20% of referred defendants are opined incompetent to stand trial (IST). The low base rate of defendants adjudicated IST has been highlighted in defining the standards of practice in the competency arena (Pirelli, Gottdiener, & Zapf, 2011).

Competence is a legal construct, which does not have a distinct or easily identifiable psychological correlate. The U.S. law regarding trial competency was established in *Dusky v. United States* (1960) and currently all states use some variant of the *Dusky* standard, with the exact definition varying by jurisdiction. Forensic evaluators are tasked with describing the degree of congruence or incongruence between the relevant jurisdictional competency standard and the defendant's current abilities. To complete this task, forensic evaluators must maintain a combination of advanced clinical skills coupled with knowledge about the legal system, competency standards, and their interpretation, as a finding of IST cannot be rendered without sufficient consideration of specific facts regarding the defendant's current legal case (Murrie & Zelle, 2015; Zapf, Roesch, & Pirelli, 2014). Mental health issues, such as the presence or absence of psychosis, play a prominent role in competency determinations (Kalbeitzer & Benedetti, 2009; Ryba and Zapf, 2011). Historically, competency was equated with psychosis; however, research has since provided evidence that the presence of psychosis itself is not sufficient for a defendant to be adjudicated incompetent (Zapf et al., 2014). CST evaluations assess basic cognitive processes in relation to the defendant's present psycholegal abilities such as understanding relevant information, appreciating the situation and its consequences, the ability to use logical thinking and reasoning, being motivated to assist counsel, and the ability to effectively formulate as well as communicate decisions (Murrie & Zelle, 2015).

## Procedural Issues

It is common practice that when the issue of competency is raised, a forensic evaluation is subsequently conducted. These evaluations are court-ordered the majority of the time and may take place in numerous locations such as jails, community-based outpatient centers, or mental health centers (Vitacco, Rogers, Gabel & Munizza, 2007). Once an evaluator completes a competency evaluation, a written report is submitted to the court. If the defense and prosecution attorneys do not accept the opinion of the evaluator, a brief hearing may be held wherein the evaluator is asked to testify; however, this is rarely the case. The ultimate decision regarding a defendant's competence rests with the court, which is not bound by the evaluator's opinion. Most courts, however, accept the opinion or recommendation of the evaluator, resulting in very high levels of examiner-judge agreement (Zapf et al., 2014).

## Financial Considerations

Financial costs associated with competency to stand trial evaluations are vast and increasing every year. In fact, competency to stand trial evaluations and subsequent treatment and adjudication require more financial resources than any other venture in forensic psychology (Zapf, Skeem & Golding, 2005). To illustrate this point further, in the 1980s, Winick (1985) calculated that CST assessments and subsequent treatment cost over \$185 million in the United States per year. In the 1990s, Winick (1996) estimated that the cost of CST assessments and subsequent treatment in the United States was likely \$370-\$555 million per year. In the decades since Winick's estimates (1985, 1996), the annual cost of CST assessments and subsequent treatment has likely ballooned (Pirelli, Gottdiener, & Zapf, 2011).

## Assessing Competence

Assessments of competency to stand trial concentrate on several issues including mental and physical health, comprehension of legal proceedings, and capacity to communicate with legal counsel (Chauhan, Warren, Kois & Wellbeloved-Stone, 2015). Research indicates that forensic evaluators show high levels of agreement on the ultimate issue of a defendant's competence; however, high levels of reliability do not ensure that valid decisions are being made. Multiple evaluators could agree that the presence of psychosis automatically signifies that a defendant is incompetent, yet previous research has underscored that this is an invalid conclusion (Zapf et al., 2014). It is important that evaluators appropriately assess a defendant's mental status in relation to the functional abilities that are relevant to the particular defendant's legal case. Mental status and formal psychiatric diagnoses are important competency considerations but, independent from the facts of the legal case, they are not sufficient for rendering an opinion regarding competence (Zapf et al., 2014). A defendant's mental disorder must interfere with relevant, functional abilities in such a way that he or she is left unable to effectively participate in the trial proceedings in order to be opined IST. Evaluators are obligated to address the

appropriate range of psycholegal abilities and to effectively tie psychopathological observations to their conclusions regarding competence.

There is no “gold standard” instrument for measuring a defendant’s competency (Murrie & Zelle, 2015). This, paired with the level of ambiguity in the definition of competency, further complicates the evaluation process. Prior to 1960, there was not a standardized method for assessing competency. Over the past 40 years, no fewer than 12 competency assessment instruments have been developed to address a defendant’s psycholegal abilities (Pirelli et al., 2011). These instruments range from informal checklists to structured instruments with criterion-based scoring and have minimized the need for lengthy inpatient evaluations. CST assessment tools have been deemed useful as they address a defendant’s competence-related abilities directly with respect to the legal standard (Zapf & Roesch, 2009). Although not designed to assess competency to stand trial, several instruments developed to measure specific psychological constructs including intelligence (e.g., Wechsler Adult Intelligence Scales) and psychopathology (Minnesota Multiphasic Personality Inventory) are commonly used in competency evaluations (Pirelli, Gottdiener, & Zapf, 2011). An overview of competency tools is beyond the scope of this brief article; however, interested readers are referred to additional sources (Pirelli et al., 2011; Zapf & Roesch, 2009; Zapf, Roesch, & Pirelli, 2014).

## Referred Population

The most common variables that have been identified as correlates with competency status are ethnicity, sex, employment, marital status, type of current criminal charge, criminal history, and history of psychiatric hospitalization. In comparison to defendants who were opined competent, incompetent defendants are typically older, predominantly non-white, unmarried, and have a higher rate of unemployment. Psychiatric variables typically show the most significant differences between those adjudicated competent and those adjudicated incompetent. Defendants who are deemed IST are more likely to have previous psychiatric hospitalizations and current diagnoses on the psychotic spectrum than defendants found CST (Pirelli et al., 2011).

## Guidelines for Evaluators

It is good practice for the evaluator to speak with both the defense and prosecution attorneys to have the best understanding of why the issue of competence was raised. Evaluators are further advised to obtain all evidence being offered and the dispositional alternatives that are being considered for the defendant. Evaluators should be aware of the aspects of practice within the evaluating jurisdiction and be thoroughly acquainted with the legal literature to provide the most thorough evaluation.

## Biographies

**Amanda Beltrani** is a graduate student in the Forensic Psychology master’s program at John Jay College of Criminal Justice in New York. Her professional interests include forensic assessments, specifically criminal matter evaluations. Amanda plans to continue her studies in a doctoral program after completion of her master’s degree.

**Patricia A. Zapf** obtained her Ph.D. in Clinical Forensic Psychology from Simon Fraser University in Canada and currently holds the position of Professor in the Department of Psychology at John Jay College of Criminal Justice, The City University of New York. She is the Editor of the American Psychology-Law Society book series; Associate Editor of *Law and Human Behavior*; and is on the Editorial Boards of five journals in psychology and law. Dr. Zapf is on the Board of Directors for the International Association of Forensic Mental Health Services and is the Past President for the American Psychology-Law Society (AP-LS; Division 41, APA). She has published eight books and manuals and more than 85 articles and chapters, mainly on the assessment and conceptualization of criminal competencies. Dr. Zapf was appointed Fellow of the American Psychological Association and Distinguished Member of the American Psychology-Law Society in 2006 for outstanding contributions to

the field of law and psychology for her work in competency evaluation. In addition to her research, she serves as consultant to various criminal justice and policy organizations and has a private practice in forensic assessment. She has conducted more than 2,500 forensic evaluations in both the United States and Canada and has served as a witness in a number of cases, including the competency hearing of Jose Padilla. Dr. Zapf is the author of *Best Practices in Forensic Mental Health Assessment: Evaluation of Competency to Stand Trial*; editor of *Forensic Assessments in Criminal and Civil Law: A Handbook for Lawyers*; and Editor-in-Chief of the recently published *APA Handbook of Forensic Psychology*. She served on National Judicial College's Mental Competency—Best Practices Model panel of experts and travels throughout the United States and internationally to train legal and mental health professionals on best practices in forensic evaluation.

**Jerrod Brown**, M.A., M.S., M.S., M.S., is the Treatment Director for Pathways Counseling Center, Inc. Pathways provides programs and services benefiting individuals impacted by mental illness and addictions. Jerrod is also the founder and CEO of the [American Institute for the Advancement of Forensic Studies](#) (AIAFS) and lead developer and program director of an online graduate degree program in [Forensic Mental Health from Concordia University](#), St. Paul, Minnesota. Jerrod is currently pursuing his doctoral degree in psychology.

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