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Adjudicative Competence

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Abstract

Purpose of review—Although the basic standards of adjudicative competence were specified by the U.S. Supreme Court in 1960, there remain a number of complex conceptual and practical issues in interpreting and applying these standards. In this report we provide a brief overview regarding the general concept of adjudicative competence and its assessment, as well as some highlights of recent empirical studies on this topic.

Findings—Most adjudicative competence assessments are conducted by psychiatrists or psychologists. There are no universal certification requirements, but some states are moving toward required certification of forensic expertise for those conducting such assessments. Recent data indicate inconsistencies in application of the existing standards even among forensic experts, but the recent publication of consensus guidelines may foster improvements in this arena. There are also ongoing efforts to develop and validate structured instruments to aid competency evaluations. Telemedicine-based competency interviews may facilitate evaluation by those with specific expertise for evaluation of complex cases. There is also interest in empirical development of educational methods to enhance adjudicative competence.

Summary—Adjudicative competence may be difficult to measure accurately, but the assessments and tools available are advancing. More research is needed on methods of enhancing decisional capacity among those with impaired competence.

Keywords

Competence; ethics; informed consent

Introduction

A task commonly faced by forensic psychologists, psychiatrists, and other mental health professionals working at the juncture between mental health and law is evaluating a defendant's capacity or competency to stand trial (adjudicative competence). Approximately 2% to 8% of all felony defendants are referred for evaluation of adjudicative competence; of these, approximately 10% to 30% are eventually deemed incompetent to stand trial [1,2]. In this article we provide a brief overview regarding the general concept of adjudicative competence and its assessment, as well as some highlights of recent empirical studies on this topic. Although our focus will be on adjudicative competence among adult defendants, those interested in the

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assessment of this construct among juvenile defendants are encouraged to refer to the recently published guide book by Grisso [3].

What is Adjudicative Competence?

The notion that a defendant should be mentally able to participate in the court proceedings has been present in the Western law in some form since the 14th century C.E., at which time the English law required that the defendant be able to plea guilty or not guilty [4]. Within the contemporary American legal system, the present day application of the construct was largely defined in the landmark 1960 Supreme Court decision in *Dusky vs. the U.S.* 362 U.S. 402 (cited in Mossman et al. [5]). In that decision, the court determined that the key test of competency to stand trial is whether the defendant has “sufficient present ability to consult with his lawyer with a reasonable degree of rational understanding, and whether [he or she has] a rational as well as factual understanding of the proceedings against him ” (quoted in Mossman et al.** [5], p. S5)

In a classic 1992 paper, Bonnie [6] proposed that adjudicative competence as defined by the Dusky criteria included only one of two relevant components. He suggested that the second, semi-separable component is decisional capacity, particularly as it relates to various decisions during the course of the trial that may affect a defendant’s constitutional rights. Such decisional capacity would parallel that for other aspects, such as capacity to consent to (or refuse) treatment or to enroll in clinical research. The latter are generally construed in terms of the individual’s capacity to understand the relevant information, to appreciate its significance for his or her situation or condition, and reason with that information (such as consider possible consequences of the various alternatives), as well as to express a clear choice [7,8]. Although Bonnie’s model has been widely discussed, its legal status from subsequent case law remains murky [9]. In 1993 the Supreme Court rendered a decision in the case of *Godinez v. Moran*, which some have read as indicating that decisional capacity is not necessary, but others have interpreted it as indicating that decision making capacity is already inherent within the Dusky criteria [2,10]. Recently published guidelines from the American Academy of Psychiatry and the Law (AAPL) endorse the latter interpretation [11]. The preceding is just one many potential example of how the precise interpretation and application of the Dusky standards, and subsequent court decisions, as well as integration with state law, remain a complex endeavor [9].

Who should conduct the assessments?

Assessment of adjudicative competence is generally conducted by psychiatrists or psychologists [12-14]. A number of experts have raised concerns about the quality of competency evaluations by those without specialty training in forensic practice [10,12,15]. Although recent national summary data are unavailable, as of 1992, only 19% of the US states or territories required specific certification in forensic examination [14]. However, there do seem to be ongoing efforts within at least some of the individual states to add forensic board certification requirements [16].

As the qualifications and specific expertise of those conducting adjudicative competence evaluations receive increased scrutiny, there is likely to be an interest in obtaining opinions from the most seasoned experts available. Two recently published separate studies reported good correspondence in the results of adjudicative competence interviews conducted remotely, using video conferencing tools, with those conducted in person [17,18]. Clearly there will be many legal considerations in the application of such methods, and further research will be needed to delineate the actual viability and pitfalls of these methods for general forensic use. Nonetheless, this appears likely to be part of the general rise of interest in telemedicine and

telepsychiatry to efficiently access the skills of interviewers with unique expertise regardless of geographic limitations.

Reliability of Assessments

The interrater reliability among forensic examiners in adjudicative competency opinions is unclear [19], but there does appear to be room for improvement even among the experts. As part of a recent survey study, Morris et al. [20] had board certified forensic psychiatrists or forensic psychologists respond to hypothetical vignettes. One of the two vignettes involved a patient who (per the authors) lacked rational understanding sufficient to assist in a rational defense due to specific fixed delusional beliefs, but who otherwise exhibited rational behavior and thinking. When asked to apply the Dusky “rational understanding” rule, 48% of the experts found the defendant competent, 52% found him incompetent to stand trial.

Although the vignette methodology of Morris et al.’s [20] study generated some debate in the form of letters to the editor [21-23], their finding of a near even-split among surveyed experts nonetheless raised concerns that there may be inconsistency and confusion about how the Dusky standards are routinely operationalized. The recent publication of specific and comprehensive guidelines for assessment of competency to stand trial by the APPL [11] may bring some clarity and consistency to the field. (These guidelines have already received several highly positive published reviews [11,24,25].

Use of Structured Instruments

One way to improve reliability is to use standardized methods. Efforts to develop structured assessments for adjudicative competence date back to at least 1965 when Robey [26] published the Criteria for Competency to Stand Trial checklist. In the subsequent 43 years a wide array of checklists and structured or semistructured interviews have been published for assessment of adjudicative competence. In a recently published practice survey of forensic psychologists, Archer et al. [27] found that the most frequently and widely used instrument for assessing adjudicative competence is the MacArthur Competence Assessment Tool - Criminal Adjudication (MacCAT-CA) [28]. But the MacCAT-CA is just one of several available instruments, all of which have their strengths and limitations. Detailed comparisons of these instruments are available in several excellent critical reviews [2,9,11,29], but the strengths and limitations of some of the most common instruments are listed in Table 1. It is important to keep in mind that, as noted in the AAPL guidelines [11], “Designers of these instruments intend that they be used in concert with, rather than as a substitute for, a more comprehensive clinical examination” (p. S43).

Adjudicative Competence Restoration

If a defendant is deemed incompetent to stand trial, there may be efforts made to restore his or her capacity to a sufficient level to stand trial [38], e.g. by addressing any medical, substance abuse, or other neuropsychiatric conditions affecting mental status. Deficits in competency secondary to some conditions, such as some developmental disabilities, static deficits from a prior traumatic brain injury, or neurodegenerative conditions, may be difficult to resolve, but efforts are generally made to improve mental status among those deemed incompetent to stand trial due to acute exacerbations in psychiatric conditions such as psychosis. The latter raises the frequently discussed question of whether a defendant can be forced to take medication to improve his or her mental status, and thereby possibly enhance his or her competence to stand trial. This issue was addressed in the 2003 Supreme Court ruling on *Sell vs. the U.S.*, wherein the court specified several conditions for the involuntary administration of medication. These included (1) How important the restoration is must be evaluated on a case-by-case basis, (2) That the medication must have minimal side-effects, (3) That there are no other options to

restoration, and (4) That the medication is appropriate treatment for the disorder that caused the incompetence in the first place [38].

There has been a relative dearth of empirical research on psychoeducational interventions to enhance adjudicative competence. Mueller and Wylie [39] recently conducted a randomized comparison in inpatients (68% of whom had a diagnosis of psychosis) who had been identified as incompetent to stand trial, that examined the effectiveness of a board-game-based educational program to teach patients about relevant legal concepts. The control condition involved a board game focused on teaching healthy behaviors. Both groups showed a pre- to post-intervention improvement on the MacCAT-CA understanding and appreciation scores, but there were no significant between-group differences. Although the findings did not support differential efficacy of this particular educational intervention, this study is of interest as a model for developing more effective non-pharmacologic methods of enhancing adjudicative competence. In other arenas of competence/decisional capacity, a number of studies have shown efficacy of enhanced educational methods [40-42].

Discussion

Adjudicative competence is a complex construct. Although empirical research on adjudicative competence is not a recent development (e.g., see the series of comprehensive reviews by Grisso and colleagues [43-45]), there remains room for empirical contributions to refining the construct and its assessment. Similar efforts and successes in the related arena of empirical bioethics [46-50], should encourage the ongoing efforts in the study of forensic competency issues as well.

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Abbreviations

APPL, American Academy of Psychiatry and the Law; MacCAT-CA, MacArthur Competence Assessment Tool-Criminal Adjudication.

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* special interest

** outstanding interest

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Table 1**Overview of Common Tests Used to Help Determine Adjudicative Competency**

Test	Description	Strengths	Weaknesses
Competency Screening Test [31]	<ul style="list-style-type: none"> Screening instrument 22 items standardized sentence completion task 	<ul style="list-style-type: none"> Brief Good screen Good inter-rater reliability Good at prediction of competency 	<ul style="list-style-type: none"> High false positive error rate Does not specifically address the Dusky criteria
Georgia Court Competency Test- Mississippi State Hospital [32]	<ul style="list-style-type: none"> Screening instrument 21 questions Four areas: Understanding of courtroom procedure, Knowledge of the charge, Knowledge of possible penalties, and Ability to communicate rationally with an attorney. 	<ul style="list-style-type: none"> Brief Good Screen Good inter-rater reliability 	<ul style="list-style-type: none"> 1/3 of questions based on a court-room layout that does not assess understanding, appreciation, or reasoning about the court procedures, and were of little use [33]
MacArthur Competence Assessment Tool - Criminal Adjudication (MacCAT-CA) [29]	<ul style="list-style-type: none"> Three subscales: (Reasoning abilities related to relevant and irrelevant material and pleading guilty or not-guilty, <u>Understanding</u> of the legal system and process, and <u>Appreciation</u> of the defendant's own situation) 22-item structured interview based on a vignette approach for Understanding and Reasoning (tailored for actual situation for Appreciation) Ages: 18 years and older 	<ul style="list-style-type: none"> Factor structure was supported [34] in a sample of 177 participants who had been evaluated for competency Test was well normed (normative sample = 729 individuals in a multisite study) [35]. Good psychometric properties [35]. Worked well with paranoid individuals and less sophisticated defendants who were attempting to malingering [35]. 	<ul style="list-style-type: none"> Failure to detect specific delusional beliefs that might be detrimental to the defendant [35]. Malingers were often misidentified [35]. Those with cognitive difficulties may become confused, and fail the MacCAT-CA due to memory and attention problems [35]. Biased against people from certain cultural backgrounds who did not understand the vignettes [35].
Evaluation of Competency to Stand Trial - Revised [36]	<ul style="list-style-type: none"> Semi-structured interview Three main areas covered are: Factual Understanding of the courtroom proceedings, Rational understanding of the courtroom proceedings, and Consultation with counsel. 18 Items Ages: 18 years and older 	<ul style="list-style-type: none"> Has good psychometric properties Specifically designed to correspond with the Dusky criteria. Screens for malingering Focuses on case-specific information including relationship with counsel 	<ul style="list-style-type: none"> As noted by Melton [33], some aspects of the scoring led can lead to substantial incongruity between item scores and overall interpretation of the scale results.
Competence Assessment to Stand Trial For Defendants With Mental Retardation [37]	<ul style="list-style-type: none"> For specific use with "mentally retarded" individuals Three separate sections: Basic legal concepts, Skills to assist defense, and Understanding of case events. 50 items 	<ul style="list-style-type: none"> Standardized Based on Dusky principles Good reliability Low false positive rates. 	<ul style="list-style-type: none"> Population is deemed to be vulnerable and able to be easily led in questioning and very willing to please [33]. Therefore, hard to differentiate actual understanding and saying they understand just to please the examiner

Test	Description	Strengths	Weaknesses
	<ul style="list-style-type: none">Ages: Adults & AdolescentsTime: 34-40 minutes		<ul style="list-style-type: none">Persons with mental retardation able to malingering successfully if instructed to do so [38].