

# Competency, Restoration & Insanity

## Facts and Myths

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Adjudicative competency has been an issue in Anglo-Saxon jurisprudence from the early 13<sup>th</sup> Century. Many pleas existed and a trial could not proceed without a defendant's entering a plea. If the defendant did not, the competency issue arose in the form of a query.

Was he 'mute by malice' i.e. not responding to the indictment in order to prevent a trial' or 'mute by visitation by God' i.e. unable to comprehend and respond to the charges because of mental retardation or disorder.

By the 17<sup>th</sup> Century, allowing an incompetent defendant to proceed to trial compromised the moral authority of the court and would be 'a miserable spectacle, both against the law and of extreme inhumanity and cruelty and can be no example to others.'

A further core jurisprudential justification, that the trial of an incompetent defendant is like an unjust adversarial contest 'in which the defendant, like a small boy being beaten by a bully, is unable to dodge or return the blows' also emerged (Frith, 1790).

In our adversarial system, it is a fundamental violation of fairness and due process to proceed against an incompetent defendant. (Dusky v. U.S. 1960)

**Pragmatically**, an individual who cannot participate vigorously and effectively in his defense is denied ‘fundamental fairness’ and may be erroneously convicted.

**Symbolically**, the moral authority of the judicial system is diminished as was stated in Frith.

**Procedurally**, adjudicative incom-petency places a ‘hold’ on all subsequent phases of adjudication.

**Economically**, competency evaluations, competency hearing and restoration require the majority of ‘forensic mental health dollars’ in any jurisdiction.

Competency does not have a precise relationship to either IQ or level of psychopathological disturbance. Incompetent defendants are often psychotic, but psychotic defendants, in general, are not incompetent.

The essence of a competency evaluation is not the assessment of pathology or cognitive functioning, but rather how and why this can be linked to deficits in specific psycho-legal abilities that are required of a defendant in a particular case.

“It is not enough for a judge to find that ‘the defendant is oriented to time and place and has some recollections of events,’ but that the test must be whether he has sufficient present **ability to consult with his lawyer** with a reasonable degree of rational understanding and

**“ ..whether he has a rational as well  
as factual understanding of the  
proceedings against him.”  
( Dusky v U.S. 1960 )**

Who raises the competency issue?  
**Defense, Prosecution or Judge**

Who performs competency evals?  
**50 Psychologists and Psychiatrists.**

How many are arrested in Maricopa County on a daily basis?

Approximately 350 from all Police Departments, are taken to 'Watkins Jail' (ITR) for physicals, 'Receiving Screening'.

How many competency evals. are ordered each week?

Approximately 180 (out of 2450)

How many evaluators per case?

Two. If there is disagreement, a third evaluator is appointed.

If defendant is competent?

Proceed to trial.

If defendant is incompetent?

Proceed to restoration which is of  
15 to 21 months duration for  
felonies and 6 to 8 months for  
misdemeanors.

Successful restoration rates?

c. 85% within 6 months. Consists of psychopharmacological and psychoeducational programs.

1/3 have good response to meds.

1/3 have some response to meds.

1/3 have no response to meds.

# **1. Appreciation of charges.**

**Do you know what you are  
charged with?**

**Major or minor charges?**

**Felony or misdemeanor?**

**Which is worse?**

## 2. Appraisal of Available Legal Defenses.

What pleas can a person make?

What does not guilty mean?

What does guilty mean?

What does no contest mean?

What does guilty except insane mean?

### **3. Appreciation of Possible Penalties**

**If found guilty, what are the possible sentences?**

**How much time? Where?**

**What is Probation?**

**What if found you're guilty but also mentally ill?**

## **4. Courtroom Participants**

**Defense attorney's job?**

**Prosecutor's job?**

**Judge's job?**

**Jury's job?**

**Who is the defendant?**

**What is a witness?**

## **5. Court Procedures**

**Do defendants have to testify?**

**Do you have to tell everything?**

**Who can ask you questions?**

**What does D.A. try to do?**

**What is evidence?**

**Are fingerprints and videos  
considered to be evidence?**

**6. Motivation to Help Self**

**7. Appraisal of Likely Outcome**

What is the evidence against  
you?

How strong is the case against  
you?

What are your chances of  
being found not guilty?

## **8. Planning of Legal Strategy**

**Do you know your plea?**

**Is there another plea you  
would consider?**

**What is a plea bargain?**

**Would you accept a guilty plea  
if you believe it will shorten  
your jail time? Why not?**

8. continued.

Would you make a plea of guilty but mentally ill if your lawyer suggested it?

Why not?

Would you (not) testify if your lawyer suggested it?

Why not?

## 9. Ability to Cooperate with

**Atty.**

Do you have an attorney?

What his/her name?

Do you trust your attorney?

Do you think your atty. knows  
what he/she is doing?

How can you help your atty?

What if you disagree w. atty?

What is confidentiality?

# 10. Capacity to Disclose Pertinent Information to Counsel

Do you remember what happened? Why not?

Should you tell your attorney everything you know and remember?

Will you do that?

# 11. Capacity to Testify

Did you read the Police report?

Do you remember what it said?

What led the Police to arrest  
you?

## **12. Capacity to Challenge Prosecution Witnesses**

**What should you do if you  
know a witness is lying?**

**Do you expect anyone to lie  
about you in this case?**

**Why would someone lie about  
you in this case?**

# **13. Ability to Behave Appropriately in Court**

How are you supposed to  
behave in Court?

When can you speak in Court?

Have you ever had trouble  
behaving in Court?

# 14. **Capacity to Cope with Jail Prior to Court**

When were you brought to jail?

How are you handling jail?

Are you taking medications?

What do meds. do for you?

Do you think you are mentally ill?

## 15. Rights Related to Pleas

What is the right to a trial by jury?

What is the right to remain silent and not incriminate yourself?

What is the right to confront witnesses?

## 15. Continued

What is the right to present evidence and compel witnesses of your choosing to appear and testify?

What rights do you give up if you plead guilty?

Competency Evaluation consists of the aforementioned questions, plus a thorough social history, mental status examination and review of medical records if available.

What percentage of defendants  
plead guilty but insane?

Approximately 0.3% of all cases  
in Maricopa County  
This defense is rarely used due to  
difficulty in convincing a jury  
the defendant is insane, and  
upon appeal, the insanity  
defense must be used.

How successful is the insanity def.?

About 20 to 25% success rate

What determines success?

90% of successes had previous  
mental health diagnoses

Go to mental hosp. or get out now?

1% (of 90%) are released immedi.

Most cases average 3 years of  
inpatient treatment.

California and N.Y. hospitalize  
longer than the sentence  
would have been in prison.

Idaho, Kansas, Montana, Utah  
and Vermont have no insanity  
defense.

David Berkowitz, 'Son of Sam' killer  
unsuccessful, convicted

Jeffrey Dahmer,  
unsuccessful, convicted  
killed in prison

John W. Hinckley, 'Reagan's assassin'  
successful, was in treatment 41  
years, 2 months, 15 days,  
released June, 2022. Mother  
died, he is in Williamsburg alone.

Lee Boyd Malvo, 'Beltway Killer'

unsuccessful, convicted

Jack Ruby, killed Lee Harvey Oswald

unsuccessful, convicted

died 1/3/67 awaiting appeal

Andrea Yates, drowned 5 children

unsuccessful, convicted

reversed on appeal

James E. Holmes; Aurora, CO theater  
07/20/2012 midnight screening  
of 'The Dark Knight Rises', a  
batman movie.

Bulletproof vest and leggings, gas  
mask, helmet and gloves  
Set off gas grenades, smoke bombs  
and shot 82 people with a shot  
gun, pistol and semi-automatic  
rifle. Killed 12, wounded 70.

Post arrest, apartment was searched.

Gun powder, gasoline and motor oil, dozens of spheres with fuses all connected to them. Pickle jars filled with liquid and bullets.

Fishing line from door jamb to thermos of pure glycerine perched above frying pan filled with potassium permanganate.

Could have exploded and  
destroyed entire apartment.  
20 bombs and incendiaries were  
found.

Studied neuroscience at Univ. of CO, was a Ph.D. candidate and withdrew from medical center. He pled GEl.

07/15/2015, found guilty on all charges: 2 counts of 1<sup>st</sup> degree murder for each of 12 murders; 2 counts of attempted murder on each of 70 injured victims.

GEI unsuccessful.

Sentenced to 12 life sentences  
and 3,318 years.

Attacked in CO State Prison by  
inmate Oct. 2015 and moved  
to Allenwood State Prison in  
Pennsylvania.

**Insanity:** A person may be found guilty except insane if at the time of the commission of the criminal act the person was afflicted with a mental disease or defect of such severity that the person did not know the criminal act was wrong.

A mental disease or defect constituting legal insanity is an affirmative defense. Mental disease or defect does not include disorders that result from acute voluntary intoxication or withdrawal from alcohol or drugs, character defects, psychosexual

disorders, or impulse control disorders.

Conditions that do not constitute legal insanity include but are not limited to momentary, temporary conditions arising from the pressure of the circumstances,

moral decadence, depravity or passion growing out of anger, jealousy, revenge, hatred or other motives in a person who does not suffer from a mental disease or defect or an abnormality that is manifested only by criminal conduct. (Antisocial Personality Disorder; psychopathy; sociopathy or dyssocial personality disorder)

If defendant is found to be insane, he will be committed to 'Arizona State Hospital' for 30 days for mental health eval. & treatment.

If still found to be insane, Court shall determine the sentence the defendant could have received if not found insane & shall sentence defendant to a term of prison in

D.O.C. and order the defendant to be placed under jurisdiction of the Psychiatric Security Review Board and committed to a state mental health facility.

A GEI verdict is not a criminal conviction for sentencing enhancement purposes.

**Insanity:** a condition of the mind that renders a person incapable of being responsible for his or her criminal acts.

Defendants who are found to be  
not guilty by reason of insanity  
therefore *lack criminal  
responsibility.*

American Law Institute

Durham Rule

McNaughten Rule (Arizona

uses a modified version)

Penal Code Insanity Test

**McNaughten Rule:** to plead insanity the accused must be ‘laboring under such a defect of reason, from disease of the mind, as not to know the nature and quality of the act he was doing, or if he did know it, he did not know that what he was doing was wrong.’

Rule was established in 1843 by judges in England after the trial of 'Daniel McNaughten', who believed the gov't. was persecuting him and killed Prime Minister Sir Rob't Peel's secretary mistaking him for the Prime Minister.

McNaughton shot Edward Drummond in the back on 06/20/1843 and victim died five days later. McNaughton forcibly institutionalized for life under the 'Criminal Lunatics Act' of 1800. Died 05/03/1865, age 52 at Broadmoor Asylum.

