

## CRIME AND LEGAL DEFENSE : A FORENSIC AND JUVENILE PSYCHIATRIC PERSPECTIVE\*

Seungtai Peter Kim, M.D., Ph.D., MBA. \*\*†

### = ABSTRACT =

A historical overview of the relationship between law and medicine, particularly psychiatry, was presented along with the religious, social and legal aspects of the societies in the Western hemisphere as they affected the concepts and philosophy of the legal system in each society at different point in history. The evolution of the modern concept of juvenile court system and changing patterns of implementing the juvenile law in the United States, particularly the mental health evaluation process to determine the youths' competence to stand trial, were presented in detail. The ultimate goals of protecting the civil rights of children, adolescents and youths are emphasized.

**KEY WORDS** : Forensic psychiatry · Competence to stand trial · Juvenile court · Insanity defense.

### A Historical Overview

The first medico-legal expert described in the Western literature was Imhotep, about 3000 B.C., grand vizier and chief architect to the Egyptian Pharaoh Zoser with undifferentiated roles of priest-physician-architect-statesman, who was the first man combining sciences of law and medicine<sup>1)</sup>.

Although Roman law was the most comprehensive and sophisticated among ancient legal system as in its Greek predecessor, Roman legal process did not employ physicians as experts<sup>2)</sup>, while midwives, land surveyors (agrimensores) were used in a forensic capacity<sup>3)</sup>. However, Roman law did accept that anyone who committed criminal acts without malicious intent should not be

held accountable for those acts. Roman law in its stipulations about insane people was primarily concerned about dealing with questions of guardianship, not on the criminality aspects. The issue of criminal intention, as it was an important area in the ancient legal literature, was obviously pushed behind by the issues of custody, protection, and guardianship status<sup>4)</sup>.

The medieval period, between 6<sup>th</sup> and 16<sup>th</sup> century approximately, was considered a period of scientific re-trenchment during which the Roman tradition and theology of Christianity dominated to influence legal scenes throughout most of Europe. In 528 A.D. the Emperor Justinian ordered a review and codification of the enormous corpus of Roman legislation. The Code of Justinian, or the Corpus Iuris Civilis, distinguishing it from canon or church law, made provision for the insane<sup>4)</sup> :

\*Professor of Psychiatry, Director of Child, Adolescent and Youth Forensic Psychiatry Program & Coordinator MD-MBA Program Development, University of Hawaii, John A. Burns Medical School, Honolulu, Hawaii 96813, U.S.A.; Liaison Clinical Director, University of Hawaii and Family Court Liaison Branch, State of Hawaii (He is FACP, FAPA, FAACAP, FAOP, FASSP, FPRCP).

\*\*Department of Psychiatry, University of Hawaii School of Medicine, USA

†Address for correspondence : Seungtai Peter Kim, M.D., Ph.D., MBA., 1319 Punahou St., 6th Flr. Honolulu, Hawaii 96826, USA

TEL : (808) 266-9932 · FAX : (808) 266-9933 · E-mail : Kimsp@jabsom.Biomed.Hawaii.Edu

## Forensic and Juvenile Psychiatric Perspective

The insane, therefore, was to retain not only the ownership of his property for the duration of his illness, but also his position, rank, and even his magistracy, if he were a magistrate at the time the illness struck him. However, the law did recognize the judicial capacity of the insane person. He was likened to a person who was absent, asleep or even dead. Consequently, he was considered unable to make a valid will according to the principle of law : “Soundness of mind, not health of body, is required of a testator when he makes his will.”

Gaius, in his Institutes wrote : “An insane person cannot contract any business whatever because he does not understand what he is doing.” In the matter of legal responsibility or culpability for wrongdoing, the Roman law followed a principle stated in one of the opinions of Paulus, namely, that an insane person, like an infant, was incapable of malicious intent and the will to insult. Accordingly, he was to be considered immune from any action for damages<sup>5)</sup>.

The Roman Catholic Church, after established in Europe, applied Roman law to answer many questions relating to insanity. How would matrimonial contract/consent be affected by insanity? Could the insane receive the sacraments of the church? Could a priest who became insane continue to his church roles?

According to the available records, the Italian city of Bologna may have been the first to establish a system of medical expertise that was used in what we would call criminal investigation<sup>6)</sup>.

In Germany, the medieval city of Freiburg in Barbaria gave barber/surgeons the responsibility for playing a forensic role at a time when academic medicine remained aloof from the mundane world<sup>7)</sup>.

In England, tests of legal insanity were developed and became part of the legal tradition of the common law. Henry de Bracton made an early and formative influence on the development of the legal insanity tests. As the chief judiciary of the highest English court and the author of one of the first important treatises on English law, *On the laws and Customs of England* (Ca. 1256),

he has been known for his famous “the wild beast test.” Platt and Diamond<sup>8)</sup> have explained that Bracton’s use of the concept of the wild beast (*brutus*) was not in any way intended to compare the insane with wild beasts but was making the point that the insane, like animals, were not capable of forming the requisite intent to commit crime, much as a child would be incapable of forming such intent. When a decision on the insanity of an accused was an issue in an English criminal proceeding, the matter was given over to the judgment of the king. A royal pardon could be sought to release the insane from responsibility, a procedure also used to excuse those who killed by accident or in self-defense<sup>9)</sup>.

During the same period, in England, the statute, *Praerogativa Regis*, drew a important distinction between those who were “natural fools,” congenitally abnormal, and those who were “non compos mentis,” or whose mental illness symptoms first appeared after birth and included a wide range of psychiatric disorders, some of which was brought to temporary remission or even permanent recovery. In the process of determining if the insane was “natural fool” or “non compos mentis,” physicians were not involved. Finding and determining if the insane was incompetent or of congenital origin in medieval England was a “community judgment<sup>10)</sup>.”

One of the darker aspects of this “community judgment” occurring during the medieval period was the practice of witch hunting. From the fifteenth through the seventeenth centuries thousands upon thousands of persons were tried on the charge of practicing witchcraft. The *Malleus Maleficarum* (or *Witch’s Hammer*) written by two Dominican friars, Sprenger and Kraemer, set out the argument for the existence of witches, the manner in which they could be identified, and the procedures for properly trying them. A noteworthy appearance of a physician as an expert witness in an English court was by Sir Thomas Browne, author of the *Religio Medici*, a book of religious contemplation, participated in the witchcraft trial of two women in 1664 at Bury St. Edmond, testifying that the devil might work through the madness of the women ; thus Browne appeared to support the

independent existence of witchcraft and madness simultaneously<sup>4)</sup>.

Johann Weyer(1515 - 1588) was perhaps the first physician to devote the major part of his professional efforts to psychiatric illnesses and was the reason and voice of the time standing against the social and religious reality on the insane. Ironically, the witchcraft trials are viewed as the true forerunner of the law/psychiatry interface.

A mention is noteworthy on Thomas Szasz who has made a widely publicized career calling psychiatry as a modern version of witch-hunting. For him, regardless of how humane their motives may be, physicians who participated in the legal process have assisted in bringing medicine into the services of the law and of the forces of social control<sup>11)</sup>.

Throughout the history of Anglo-American law, there have been various tests of insanity and the evolution of these tests through a series of important criminal cases beginning the eighteenth century. The trial of Earl Ferrers\* in 1760 marks the first recorded instance of ‘psychiatric testimony’ offered in the criminal trial<sup>12)</sup>.

\*In a fit of rage, the Earl had shot and killed his steward. Dr. John Monro, a physician superintendent of Bethlem(commonly known as Bedlam), testified as an expert witness and was examined by the accused Earl Ferrers himself, who conducted his own defense in accordance with the English law of the time. The Earl was left in the difficult position of proving his own insanity. However, he conducted so sagacious a defense that his plea for insanity was not believed. He was found guilty and executed.

A pattern seems to emerge from the eighteenth and nineteenth century cases ; those who succeed in the commission of crime fail in their insanity pleas ; those who attempt a crime and fail, succeed in their insanity pleas.

M’Naghten’s case\*\*(1843) definitely departed from this pattern, and established a rule that has been maintained by most American jurisdictions until the present day. M’Naghten was found not guilty by reason of insanity. M’Naghten rules originally contained answers to

five questions that the House of Lords addressed to the fifteen judges of the Queen’s Bench. The most significant part of these rules for the further development of forensic psychiatry is that found in the answers to the second and third questions that sought guidelines on the instructions to be given to a jury. In order to establish a defense on the ground of insanity, it must be clearly proved that, at the time of committing of the act the party accused was laboring under such a defect of reason, from disease of mind, as not to know the nature and quality of the act he was doing, or, if he did know it, that he did not know what he was doing was wrong.

\*\*Daniel M’Naghten suffered from an elaborate set of delusions involving his persecution by the British government and Vatican, among many others. M’Naghten, believing the man he shot in the back was Sir Robert Peel, the British prime minister, mistakenly assassinated Edward Drummond, private secretary to Peel. Nine physicians were called in as expert witnesses in this trial.

### **Forensic Psychiatry in the United States : Legal Defense and Mental Illness**

After the model of its English predecessor, the Bethlem(or Bedlam) Hospital, in America the Pennsylvania hospital was opened in 1752 to admit mental patients and Benjamin Franklin was a founding member of the hospital board.

The pioneer of American psychiatry, Isaac Ray, through his thinking, has had the most profound effect on development both within law and psychiatry, especially with the notion of “moral insanity,” a concept introduced by a nineteenth-century physician and scholar, James Cowles. Ray was critical of the English tests of insanity because they were too concerned about cognitive function, leaving out the role of emotion and the impact of mental disease on “moral functioning.” Later, spun off from the same concept, “moral treatment” consisted of kindness, understanding, and what resembled a kind of behavioral

## Forensic and Juvenile Psychiatric Perspective

modification therapy.

Initiated by Judge Doe of New Hampshire Supreme Court in 1866, the correspondence between Ray and the judge resulted the rule of law, established in the State vs. Pike case, subsequently known as the New Hampshire rule or “product rule.” It states that, since insanity is a disease, what is a diseased condition of mind is to be settled by science and not by law. The rule states that a test of insanity ought to determine if the act in question was the product of a mental disorder or defect. This rule has been proposed from time to time for wider adoption both in the United States and in England<sup>13)</sup>.

The New Hampshire rule was adopted in the District of Columbia in 1954 and called the Durham Rule (Durham v. United States) but was later overturned in the case U.S. v. Brawner (1972) replaced with the rule enunciated in the American Law Institute’s (ALI) Model Penal Code. The following appears in the Brawner decision :

A person is not responsible for criminal conduct if at the time of such conduct as a result of mental disease or defect, he lacks substantial capacity either to appreciate the criminality (wrongfulness) of his conduct or to conform his conduct to the requirements of the law.

An irresistible impulse test was employed first using the word impulse in Commonwealth v. Rogers (1844) in Massachusetts.

Although the New Hampshire Rule of “irresistible impulse test” is not currently applied anywhere as the sole test, similar tests are often used in conjunction with the M’Naghten Rules or are incorporated in the volitional prong of the ALI insanity test.

The development of the diminished capacity defense in California was by the contribution of Bernard L. Diamond, M.D., a psychiatrist and psychoanalyst. Diminished capacity permitted graduations of punishment by finding graduations of guilt. It allowed the psychiatrist to explain why a defendant committed a crime. Prior to the development of this type of defenses in California, two separate trials were held : one to establish guilt or innocence and another afterward to determine sanity or

insanity<sup>14)</sup>.

Until People v. Wells (California, 1949), psychiatrists were excluded from testifying until the second stage of the bifurcated trial. People v. Wells established that mental illness could negate the mens rea (criminal intent) required to convict for a crime and evidence supporting such negation could be introduced at the primary trial<sup>4)</sup>.

In essence, there are two lines of defense of criminal acts that are either directly related to or the results of mental disorder or mental deficiency of the accused, under the current legal rules and accumulated cases in the United States. The first line of criminal defense involving psychiatric condition of the violator is successfully establishing that the person accused of criminal act is incompetent to stand trial (competence to stand trial). The second line of criminal defense, if the accused is declared competent to stand trial despite his/her mental disorder or defect, is seeking to establish that the criminal act was the direct result of mental illness or defect of the accused (insanity defense). The aforementioned tests and rules are mostly applied in the second line of defense, namely, for insanity defense.

### 1. Competence in criminal court : the law

The Anglo-American law requires that criminal defendants must be able to understand the nature of the court proceedings against them and also must be able to assist their attorney in their defense as their trials proceed. Mental health professionals often are asked to perform evaluations of defendants’ competency in the court proceedings in order to assist the court to be able to determine if the defendant is competent to proceed to trial and to make important decisions during the court process.

Adolescents’ competence to stand trial (adjudicative competence) may be evaluated in two different context : criminal court where the question of their competence to participate in their defense is sometimes raised after they are arraigned in criminal court charged with certain serious offenses ; juvenile court where many states provide that juveniles of delinquency cases must be competent to participate in delinquency proceedings.

The American system of criminal law adopted the

doctrine of competence to stand trial from English common law. When defendant's mental incapacities seriously reduced their ability to defend themselves, it was considered unfair to require them to stand trial. When a defendant is found incompetent to stand trial, the trial is delayed in order to provide treatment that will restore the defendant to competence and allow the trial to resume. Every state's laws require that defendants must be competent to stand trial in criminal court, including adolescents who have been transferred from juvenile court to criminal court for trial.

Every state employs a legal definition of competence adopted from the one case stated by the U.S. Supreme Court in *Dusky v. U.S.*<sup>15)</sup>

“Whether he [the defendant] has sufficient present ability to consult with his attorney with a reasonably degree of rational understanding and a rational as well as factual understanding of the proceedings against him”(p. 402).

The statutes of most states in America add that deficits in these abilities, if and when they are to be considered reasons for incompetence to stand trial, must be due to mental illness or mental retardation. Most adult defendants who are found incompetent to stand trial have serious mental disorders, usually psychoses, or mental retardation. One very important point of caution is that incompetence is not synonymous with mental disorder, and that a defendant may be at times seriously ill yet be competent to stand trial. The key issue is whether, and how, the mental disorder actually affects the defendant's abilities to perform those functions that are required for the defendant's trial participation. Not all defendants with mental disorders, even those that involve psychotic delusions, necessarily experience symptoms that interfere with their trial participation. As the *Dusky* standard indicates, competence requires a degree of understanding of the trial process, as well as the capacity to consult with and assist his legal counsel. When working with counsel, defendants may have to make decisions related to defense strategy, pleading (guilty, not guilty, not guilty

by reason of insanity), responding to plea bargains, and waiving the right to be represented by counsel<sup>16)</sup>.

Bonnie<sup>18)</sup> has pointed out that some defendants who have a basic understanding of the trial process could be considered competent to proceed to trial with assistance of counsel, but possibly incompetent to make certain decisions, for example, a psychotic defendant's denial that he or she is mentally ill. Some federal and state courts have accepted this view in the past. Nevertheless, the U.S. Supreme Court in *Godinez v. Moran*<sup>17)</sup> decided that there is only one competence for purposes of trial participation. Therefore, when states apply the *Dusky* standard for trial competence, they do not violate constitutional requirements if they use this standard to cover all of the psychological functions that might have to be addressed in deciding whether the defendant has sufficient capacity to be tried fairly<sup>16)</sup>.

## 2. Competence in juvenile court

In the colonial United States, as an English colony and following English law, children were basically viewed the same as adults for legal purposes of attaining criminal status. Someone who violated the law, regardless of age, was viewed in principle as having exercised a free choice in so doing. This meant that the person had supposedly made a rational choice to pursue a particular action. There were a few exceptions, such as a child less than seven years of age not being held criminally responsible, which harked back to Roman law. Under the common law a child between ages of 7 and 14 was presumed responsible, but it was a rebuttable presumption that had to be proven in court. After age 14, no distinction from the adult population was made<sup>19)</sup>.

In the 1641 Massachusetts Body of Liberties, children who disobeyed their parents were actually subject to the death penalty<sup>20)</sup>.

One of the major antecedents to the emergence of the juvenile court itself as a separate legal institution was what historians call the Progressive Era (1880 - 1920) : a time of major social and industrial change, with and increase in concentrated wealth and accompanying concerns about protecting property and maintaining law and

## Forensic and Juvenile Psychiatric Perspective

order. In the second half of the nineteenth century, a reform group referred to as the Child Savers had arisen. They believed that churches had to do more for the urban poor and their children. A variety of laws were enacted for the protection and assistance of needy children. Compulsory education and regulation of child labor were thus enacted with the idea that they would strengthen family life and in that way promote better child development and control over delinquency. Out of this background the juvenile court system and juvenile law emerged.

The current juvenile justice system grew from rehabilitative goals envisioned in the closing years of the nineteenth century. Whereas children were previously treated as little adults and subjected to the same criminal justice penalties as adults, the growing awareness of the need and protection for minors turned the states toward assuming a parental role (i.e., *parens patriae*) in dealing with juvenile offenders. Even a new argot evolved. "Taken into custody" replaced "arrest ;" "trial" became "hearing ;" "conviction" was now "adjudication ;" "sentence" to "disposition." Juvenile "delinquents" were no longer sent to prison ; instead, they were remanded to reformatories or trade schools. Early reformers created the Illinois Juvenile Court Act, which established the first juvenile code in 1899, with emphasis on rehabilitation.

In the United States juvenile justice system, a child can commit two categories of offenses : delinquency offenses and status offenses. Delinquency, a legal term, means that a child has been found guilty of at least one crime that, if committed by an adult, could be punishable by law (e.g. theft, rape). Truancy, ungovernability and running away are considered status offenses. In *re Gault*<sup>21)</sup> ruled that delinquent offenders were to be afforded the same due process rights as an adult charged with a crime with the exception of jury trial. Prior to *Gault*, all offenders (status and delinquent) were treated equally and were offered no legal protections. The Juvenile Justice and Delinquency Act of 1974 provide status offenders with protection from the harshest form of punishment, i.e., incarceration in juvenile correctional

facilities. In order to continue receiving federal funding, states could no longer lock up status offenders in training facilities. Responses to the new federal restrictions resulted in rapid growth of community-based treatment programs and the child mental health movement<sup>22)</sup>.

Although the history of competence to stand trial in criminal court is relatively long, the issue and concept of juvenile competence in the court have received little attention during the first sixty years history of the juvenile justice system in the United States. Mostly this is due to the belief that there was no need to discuss the issues of juvenile competence. In theory, philosophy and in all good intent, the separate system of juvenile justice in America presumed that delinquent youths were to be rehabilitated and mainstreamed, not to be punished, and that the main purpose of the juvenile court was to fulfill the unmet needs of the wayward youths. The earlier and original notion was that proceedings were not construed as adversarial, youths did not have to be represented by legal counsel, and there was no need for a defense against the state's beneficent interventions. Therefore, youths' competence to participate in a defense was irrelevant.

Then in the 1960s, the United States Supreme Court decisions in *Kent v. U.S.*<sup>23)</sup> and *In re Gault*<sup>21)</sup> required that juvenile courts begin providing many of the same due process rights in delinquency proceedings as in adult criminal proceedings, including the rights to counsel, to avoid self-incrimination, and to challenge evidence presented in the court. However, these two cases were silent on the right of juveniles to be competent to stand trial in the new adversarial proceedings in juvenile court. Within some twenty years, however, about one-third of the states had recognized, either by statute or by case law, the legal concept of competence to stand trial in juvenile court<sup>24)</sup>. This has now increased to about one half of the states, and others will soon follow suit.

Although most states appear to have employed the same Dusky Standard for competence in juvenile court as is applied in criminal court, in some states the standard may be interpreted somewhat differently in juvenile court. A few appellate courts (e.g., *In re Causey*<sup>25)</sup>) have

ruled that immaturity, not just mental disorder, may be the basis for a finding of incompetence in juvenile court.

In the wake of the recent increase in rates of violent offenses among juveniles, there have been many changes in states' laws that place juveniles in jeopardy of highly punitive sentences in juvenile court, including a greater likelihood of waiver to criminal court for trial as an adult. In these trends, the issue of juveniles' competence to stand trial was raised more frequently in the mid-1990s. Consequently, this produced new and more definitive appellate decisions in a few states affirming juveniles' rights to be competent to stand trial in juvenile court.

For example, a recent Georgia case<sup>26)</sup> involved a 12-year-old with an IQ of 40 who was accused of sexually molesting younger mentally retarded youths. Although the juvenile court was of the opinion that the youth was incompetent to stand trial, it denied a motion for incompetence because Georgia appeared not to provide a statutory framework for finding juveniles incompetent to participate in juvenile court proceedings. The Georgia Appellate Court reversed this decision. The court said that to try juveniles in juvenile court when they are incompetent would deny them a fair trial in that they would not be able to exercise other rights that Georgia already recognized as important in delinquency proceedings (e.g., the right to confront opposing witnesses, the right to avoid self-incrimination). In the present case, the youth's incapacities prevented his attorney from mounting any meaningful defense because the youth was unable to communicate with his attorney his own perceptions of the event surrounding the alleged offense. It is important to remember that not all courts will analyze the issues in the same way. In an Oklahoma appellate case, the court decided that juveniles do not have a right to be competent to stand trial in juvenile court because the proceedings are rehabilitative and not criminal<sup>27)</sup>.

In the few instances in which the question has been raised, courts have indicated that the competence of a youth to stand trial in juvenile or criminal court is not determined by any particular age or mental disorder. The matter is weighed according to the totality of circum-

stances, including any characteristics of the youth that might be relevant for the question<sup>28)</sup>.

### 3. Legal process for determining competence : raising the question

Courts presume that both adult and juvenile defendants are competent to stand trial unless the question is raised by defense, prosecution, or the court. Whether such question is raised or not is a matter of discretion. An exception at this time is that in Virginia, where juveniles' competence to stand trial in criminal court must be evaluated in all juvenile court hearings on the issue of a juveniles' waiver to be tried in criminal court. If and when the question is raised, courts in most American states are required to order a competence evaluation by a mental health professional, either by a psychiatrist or a qualified psychologist. The question is usually raised because the court or the defendant's attorney has observed the defendant's some suspicious behavior suggestive of the presence of mental disorder or mental deficiency that seems to be interfering with the defendant's ability to grasp the nature of the trial process or co communicate relevant information to the attorney, such as to provide a coherent account of events related the charges.

Grisso et al<sup>24)</sup> based on available information about children's and adolescents' abilities as described in developmental and clinical literature, recommended that the question of juveniles' trial competence should be asked in cases involving any one of the following :

- Age 12 years or younger
- Prior diagnosis/treatment for a mental illness or mental retardation
- "Borderline" level of intellectual functioning, or record of "learning disability"
- Observations of others at pretrial events suggest deficits in memory, attention, or interpretation of reality

The presence of any of these conditions does not necessarily mean that a competence evaluation should be ordered or performed. They should simply alert the attorney or the court to the potential need to raise the question of trial competences.

**4. Legal process for determining competence : the competence evaluation**

Grisso<sup>28)</sup> presents that a theoretical and empirical perspective for trial competence evaluations of juveniles can be constructed on the basis of past literature on competence to stand trial evaluations with adults, combined with developmental literature on children's and adolescents' cognitive and psychological capacities. He outlines the objectives of a competence to stand trial evaluation in four components : functional, causal, interactive and judgmental.

**1) Describing functional abilities**

The most fundamental objective of a competence to stand trial evaluation is to describe to the court the status of the youth's abilities that are relevant for the legal question. At the broadest level, these abilities are identified in the Dusky standard for trial competence : understanding and appreciating the nature of the court proceedings, and being able to assist counsel in developing a defense. Forensic mental health examiners have found it helpful to use a more specific set of abilities to which these two broad domains seem to refer, focusing on the matters that appellate courts have suggested defendants ought to know or be able to manage as competent trial defendants. One of the more frequently used sets of abilities was developed by McGarry<sup>29)</sup>. They consist of four categories and listed as follows :

**(1) Understanding of Charges and Potential Consequence**

- Ability to understand and appreciate the charges and their seriousness
- Ability to understand possible dispositional consequences of guilty, not guilty, and not guilty by reason of insanity
- Ability to realistically appraise the likely outcomes

**(2) Understanding of the trial process**

- Ability to understand, without significant distortion, the roles of participants in the trial process (e.g., judge, defense attorney, prosecutor, witness, jury)
- Ability to understand the process and potential con-

sequences of pleading and plea bargaining

- Ability to grasp the general sequence of pretrial/trial events

**(3) Capacity to Participate with Attorney in a Defense**

- Ability to adequately trust or work collaboratively with his/her attorney
- Ability to disclose to attorney reasonably coherent description of facts pertaining to the charges, as perceived by the defendant
- Ability to reason about available options by weighing their consequences, without significant distortion
- Ability to realistically challenge prosecution witness and monitor trial events

**(4) Potential for Courtroom Participation**

- Ability to testify coherently, if testimony is needed
- Ability to control own behavior during trial proceedings
- Ability to manage the stress of trial

The abilities in McGarry's list are as relevant for juveniles as for criminal court.

There are a few things that youths need not understand when facing juvenile hearings ; for example, most states have no jury trials in juvenile court.

Bonnie<sup>18)</sup> and his colleagues<sup>30)31)</sup> have offered a somewhat different way to conceptualize functional abilities relevant for trial competence. They focus on the same content areas as the McGarry Structure, but they group the abilities in a different way :

• First, defendants must be able to understand a number of things about their legal situation, the possible penalties, the nature of the trial process and its participants, and information that is acquired as the trial proceeds (e.g., what their attorney tells them about the process and what they are observing as events unfold).

• Second, defendants must have a proper appreciation of the significance of what they understand as it applies to their own situation. For example, a defendant might "understand" that defense counsel is intended to be an advocate, yet the defendant may fail to "appreciate" or "believe" that the attorney is on his or her side due to the

defendant's paranoid delusional state.

• Third, defendants must have the reasoning ability to make important trial-related decisions using the information that they understand and appreciate. For example, cognitive deficits might interfere with their ability to imagine the consequences of various options that are available (e.g., through plea bargaining), or to handle the complex task of considering several consequences related to several available options.

### 2) Causal explanation for deficits in abilities

If youths show deficits in abilities as listed previously, the clinician must explain the probable reasons for those deficits. The more common sources of deficits in such abilities include mental disorders, mental retardation, specific learning disorder, and developmental immaturity. Following up on hypotheses about these clinical and cognitive conditions is thus an integral part of the competence evaluation. The clinician's opinions/reports should include a description of the connection between such deficits in competence abilities and the youth's clinical and developmental status which will assist to address to the later question of remediation : if the youth is incompetent, whether the condition underlying the youth's functional deficits can be modified, and if so, whether and how competence to stand trial can be restored.

### 3) Interaction of abilities and situational demands

The youth's manifest functional deficits in one or more areas, for whatever clinical or developmental reasons, do not answer the question of their competence to stand trial and must be considered in light of the specific demands of the criminal or juvenile court proceeding that the juvenile faces. Competence depends on the degree of match or mismatch between the person's abilities and the actual demands of the situation. This means the evaluation will be of more value if the examiner has some notion of the specific circumstances of the youth's legal situation and the trial circumstances that the youth might face<sup>28)</sup>.

For example, greater demand for various abilities might be requested when :

- the trial is in criminal court rather than juvenile court,
- the juvenile court hearing is for the purpose of deciding whether the youth should be transferred for the trial in criminal court,
  - plea bargaining is likely to be involved,
  - the evidence against the youth is uncertain so that the youth's own ability to provide a coherent, personal account of the events is especially relevant,
  - the trial process is likely to involve many witnesses,
  - the trial is likely to require a more complex legal defense,
  - the defendant is likely to have to testify,
  - the trial is likely to be lengthy,
  - the defendant has fewer sources of social support.

### 4) Conclusion/judgment about competence to stand trial

After reviewing all the relevant data and describing relevant deficits in functional abilities, their clinical or developmental causes, how they might impair the youth's ability to participate in light of the youth's trial circumstances, a conclusion has to be reached in the report. Are the youth's abilities sufficient or insufficient to satisfy the standard for competence to stand trial? The law provides no guiding rules for the judgmental conclusion. Ultimately the judge must return to the purpose of the legal concept : weighing all of the evidence, would it be fair to try this defendant?

### 5) Remediation of competence deficits

If and when a defendant is found incompetent to stand trial, the court must determine whether the conditions responsible for the defendant's incompetence can be changed. Therefore, it is very important for the mental health professional who examines the defendant to provide information relevant for this question. Specifically the examiner must form an opinion concerning :

- whether an intervention exists that could increase the defendant's relevant abilities ;
- if there is, the likelihood of change if that intervention were employed ; and

- the time that is likely to be required to bring about the necessary change.

The purpose of this treatment recommendation is somewhat different from one that is made in ordinary clinical situations. Here, the clinician is not prescribing what would be needed for complete remission of the underlying condition but simply the ways and means in order to prepare the defendant to participate in the trial process. Often the objective of remediation of competence is focused and not as ambitious as in the ordinary clinical situation. For example, treatment might reduce the intrusion of delusional ideas that were interfering with the defendant's perceptions of the trial process, while not necessarily having dealt with a wider range of changes that would be necessary to return the person to community life.

#### 5. Disposition in incompetence cases

If the court finds the defendant competent to stand trial, then the trial process proceeds. If the defendant is found incompetent to stand trial, the court must decide whether the defendant can be restored to competence within a specified time. Many states allow one year. If the court finds that the defendant's condition responsible for the incompetence is not likely to be changed within the period of time, charges must be dismissed. Defendants who meet criteria for civil commitment can then be committed if they are in need of psychiatric care<sup>31)32)</sup>. If there is a reasonable prospect of the condition responding to treatment, the court then can authorize the defendant's treatment to restore competence, usually in an inpatient setting. Trial process is then suspended while the defendant is provided treatment to regain competence. Professionals who are responsible for the defendant's treatment must re-evaluate the defendant's competence status periodically, and must notify the court at any time that they believe the defendant is competent to stand trial. If the defendant is found competent, the trial process will resume. If the defendant has not been restored to competence by the end of the period of time defined by statute, most states require that the charges must be dismissed and a hearing held concerning possible civil commitment.

## Conclusion

The modern concept and implementation of juvenile court system in America have evolved over a century and they are still continuing to undergo changes to protect best the rights of children and adolescents as guaranteed in the Constitution. Although initially modeled after the adults' criteria, the criteria for competence to stand trial for minors have to be continuously studied and modified in order to consider and accommodate the unique developmental aspects of children and adolescents. Judges of juvenile courts need to learn more about the developmental needs of the minors, and the forensic mental health professionals must look into the most effective and reasonable ways of helping judges improve their practical understanding and awareness in the areas. All states must have a clear and reasonable time line and time limits of obtaining competence evaluation reports by mental health professionals and also of adjudication the minors' cases. In all areas of mental health evaluation of minors and also in the adjudication processes each child and adolescent defendant's developmental status should be carefully considered along with the presence or absence of any mental disorder or deficiency. All mental health professionals should continuously strive to protect and sustain the civil rights of children and youths.

## References

- 1) **Smith, SS.** The history and development of forensic medicine. *British Medical Journal* 1951;4707:599-607.
- 2) **Sesto GJ.** Guardians of the Mentally Ill in Ecclesiastical Trials: A Dissertation. Washington, D.C.: The Catholic University of America;1956.
- 3) **Amundsen DW, Ferngren GB.** The forensic role of physician in Roman law. *Bulletin of the History of Medicine* 1979;53:39-56.
- 4) **Prosono, M.** History of Forensic Psychiatry. In: Principles and Practice of Forensic Psychiatry, Richard Rosner, Edit., Chapman & Hall, New York, N.Y.;1994. p.13-29.

- 5) **Van Ommeren WM.** *Mental Illness Affecting Matrimonial Consent. A Dissertation.* Washington, D.C.: The Catholic University of America 1961.
- 6) **Simili A.** The beginnings of forensic medicine Bologna. In *International Symposium on Society, Medicine and Law.* Jerusalem, March 1972, H. Karplus, ed. Amsterdam: Elsevier Scientific Publishing Company 1973.
- 7) **Volk P, Warlo HJ.** The role of medical experts in court proceedings in the medieval town. In *International Symposium on Society, Medicine and Law.* Jerusalem, H. Karplus, ed. Amsterdam: Elsevier Scientific Publishing Company 1973.
- 8) **Platt A, Diamond BL.** The origin and development of the “wild beast” concept of mental illness and its relation to theories of criminal responsibility. *Journal of the History of the Behavioral Sciences* 1965;1:355-367.
- 9) **Walker N.** *Crime and Insanity in England*, 2 vols. Edinburgh: The University Press 1968.
- 10) **Neugebauer R.** Treatment of the mentally ill in medieval and early modern England: A reappraisal. *Journal of the History of the Behavioral Sciences* 1978;14:158-169.
- 11) **Szasz T.** *The Myth of Mental Illness.* New York: Harper & Row (First published in 1953);1974.
- 12) **Eigen JP.** Intentionality and insanity: what the eighteenth century juror heard. In *The Anatomy of Madness: Essays in the History of Psychiatry.* 2 vols., W.F. Bynum, Roy Porter, and Michael Shepherd, eds. London and New York: Tavistock Publications;1985.
- 13) **Reik LE.** The Doe-Ray correspondence: A pioneer collaboration in the jurisprudence of mental disease. *Yale Law Review* 1953;63:183-196.
- 14) **Diamond B.** Criminal responsibility of the mentally ill. *Stanford Law Review* 1961;14:59-86.
- 15) **Dusky v. U.S.,** 362 U.S. 402 (1960).
- 16) **Grisso T.** The competence of adolescents as trial defendants. *Psychology Public Policy and Law* 1997;3:3-32.
- 17) **Godinez v. Moran,** 113 S.Ct. 2680 (1993).
- 18) **Bonnie R.** The competence of criminal defendants: A theoretical reformulation. *Behavioral Sciences and the Law* 1992;10:291-316.
- 19) **Malmquist CP.** Overview of juvenile law. In: *Principle and Practice of Child and Adolescent Forensic Psychiatry.* Schetky, DH, Benedik, EP (Eds), Washington, D.C., American Psychiatric Publishing, Inc;2002.
- 20) **Hawes JM.** *Children in Urban Society: Juvenile Delinquency in Nineteenth Century in America.* New York: Oxford University Press;1971.
- 21) *In re Gault,* 387 U.S. 1 (1967)
- 22) **DePrato DK, Hammer JH.** Assessment and treatment of juvenile offender. In: Schetky DH and Benedek EP (Eds.): *Principle and Practice of Child and Adolescent Forensic Psychiatry.* Washington, D.C., American Psychiatric Publishing, Inc;2002.
- 23) *Kent v. U.S.,* 383 U.S. 541 (1966).
- 24) **Grisso T, Miller M, Sales B.** Competence to stand trial in juvenile court. *International Journal of Law and Psychiatry* 1987;10:1-20.
- 25) *In re Causey,* 363 So. 2d 472 (La. 1978).
- 26) *In the Interest of S.H.,* 469 S.E. 2d 810 (Ga. Ct. App., 1996).
- 27) *G.J.J. v. State,* 778 P.2d 485 (Okla. Crim. 1989).
- 28) **Grisso T.** *Forensic Evaluation of Juveniles.* Sarasota, FL: Professional Resource Press 1998.
- 29) **McGarry L.** *Competence to Stand Trial and Mental Illness* (Publication No. ADM 77-103). Rockville, MD: Department of Health, Education and Welfare;1973.
- 30) **Poythress N, Hoge S, Bonnie R, Otto R, Edens J, Monahan, J, Nicholson R, Eisenberg M, Feucht-Haviar T.** *The MacArthur Competence Assessment Tool – Criminal Adjudication (MacCAT-CA): Introduction and Preliminary Research Findings.* Unpublished manuscript, Florida Mental Health Institute, University of South Florida, Tampa, FL 1997.
- 31) **Hogo S, Poythress N, Bonnie R, Monahan J, Eisenberg M, Feucht-Haviar T.** *The MacArthur Adjudication Competence Study: Diagnosis, psychopathology, and adjudicative competence-related abilities.* *Behavioral Sciences and the Law* 1997;15:329-345.
- 32) *Jackson v. Indiana,* 406 U.S. 715 (1972).