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Incompetency to Stand Trial: Treatment Unaffected by Demographic Variables

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ABSTRACT: The results of previous studies of the assessment of a defendant's competence to stand trial have suggested that demographic characteristics of the defendant have influenced diagnostic and treatment decisions. This study investigated the effect of three such demographic characteristics on the length of treatment of defendants committed because of incompetency to stand trial. Length of treatment was chosen because it had been the focus of the U.S. Supreme Court's decision in *Jackson v. Indiana.* The institution from which data were analyzed was the North Florida Evaluation and Treatment Center, a forensic mental health treatment center located in Gainesville, Florida. The records of 1090 defendants committed for such treatment between 1978 and 1984 were coded and collected. The demographic composition of the institution was found to parallel that found in the prior studies and to reflect that of the criminal justice system generally. Statistical analysis, using linear regression, revealed, contrary to researchers' expectations, that length of treatment did not appear to be influenced by the demographic factors of race, education, or marital status.

KEYWORDS: jurisprudence, competency, demography, incompetency to stand trial, insanity, mental health, psychiatrist, treatment, forensic institution

The determination of the mental competency of criminal defendants to stand trial has become an area of significant research in the last decade [*1*]. Although the insanity defense [(not guilty by reason of insanity) (NGRI)], publicized in the cases of John Hinckley and David Berkowitz, has captured public interest [*2*], its impact on the criminal system is slight when compared to the number of defendants historically found to be mentally incompetent to stand trial (ICST). The number of criminal defendants raising the issue of competency to stand trial is almost twelve times the number of defendants raising insanity as a defense [*3*]. In addition, the number of those defendants determined to be ICST has undergone an increase in recent years [*4*].

In the case of *Jackson v. Indiana* [*5*], the U.S. Supreme Court addressed the issues of the length and the propriety of commitment of a defendant for treatment to restore competency to stand trial. Before the *Jackson* decision, incompetent defendants had been subject to lengthy commitment for treatment, commitment which could exceed the maximum prison sentence for the offense itself. The lengthy commitments were disproportionately severe for what could have been a misdemeanor offense, and were not always related to the availability of treatment [*5,6*]. While the *Jackson* decision was intended

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to remedy the problem of inappropriate commitments for treatment, the causes of excessive length of treatment were not addressed by the court and have been studied infrequently by researchers. Mental incompetency to stand trial is not the same as insanity, mental illness, or mental retardation. This incompetency is not a psychiatric concept, but is a legal requirement in which the defendant's capacity to understand the proceedings, assist the defense, and consult with counsel are the essential components [*7,8*]. These components and criteria were outlined by the U.S. Supreme Court in *Dusky v. U.S.* [*9*]. Although the concepts of mental illness and incompetency are disparate, untrained mental health evaluators have frequently equated mental retardation or psychosis with incompetency [*10*].

The *Jackson* decision underscored the difficulty of balancing the right of the accused to a fair trial with society's right to resolve the issues arising from the criminal charge. The evaluator has an ethical obligation to achieve such balance [*11*]. In the interaction between the judicial and mental-health care systems, the friction between the conflicting rights frequently has produced a situation in which the defendants have found themselves in a "no-man's land" between the mental health and legal systems [*12*].

The determination of competency and treatment to restore a defendant to competency are two areas in which the mental health system has become an important adjunct to the criminal-justice system [*13*]. Psychiatrists, psychologists, and other mental health care providers perform the assessment of the defendant utilizing a variety of screening procedures and instruments, some defined by statute, and communicate the results of the assessment to the courts [*14*]. Some researchers have noted that this communication between the mental health evaluators and the legal profession is frequently minimal [*15*]. The lack of communication concerns not only the treatment necessity and appropriateness, but also the treatment goals and probable duration.

The treatment to be afforded an incompetent defendant is that required to restore the defendant to competency [*5,16*]. Mental health professionals have tended to expand the limited purpose of treatment in the competency context, viewing treatment as that designed to restore a patient to mental health rather than to restore a defendant to competence [*16*]. Researchers have also noted that the length of treatment can be affected by factors unrelated to restoration to competency [*17*]. The current study examined the impact of three salient demographic variables—race, marital status, and education—upon the length of treatment for restoration to competence to stand trial.

Understanding the extent to which both mental health care providers and members of the legal profession are influenced by the varying demographic characteristics of the defendants is critical in understanding the process of competency assessment and treatment. It is important to know whether the differences in assessment and treatment are real or the result of an inherent bias in the system [*18*]. The current study was created to clarify the influence of selected demographic variables on the length of treatment of a defendant committed to a forensic treatment center. Each of three selected demographic variables will be discussed with a review of the literature regarding that variable as it has been shown to affect ICST defendants.

Demographic Variables

Race

In a multiracial society such as in the United States, the variable of race or ethnicity is critical to any demographic study. The importance of race is highlighted by the once widespread overt prejudice against non-whites. Race or ethnicity has been examined as a variable by a number of different scholars. Studies that have investigated the relationship between race and defendants found to be incompetent to stand trial have not been

consistent. None of the studies reviewed, however, examined the relationship between race and the length of treatment time, but examined the relationship between race and the initial competency determination.

Cooke et al. argued that the mental health care providers make a subjective decision regarding the existence and extent of the defendant's abnormality [*18*]. The health care providers made this decision based upon a comparison of the defendant's behavior to the mental health care provider's own norms. The norms are those behaviors that are considered to be typical by members of the culture. These norms are both explicit and tacit, and the failure of the defendant to meet the mental health care provider's cultural norms would result in a diagnosis of abnormality. Cooke et al. [*18*] found that since most mental health care providers were white, blacks tended to be overclassified as being deviant, usually found by the evaluators to be psychotic, while whites in a comparable situation were frequently classified as having only a personality disorder.

The cultural bias hypothesis makes logical sense in our society, but the majority of existing studies have failed to support those findings [*18*]. A number of studies reported the raw percentages of racial composition of the subject pool with no statistical inference, leaving the readers to draw their own conclusions. Roesch [*19*] reported that 41% of the defendants found to be incompetent were black, but reported no statistically significant differences. Bluestone et al. [*20*] examined repeat offenders who were referred for multiple competency examinations and found that 46% were black, 40% were Hispanic, and 14% were white. This study did not report any statistical significance. A 1985 study by Reich and Wells [*21*] found that defendants found incompetent were more likely to be black than white, but that the percentages failed to be statistically significant. A later analysis by Reich and Wells [*22*] reported 53.8% of the defendants studied were white and 36.2% were black. This difference also failed to be significant. Two studies, however, have found a statistical difference regarding race [*6,23*]. Rachlin et al. [*6*] found that blacks were overrepresented in a pool of incompetent misdemeanants, whereas Pasewark et al. [*23*] reported that the acquitted defendants were significantly likely to be non-Caucasian and were also hospitalized for a shorter length of time. The study also found that acquittal rates were significantly higher for white women than for others, but that race made no difference in acquittal rates of male defendants.

A number of studies have concurred that blacks make up about 40% of the mentally ill population. Miller et al. [*17*] reported a 60/40 ratio of whites to blacks in the population of all committed patients. They also found a 69/31 ratio of white-to-black defendants found incompetent to stand trial. This study failed to find any significant differences between the defendants and the total sample of all committed patients.

Studies that examined defendants found to be insane, or mentally disordered sex offenders (variously called MDSOs, sexual psychopaths, or defective delinquents) have resulted in findings similar to those involving defendants found incompetent to stand trial. A study of defendants seen for a presentence psychiatric exam by Protter and Travin [*24*] that included incompetent, insane, and mentally disordered sex offender defendants reported that blacks made up 42% of the sample and that 40% were Hispanic. A study of both incompetent and insane defendants by Daniel et al. [*3*] revealed that 82% of their sample were white and 15% were black. Three percent were classified as "other." Despite the percentages that appeared to be at variance with other studies, this study did not find any statistical significance in regard to race.

A study of defendants found to be not guilty by reason of insanity by Pantle et al. [*25*] reported that no significant ethnic differences were found. Pasewark [*26*], in a follow-up study, examined similar subjects and reported that whites were overrepresented in both the samples of those pleading insanity and those found to be insane. Bonheur and Rosner's [*27*] examination of sex offenders found that 61% were black, 20% Hispanic, and 19% white. No statistical conclusions were provided for this study.

Although the evidence suggests that the variable of race is not highly correlated to that of incompetence to stand trial, the existence of those studies that do indicate a racial difference would warrant additional research. Further, the failure to find a difference would call into question the cultural bias hypothesis of Cooke et al. [*18*].

Marital Status

A fairly consistent finding among the studies that have investigated the marital status of male defendants found incompetent to stand trial has been that relatively few were married or living with a female partner. Almost all of the studies treated marriage and common law marriage as being equivalent. These studies, however, examined marital status as a variable affecting determination of competency itself, and not the effect of the variable on the length of treatment.

A study by Cooke et al. [*18*] found a difference in marital status between black and white incompetent defendants. The finding, however, appeared to support a racial difference in the tendency to legalize separation rather than a genuine difference based on marital status. Roesch et al. [*28*] reported that only 9.8% of subjects found incompetent to stand trial were married. A study by Bluestone et al. [*20*] that examined repeat incompetent defendants found that 77% of the defendants had never been married. Hodgins [*4*] noted in a study of subjects found incompetent to stand trial that only 10.3% of the males lived with a partner, while 34.4% of the females did so.

One study that reported a higher rate was conducted by Daniel et al. [*3*]. Their study reported a marriage rate of 50%. However, this study used both incompetent and insane defendants, and the marriage rate might be the result of their mixed subject pool. A study of incompetent defendants by Reich and Wells [*22*] found the defendants more likely to be unmarried. Another study that demonstrated the low marriage rate of incompetent defendants was conducted by Rachlin et al. [*6*]. They found that such defendants were significantly more likely to be single (never married, divorced, or separated) than married.

The majority of the insanity or sex offender studies also have reported their subjects as having low marriage rates. Bonheur and Rosner [*27*] found only 17.75% of the sex offenders in their study to be married. Pasewark [*26*] found an overrepresented sample of divorced and separated NGRI defendants. A follow-up study of Pasewark et al. [*23*] found no significant differences in marital status between men and women; however, the study concluded that marital status was statistically significant for acquitted defendants. Pasewark et al. [*29*] reported a marriage rate of 21% for the male NGRI defendants and 27% for the females. Interestingly, the figure for the divorced/separated/widowed males was 18%, whereas the rate for males who had never been married was 61%.

The consistent finding through the body of literature that has investigated the marital status of incompetent defendants is that the male defendants who are not currently married will be overrepresented in the sample.

Education

Only a few studies have investigated the educational level of defendants found incompetent to stand trial. The existing literature has indicated that such defendants possess a fairly low level of education, averaging about ninth- or tenth-grade level. It is not clear how education interfaces the assessment of competency, nor is it clear how education interfaces with the length of treatment time for restoration to competence to stand trial.

Bluestone et al. [*20*] found that the modal education level of their subjects was about the ninth grade. Only 4% of their subjects have some college education. Roesch et al. [*28*] found no significant education differences between those defendants found fit to

stand trial (incompetent) and those found unfit. Of the subjects only 16% had an elementary education, 44% had a junior-high education, 29% had some or completed high school, and 11% had some university education. Daniel et al. [3] found that education was significantly related to competency and responsibility. Defendants who had attained higher levels of education were more likely to be found to be competent or responsible. Another study that looked at both incompetent and insane defendants was conducted by Hodgins [4]. This study reported a mean educational level of eight years for the male defendants.

The two studies by Reich and Wells [21,22] found that educational level affected the finding of incompetence within the subject pool. In their 1985 study of defendants found incompetent to stand trial, 25% of the subjects had received up to eight years of schooling and only 15% had completed high school. The study found an inverse relationship between competency and education, indicating that the more education the defendant possessed, the less chance of being found competent. This finding is reversed from the finding of Daniel et al. [3]. Reich and Wells [21] reported that education's influence was completely eliminated with the addition of the diagnosis variable. Their study of repeat ICST defendants reported that repeaters tended to have less education [22]. This study did not disclose if the diagnosis variable superseded education.

The education results of studies of defendants found to be insane or to be sexual psychopaths are similar to the majority of studies involving defendants found incompetent to stand trial. One New York study that contrasted the results of Daniel et al. [3] was reported by Pasewark [26]. This study obtained a bimodal distribution with acquitted NGRI defendants with a high education and those with no education being overrepresented. Pasewark et al. [23] found no significance between convicted and acquitted NGRI defendants. The average acquitted male had ten years of education and the average convicted male eight years. The figures were reversed for females, with convicted females averaging around ten years and acquitted females averaging around eight years of education. Another follow-up study by Pasewark et al. [29] reported a mean education level of 10.7 for NGRI defendants. Bonheur and Rosner [27] found that over 75% of the sex offenders were high-school dropouts.

The studies that have examined the education level of defendants found incompetent to stand trial as well as the insanity/sex offender studies indicate that the average defendant is probably a high-school dropout with a ninth-grade education. The evidence suggests that defendants with higher educational levels are less likely to be adjudged either incompetent to stand trial or insane.

Method

The instant study utilized the length of the defendant's hospitalization as the dependent measure. The measure was chosen for two reasons: (1) it is a variable addressed by the *Jackson* [5] decision and related directly to restoration of competency as a treatment goal, and (2) the length of treatment is a variable directly controlled by the mental health care providers and not by influences external to the treatment facility. If demographic variables are influencing the treatment providers, the effect should be seen in the length of the defendant's hospitalization.

Subjects

The subjects were 1090 clients who were discharged from the North Florida Evaluation and Treatment Center (NFETC) between 1978 and 1984. The pool comprised the entire subject population of the institution. The subjects had been admitted for treatment to restore competence to stand trial. NFETC, located in Gainesville, Florida, provides

inpatient treatment exclusively to forensic clients. It is one of three such institutions in the state of Florida. Only male clients are admitted to NFETC; female clients are placed in another facility. At the NFETC, the clients must be ambulatory and free from serious illnesses or chronic disabilities. The age range of the clients extended from 17 to 65. All types of forensic commitments are served by the NFETC, including defendants found to be not guilty by reason of insanity, to be mentally disordered sex offenders, or to be mentally incompetent to stand trial.

Incompetent defendants committed to NFETC were evaluated by mental health care providers and treated until their competency was restored. At that time, the defendants were referred back to the committing court for final disposition. While the treatment program could be of indefinite duration. NFETC (1986) reported that the mean time of incompetent defendants' treatment was approximately 5.5 months [*30*].

Procedure

Prior to their admission to NFETC, the defendants underwent a court-ordered competency assessment by several mental health care providers, usually three independent psychiatrists. After admission to the NFETC, the defendant underwent an initial formal assessment by an assessment team, with additional assessments conducted of the defendant at regular intervals. A discharge assessment was performed before the client's release. These assessment reports were coded for the defendant's demographic characteristics by trained raters. The assessment reports were coded and collected for all discharged defendants at NFETC for the years between 1978 and 1984, including those committed for treatment after being found not guilty by reason of insanity or being found to be a mentally disordered sex offender. In the current study, only the data relating to clients treated for restoration to competency to stand trial were examined. The coded and collected reports were assembled into a database which constituted the basis for the present study. The statistical manipulation was performed by the SAS Pc 6.02 version software. A linear regression procedure, chosen because of its analytical power, was used to perform the analysis of the data.

Results

Because of values missing from the subject pool and the limitation of the pool to those being treated for restoration to competence, 1019 subjects formed the basis of the analysis regarding race. Contrary to what had been expected, there was no statistically significant difference in length of treatment based on race. Although there were differences between the three groups of black, Hispanic, and white defendants, these differences failed to produce a high enough *F*-value to reject the null hypothesis that a significant difference existed. Five hundred twenty-one white defendants (51% of the population studied) had the highest mean length of treatment with 178.26 days and a standard deviation of 152.48. Forty-one Hispanic defendants had the next longest period of confinement, with a mean treatment time of 174.73 days and a standard deviation of 133.88. The 471 (45%) black defendants had the shortest mean length treatment of 171.24 days and a standard deviation of 119.78. Although these differences are interesting, race as a variable was far from significant (F-value = 1.7, 2 DF, $Pr > F$ of 0.1837) (Table 1).

The number of subjects used to conduct the analysis of the variable of marital status, because of values missing from the data sample, was 882. Married subjects made up 13% of the sample, having a mean length of treatment of 158.99 days with a standard deviation of 117.78. Unmarried defendants made up 87% of the sample. This figure breaks down into 20% for divorced, having a mean treatment length of 166.9 days with a standard deviation of 132.35, 65% for never married with a mean treatment length of 180.8 days

TABLE 1—*NFETC data analysis—ICST.*

Dependent variable: length of treatment
Independent variable: race
Date: 23 Feb. 1988
General Linear Models Procedure

Class	Levels	Values		
Education	3	Black	Hispanic	White

NOTE: Because of missing values, only 1019 observations were used in this analysis.

Source	DF	Sum of Squares	Mean Square	*F* Value	*Pr* > *F*
Model	3	12 000.1674	6000.0837	0.32	0.7298

Level of Variable	*N*	Mean	Standard Deviation
Black	457	171.24	119.78
Hispanic	41	174.73	133.89
White	521	178.26	152.48

and a standard deviation 146.7, and 2% for widowed, with a mean length of treatment of 173.11 days and a standard deviation of 103.9. While the differences for marital status are interesting, the differences again fail to reach a statistically significant level (*F* - value = 1.04, 4 *DF*, *Pr* > *F* of 0.3757) (Table 2).

Eight hundred ninety-six subjects formed the basis of the analysis of education as a variable affecting length of treatment. In contrast to much of the existing literature, defendants with less than a ninth-grade education made up only 35% of the sample. The education level with the highest percentage representation was the twelfth-grade education level with 29%, while only 3% were college graduates. While the differences in education level are moderately interesting, indicating that the overall educational level of residents is higher than that reported in other studies, education was not significant as a determinant of length of treatment (*F*-value = 2.24, 16 *DF*, *Pr* > *F* of 0.0033) (Table 3).

No interaction effects were found for any of the three variables.

Discussion

The results of this study are not inconsistent with what would be expected from much of the existing literature insofar as the findings address the demographic profile of the institution's population as a whole. The studies reviewed, however, had examined primarily the commitment decisions of the judicial system and the demographic characteristics of the defendant population as a whole, rather than the effects of the demographics on length of treatment of the committed defendant. The current study shows a demographic population similar to that reported in the literature. The racial makeup of the institutional population as a whole reflects the approximately 60% white, 40% black division in population shown in other studies [*17,22,24*]. As was found in other studies, the educational level of the client population showed that the majority of clients had less than a high-school education, although the level of clients who had reached or graduated from high school appeared higher than that shown in other studies [*3,20–22,28*]. The marital status of the general population also reflected prior findings that the constituent population is primarily single, with relatively few married subjects [*3,6,20,22,28*].

TABLE 2—*NFETC data analysis—ICST.*

Dependent variable: length of treatment
Independent variable: marital status
Date: 23 Feb. 1988
General Linear Models Procedure

Class	Levels	Values			
Education	4	Divorced	Married	Single	Widower

NOTE: Because of missing values, only 882 observations were used in this analysis.

Source	DF	Sum of Squares	Mean Square	*F* Value	*Pr* > *F*
	3	60 717.83	20 239.27	1.04	0.37

Level of Variable	*N*	Mean	Standard Deviation
Divorced	172	166.92	132.35
Married	117	158.99	117.78
Single	575	180.82	146.73
Widower	18	173.17	103.96

TABLE 3—*NFETC data analysis—ICST.*

Dependent variable: length of treatment
Independent variable: education
Date: 23 Feb. 1988
General Linear Models Procedure

Class	Levels	Values
Education	17	0 1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16

NOTE: Because of missing values, only 896 observations were used in this analysis.

Source	DF	Sum of Squares	Mean Square	*F* Value	*Pr* > *F*
	16	428 648.77	26 790.54	1.37	0.1489

Level of Variable	*N*	Mean	Standard Deviation
0	6	135.16	76.80
1	5	362.60	334.94
2	9	180.44	80.80
3	17	231.12	194.21
4	24	168.75	124.43
5	15	98.00	42.73
6	30	205.07	127.97
7	43	154.02	122.78
8	75	185.28	140.23
9	88	180.36	159.82
10	121	169.64	144.91
11	89	166.98	125.33
12	260	181.94	135.34
13	29	179.69	143.37
14	47	177.34	167.47
15	12	147.83	103.31
16	26	152.04	100.99

The primary finding of note in this study is that, although the general demographics may correspond with those of studies involving the commitment decision and those studying the constituent population of defendants in the judicial system, the variables examined had no statistically perceptible effect on the treatment activities of the mental health professionals within the institution. While other variables might be found which would have some statistical significance, one would assume the reason to be that the professionals' treatment procedures are based on the client's mental illness and treatment needs rather than on external demographic variables.

There are, however, other factors which might be profitably evaluated with respect to the treatment decisions, factors unrelated to the client's illness but which were not specifically addressed in this study. In addition to those variables suggested by Pasewark et al. [*23*], other demographic variables of the defendant such as charge, psychological diagnosis, and prior hospitalizations need to be investigated. In contrast to the suggestion of Roesch et al. [*28*] that mental health care providers used information besides the diagnosis to reach their assessment conclusion, we conclude that the evidence does not indicate that the mental health care providers were influenced by extrinsic demographic factors in determining the defendant's length of treatment time.

Future research might be directed at an analysis of the staff variables. This direction would be similar to the conclusion of Pasewark et al. [*23*]. The variables that they examined did not account for 78% of the total variance. They suggested that characteristics of the treatment staff, the defendant's family, and legal resources be investigated. Although their dependent variable was not the length of treatment time, we concur that these variables need to be researched.

Issues raised by the legal requirement that a defendant be found competent to stand trial are by no means clearcut. Nor are the causes of the variance in the length of treatment time to restore a defendant to competence. If the *Jackson* [*5*] decision of the U.S. Supreme Court had an effect on defendants being treated for restoration to competence to stand trial, that effect would be most visible in the length of treatment time of individual defendants. The fact that such specific influence was not found underscores the complexity of the phenomenon, but suggests that psychiatric treatment decisions are being based on the needs of the client, and not on the client's demographic picture.

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