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Competency to Stand Trial Evaluations: Using Vignettes with Patients Who Lack Insight

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Abstract

In the United States, an attorney may request a competency to stand trial evaluation if they are concerned that their client is not mentally fit to adequately participate in their case and defense. Patients found incompetent must undergo treatment for restoration of competency, regardless of their willingness. Clinicians and psychiatrists may use vignettes, or hypothetical scenarios, to help restore competency if the patient lacks insight into their mental illness. While vignettes have been well documented in studying attitudes and awareness, decision making, and identifying mental illness, there is little to no research into their use in psychiatric hospitals due to the limitations of studying patients who lack the insight and motivation to participate in their own treatment. This paper explores how the use of vignettes in short-term inpatient facilities may decrease patient stays and encourage restoration of competency, while use in long-term facilities may allow for patients to analyze all aspects of the criminal situation, including before, during, and after the incident.

Keywords: competency to stand trial, inpatient rehabilitation, insight, vignette

Competency to stand trial evaluations (CSTs) are evaluations attorneys can request for their clients if the attorney believes their client is suffering from a mental illness or a condition that would impact their ability to participate effectively in their case. CSTs are the most common forensic evaluation, with recent estimates reaching 130,000 assessments given annually, although researchers suggest that this number may be low due to a lack of jurisdictional data (Kois, 2022; Murrie et al., 2022). These evaluations are typically completed by a clinical psychologist or psychiatrist with experience in forensics and they may cover pertinent personal history, mental health history, basic facts about the court system, the patient's current charges, and the patient's physical and mental state (Cruise & Rogers, 1998). While there are various rehabilitation treatments for individuals who are found not competent, new rehabilitative methods revolve around using vignettes. A vignette is a short, descriptive, hypothetical situation developed to understand decision making. Vignette research is slowly being applied to the forensic context, but it may also be a prospective method to restore competency in patients who lack insight into their mental status.

History and Standards of Competency

The 14th Amendment of the Constitution affords everyone the right to due process of law, including a fair trial and the ability to assist in their defense. The standards for competency can be traced back to English common law, where it was illegal to prosecute an individual who was "mad" and unable to participate in their defense (Blackstone, 1783). *United States v. Lawrence* (1835) was one of the first American cases to address the sanity of the defendant. In this case, the Supreme Court ruled that the sanity of the defendant is assumed to be sound unless contrary evidence is presented. With more time and research into mental health and how mental health affects cognitive processing, the legal system adjusted to accommodate these findings. The Court argued that prosecuting an individual who is incompetent at the time of the court proceedings infringes not only on their Constitutional right, but can harm the patient mentally and physically, nullify any court outcomes, and invalidate the due process of law (*Drope v. Missouri,* 1975). *Dusky v. United States* (1960) set forth the current competency standards in which the defendant must possess a "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" (p. 402). *Dusky* set the precedent for the United States standards (Pirelli et al., 2011).

Adhering to the standards outlined in *Dusky*, in order to be found competent in Virginia courts the patient needs to have a factual and rational understanding of their legal situation and charges. The patient must also have the ability to effectively assist their attorney in their defense (Raising question of competency to stand trial or plead; evaluation and determination of competency, 2023). To possess a factual understanding means that the patient has a basic understanding of courtroom procedure, personnel, and their role in the court system, as well as an understanding of their charges, their consequences, and knowledge of the situation in which they procured them (Zapf & Viljoen, 2003). Example questions may include *What is the defense attorney's job? What is the role of a judge? What are your plea options? What are they saying you did? How did you acquire the charges?*

Rational understanding refers to a patient's ability to make decisions based in reality; *Godinez v. Moran* (1993) further explained rational understanding to mean that the patient was capable of making reasonable choices. Most often, patients with diagnosed schizophrenia or a disorder with persisting delusions lack a rational understanding of their legal situation (Cruise & Rogers, 1998). For evaluation purposes, patients must be able to make decisions based on realistic circumstances rather than delusions or fictional circumstances.

The final facet of competency is that the patient must be able to assist their attorney in their case, which includes being able to carry an effective conversation, providing usable evidence for their case, and deciding on a plea option using rational logic (Zapf & Viljoen, 2003). For patients to be found competent by an evaluator, they must meet all three criteria.

CST evaluations are meant to assess the patient's current state of mind and how they present during the evaluation. A Mental State at the Time of Offense (MSO) evaluation is used primarily for insanity cases.

In certain cases, patients have the opportunity to use a Not Guilty by Reason of Insanity plea (NGRI), which focuses on their state of mind during their alleged crime (Matthews, 1998). Patients can be both insane at the time of the crime and incompetent; however, they can also be one or the other. Many patients could use an NGRI plea and be perfectly competent at the time of trial. Patients could also be of sound mind during their alleged crime and not competent at the time of the trial.

United States v. Lawrence (1835) established that patients must be deemed legally competent to proceed with their charges. Patients found incompetent must undergo treatment for restoration of competency, regardless of their willingness. The charges and court proceedings are delayed until the patient is deemed competent. After patients are found to be incompetent, they are referred for either outpatient treatment or, more often, inpatient treatment at a state-run behavioral health facility. For patients in legal custody, this stay is typically short-term (60 days or less) and focuses on rehabilitation in their factual and rational understanding. With the combined use of behavioral therapy and medication, patients are given the resources to be reevaluated and return to jail to settle their cases (Cabeldue et al, 2021).

Factors That Influence Competency

Many factors contribute to an individual's success while admitted to a behavioral health facility, most notably their willingness to cooperate with treatment. Several researchers have identified factors that may contribute to incompetency and readmission. Schreiber et al. (2015) found that patients deemed incompetent were more likely to have a comorbid substance use disorder, lack employment, have a criminal record, and have a civil psychiatric history. Paradis et al. (2016) discovered that most individuals deemed incompetent suffered from a psychotic disorder and had been hospitalized previously; contrary to Schreiber (2015), they found that there was a lower rate of substance abuse in their patients. This difference could be due to the type of population sampled (e.g., only violent offenders). Cabeldue et al. (2021) found that immigration status, the presence of a psychotic disorder, and the suspected exaggeration of the symptoms of their disorder all increased the likelihood of a patient being readmitted to a behavioral health facility after being found competent in the past.

Patients who are willing participants in their recovery are usually reevaluated and released back to jail within the typical two-month period allotted by the courts. However, many patients who require restoration display symptoms that impact their understanding of their legal situation and mental illness. This leads to roadblocks to competency, including refusal of medication and behavioral treatment, failure to cooperate with treatment providers, and a general persistence of symptoms. Refusal of medication is a common occurrence in mental health facilities, but can be overridden by a psychiatrist who requests treatment over the patient's objection (Russ & John, 2013). A judge's approval to override a patient's refusal of medication means that patients may be treated with psychotropic medications against their will. By law, patients are required to be competent, thereby justifying the use of court orders to provide treatment in behavioral health facilities (Cabeldue et al., 2021). Unfortunately, patients who require this override typically do not adhere to treatment recommendations and have a higher rate of relapse for criminal behavior after receiving rehabilitation for a previous crime (Russ & John, 2013).

Oftentimes, patients who refuse treatment are those who lack insight into their mental status.

Certain patients are more difficult to treat than others due to the history and nature of their illness. Mental illnesses can present with a range of features and severity. Symptomology, the study of the combined signs and symptoms that indicate a specific disease or disorder, has a direct impact on the cooperation and willingness of a patient. The presence of a psychotic disorder is significantly correlated with readmittance (Cabeldue et al., 2021). Patients with a psychotic disorder, such as schizophrenia or bipolar disorder, or who refuse treatment may lack insight into their illness and how it affects them. While the concept of insight has been researched in the psychiatric community, its vague definition and disconnect between the patient and treatment provider can cause obstruction in restoration services.

Vignettes and Rehabilitation Services

A vignette is a short and descriptive hypothetical situation developed to understand decision making. Vignettes are used methodologically in various fields, including social psychology and criminology research, to elicit realistic responses from participants as to what they would do if they experienced the hypothetical situation. Standard interviews may not produce as in-depth responses or as useful insight into the participants' cognitive processes as interviews which utilize hypothetical situations; allowing the interviewee to reflect on their attitudes helps limit investigator bias (Schoenberg & Ravdal, 2000; van Gelder et al., 2019). Hypothetical situations allow the researcher to assess a participant's insight and their internal decision making processes. Researchers use follow-up questions to gain clarification and to discern the reasons as to why the participant may have picked one option over another. This methodology is ideal for patients who need to understand legal decision making.

When compared to general information about the court system and charges, vignettes provide an additional level of realism through storytelling.

Rehabilitative services commonly use hypothetical crime situations to assess a patient's reasoning and level of understanding. After patients have understood the factual material of the court system and their case, working through hypothetical situations helps to reveal the patient's current level of rational understanding and insight. These vignettes allow the patient to apply their knowledge to a hypothetical situation similar to theirs. Some researchers still have reservations about using vignettes because there may be a lack of immersion and reality within the situation (Parkinson & Manstead, 1993); Collett and Childs (2010) found that the lack of a tangible experience impacted a person's ability to relate to the vignette. This suggests that using tactile or visual resources to create the illusion of authenticity may allow patients to join information from educational resources to plausible examples. When compared to general information about the court system and charges, vignettes provide an additional level of realism through storytelling. Social psychologists use methods similar to this; rather than just asking *what would you do if…,* the question becomes *if you were in their situation, how would you proceed?* (Sai & Furnham, 2013).

The realistic nature of hypothetical scenarios allows the patient to make decisions based on the information provided to them. When using vignettes during treatment, it is important for the patient to only draw from information in the story to make a decision rather than from outside or personal information. Additional information unrelated to the fictional case may skew the patient's understanding or inhibit their ability to rationally process the case and situational evidence. It is also critical to emphasize the situation from a first-person point of view; situations that are conveyed in a third-person point of view allow the patient to consider evidence and factors potentially unrelated to the case, as well as the viewpoints of other characters (Parkinson & Manstead, 1993). Realistic scenarios should be incredibly detailed, including relevant contextual detail about the location, timeline, offender, and victim of the alleged crime. Including this data may mitigate the opportunity for patients to integrate their personal experiences into the vignette (van Gelder et al., 2019).

Using hypothetical situations with patients who lack insight, or awareness of their mental illness, allows treatment providers to see into the patients' current insight level, identify symptoms of mental illness, and assess their ability to think critically in a situation (Sai & Furnham, 2013). While certain patients may be unable to consider their current legal situation rationally, working with them to understand the charges of a fictional character may build rational decision making and further patients' understanding of different types of criminal charges, their consideration of plea options, and the weight of realistic evidence against a lack of such. In addition to providing a hypothetical situation, utilizing visuals can provide further realism in the exercise (van Gelder et al., 2019). For competency patients, including photographs of the altercation, various types of evidence, location of the crime, and faux police reports/witness statements can help the patient in connecting to their own case.

The use of more realistic materials in criminal decision making research has been further explored with virtual reality systems (van Gelder et al., 2019). While the use of this type of technology is limited for inpatient facilities, using photographs and tactile materials enhances the effectiveness of written vignettes. Although these resources are not as effective as immersive experiences, additional tactile resources allow the patients a more comprehensive view of the situation. The use of photographs and faux police reports allows patients to consider "real" evidence in a case. The ability to accurately understand this evidence and make a rational argument on how to plead involves many mental processes. Success in this task typically leads to a successful competency outcome. Realistic materials may also be used with patients who might require further inpatient treatment. Patients who lack insight may not believe they are criminally responsible for anything, so gathering data on their decision making when they do not participate is difficult (Matthews, 1998). Often, patients with these symptoms are quickly transferred to a long-term unit or another specialized restoration facility. This often suspends the timeline for rehabilitation put forth by the courts, so individuals have an indefinite amount of time for rehabilitation. With the elimination of a deadline, vignettes in this setting may provide further resources on how to mitigate criminal interactions after hospitalization. Developing the skills to analyze where the hypothetical character went wrong is an additional use of these hypotheticals.

By presenting patients with clear choices, the vignettes directly draw from the patients and their decisions.

The use of vignettes as a treatment tool is common, yet systematic research on the efficacy of vignettes is lacking. Vignettes have been well documented in studying attitudes and awareness (Schoenberg & Ravdal, 2000), decision making (van Gelder et al., 2019; Collett & Childs, 2010), and identifying mental illness (Sai & Furnham, 2013); however, research using vignettes in psychiatric hospitals is scarce. Due to frequent patient rotation, studying the effectiveness of using hypothetical situations to decrease a patient's stay is difficult. For the short-term inpatient setting, rehabilitation services primarily focus on psychotropic treatment and group behavioral therapy. Patients must have a satisfactory understanding of the criminal justice system before attending group sessions and patients with severe mental illness typically do not make an effort to attend group or practice sessions with staff. While there are limitations for inpatient facilities, using alternative behavioral treatment methods with patients for whom traditional methods were ineffective allows them additional resources to study. Hypothetical scenarios can increase group participation and activity because of their design. Similar to a narrative, patients have the opportunity to engage in the story and "choose the path" of the character. By presenting patients with clear choices, the vignettes directly draw from the patients and their decisions. These story methods provide a change of pace from traditional group therapy sessions and will ideally increase patient participation and engagement.

A Multidimensional View of Insight and Mental Illness

Insight in the psychiatric sense can refer to many facets of human understanding, but its simplest definition is "the patient's ability to acknowledge some awareness of having a mental illness" (Matthews, 1998, p. 18). Defining insight has been difficult in the psychiatric community as many proposed definitions fail to gather data as to how the patient feels and understands their environment. This lack of a universal definition has perpetuated confusion for both psychologists and patients. For most general psychiatrists, insight may be described as "good" or "poor," both of which lack depth and specific reasons behind each choice (Greenfeld et al., 1989).

With the development of more specific and individual focused methods of treatment, clinicians further broke down insight into two categories: intellectual insight and emotional insight. Intellectual insight may refer to an individual's capacity to attribute psychiatric symptoms or illness to personality traits, interpersonal conflicts, abnormal development, or life events (Greenfeld et al., 1989). Greenfeld et al. (1989) defined emotional insight as the capacity to understand how unconscious motivations and conflicts influence thinking and behaviors.

Patients who lack insight are often also patients who use "sealing over" as a coping technique. McGlashan et al. (1975) used the phrase "sealing over" to describe patients who have a perpetual negative view about their current mental status and do not want to understand their symptoms or seek treatment for them. In comparison to patients who have integrated their symptoms into their daily life and seek to understand how they are affected by them, insight-lacking individuals often end up in long-term care facilities due to their inflexibility.

The concept of insight may further include awareness and attribution (Amador et al., 1993). If a patient is aware of their symptoms, they are able to recognize their symptoms as abnormal or unusual. Attribution refers to the patient's capacity to understand that what they are currently experiencing is due to their mental illness or dysfunctional cognitions. However, even if patients can identify and discuss their symptoms, they often attribute another cause to those symptoms (e.g., work stress; Greenfeld et al., 1989).

Thinking of insight on a continuous scale as opposed to a discrete scale allows for greater exploration and specificity in regard to how insight properties influence patients; by using multidimensional measurement scales, practitioners are able to assess insight and make prognosis predictions based on a patient's present understanding of their illness (Amador et al., 1993). Insight may also be used to predict compliance levels in patients (Lysaker et al., 1994). Successful rehabilitation requires patients to be cooperative with the treatment providers; lack of willingness from patients typically provokes a longer rehabilitation time and creates a continuous cycle of experimental treatments and hospital stays.

While patients who lack insight are more difficult to treat, there is hope for them to return to a functional baseline. Viewing insight dimensionally allows the treatment provider to adjust treatment options to specific needs. From a patient's point of view, being described as having "poor" insight gives them little understanding as to why the treatment provider labeled them this way. A collaboration between the patient and treatment provider may improve the patient's cooperation and adherence to treatment (Williams et al., 2015). There are several treatment options for patients who lack insight, including psychotropic medication, intensive restoration group therapy sessions, individual therapy, and alternative treatment activities. Creative forms of therapy, such as writing (Ruini & Mortara, 2022), art (Shulka et al., 2022), or music (Hwang, 2023), have proven to be effective in various populations. Utilizing creative forms in treatment may encourage the patient to expand their interests in reality-based ways.

Conclusion

The CST evaluation is one of the most common exams for individuals on trial with a history of mental illness. Being deemed incompetent can create confusion for the patient, especially if they are experiencing symptoms that impact their daily functioning and understanding of reality. Going through the restoration process at an inpatient facility is common but can bring its own challenges for patients. Most units are not specialized for specific disorders and utilize basic psychotropic and behavioral therapy options. Treatment can be long and arduous for patients who lack insight into their mental illness. Medications may be given despite objection, and group participation may be little to none. Involving these patients in engaging treatment options may decrease symptoms and increase their chances of discharge. The use of vignettes is common in behavioral treatment plans and during competency exams themselves. They may increase the patient's factual understanding of the criminal process and defendant options. They can also be used to analyze their rational understanding and effective decision making skills. While the systematic study of these techniques is lacking, psychiatrists have found them to be helpful for patients. Using vignettes in short-term inpatient facilities may decrease patient stays and encourage restoration; use in long-term facilities allows for patients to analyze all aspects of the criminal situation, including before, during, and after the incident.

Author's Note

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Katelyn Fuller ('22) is currently a master's candidate at Marymount University, studying Forensics and Legal Psychology. While at James Madison University, she worked in the Cognitive Development lab with Dr. Krisztina Jakobsen, participated in the American Criminal Justice Association, and performed in the Marching Royal Dukes. Katelyn plans to pursue her doctorate in clinical psychology and focus on restoring competency with adult and juvenile clients.

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