



19 Mental Illness and Legal Fitness (Competence) to Stand Trial in New York State

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After attending this presentation, attendees will be able to describe recent scientific data on the association between mental illness and fitness to stand trial. Specifically, attendees will be able to describe a statistically significant association between findings of mental illness and forensic opinions on fitness to stand trial. In addition, attendees will be able to describe further, in-depth analysis of the "Not Fit" cases, including the statistical analysis of the significance or lack of significance of the BPRS scales. This analysis includes both individual symptom constructs and also the clusters of symptom scales as informed by the literature.

This presentation will impact the forensic science community by emphasizing research methodology and statistical analysis in achieving its educational objectives.

The proposed presentation is a report on the outcome of a research study conducted under the auspices of the New York University (NYU) School of Medicine Forensic Psychiatry Training Program. It was approved by the Institutional Review Boards of both NYU (R#11-00503) and the New York City Health and Hospitals Corporation (Bellevue Hospital #030711-Bel-S0069). The study was a case-controlled review of charts at the Forensic Psychiatry Clinic of Bellevue Hospital, a large, urban general and specialty care public hospital in New York City. This clinic provides evaluations of Fitness to Stand Trial for criminal defendants referred under New York State Criminal Procedure Law 730.

"Fitness" to stand trial is an important issue in the adjudication of criminal defendants with known or suspected mental illness. When adjudicating a criminal defendant, the assessment of the defendant's fitness to stand trial can be a crucial decision point in legal disposition. Most defendants are presumed to be fit (competent) to stand trial. When a defendant's competence is called into question, lawyers and judges consult psychiatrists and psychologists for forensic opinions on the defendant's capacity to stand trial. "Competence" to stand trial is the legal term for fitness, as designated by a judge. "Capacity" is a finding of competence as opined by the forensic clinician.

In 1960, *Dusky v. U.S.* (362 U.S. 402), a landmark case, established what is usually taken to be the minimal constitutional standard for adjudicative fitness in the United States. In this case, the U.S. Supreme Court stated that the test for competence to stand trial was "whether [Dusky had] sufficient present ability to consult with his lawyer with a reasonable degree of rational understanding—and whether he [had] a rational as well as factual understanding of the proceedings against him."¹ Psychiatrists and psychologists generally rely on *Dusky* as the standard when evaluating defendants' fitness to stand trial. New York State's Criminal Penal Code defines Incapacitated Persons as those defendants who, as a result of mental disease or defect, lack either the capacity to understand the proceedings against them, or lack the capacity to assist in their own defense.² Incapacitated persons are then court-ordered for interventions to restore fitness.³

Many clinical instruments have demonstrated validity and reliability in quantifying the degree of functional incapacity resulting from mental disorders. The Brief Psychiatric Rating Scale (BPRS) is an instrument developed to quantify psychiatric symptomatology.⁴ The BPRS is a very widely used and relatively brief scale that measures major psychotic and non-psychotic symptoms in individuals with major psychiatric disorders, particularly schizophrenia. The BPRS rating is based upon observations made by clinicians during clinical evaluations, and is generally accepted as appropriate for evaluating baseline psychopathology in outpatient as well as inpatient populations.⁵ Numerous studies utilize the BPRS as a highly efficient and rapid evaluation procedure to yield a rather comprehensive description of major psychiatric symptom characteristics.^{6,7} Sixteen symptom constructs were originally listed for rating on a seven-point scale, which document the intensity of symptoms in relatively independent areas. The sixteen original items were: conceptual disorganization; unusual thought content; anxiety; guilt feelings; grandiosity; depressed mood; hostility; somatic concern; hallucinatory behavior; suspiciousness; blunted affect; tension; emotional withdrawal; mannerisms and posturing; motor retardation; and, uncooperativeness. Subsequent additions to the scale were two additional items of excitement and disorientation. The 18-item BPRS is perhaps the most researched instrument in psychiatry.⁵ A more recent publication highlighted the need for replicating BPRS factor analysis in forensic samples.⁸

The study's research methodology and resulting data structures have important implications for the reliability and validity of its interpretations. Inter-rater reliability, test-retest reliability and inter-method reliability, all apply to both the scales of the BPRS and the findings of Fitness/Unfit. In addition, the BPRS is being explored as possibly to become an initial screening tool, to aid New York lawyers and judges in deciding which criminal defendants to refer to the clinic for Fitness assessments. Thus, the degree of validity of the BPRS as a screening tool for Fitness will be discussed.

The study's limitations will also be discussed, including the reliability of the clinic's slightly-modified version of the BPRS. Separately, the evaluators' training in using the BPRS instrument will be discussed as well.

References:

- ¹Mossman D et al "AAPL Practice Guideline for the Forensic Psychiatric Evaluation of Competence to Stand Trial" in *J Am Acad Psychiatry Law* 35:Supplement_4:S3-S72 (2007)



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