

JUVENILE ADJUDICATIVE COMPETENCY AND RESTORATION SERVICES

CREATING A FORENSIC SERVICE DELIVERY SYSTEM FOR JUVENILES

Janet I. Warren, DSW
Professor of Psychiatry and Neurobehavioral
Sciences
University of Virginia
jiw@virginia.edu
2014

OVERVIEW OF PRESENTATION

- Legal basis of adjudicative competency
- Conducting a clinical assessment of competency
- Uniqueness of competency in juvenile court
- Writing a report concerning competency
- Offering an expert opinion on competency and restorability
- Contours for offering services to incompetent juveniles
- Final outcomes of competency proceedings

LEGAL BASES OF ADJUDICATIVE COMPETENCY

- Mute of malice versus mute by visitation of God/1600s
- *Dusky v. United States*, 362, U.S. 402 (1960)
- *Jackson v. Indiana* 406, U.S., 715 (1972)
- *In re: Gault* 387, U.S., 1 (1967)
- *Sell v. United States*, 539, U.S., 166 (2003)
- *California Welfare and Institutions Code Section, 709*


DUSKY V. UNITED STATES, 362, U.S. 402 (1960)



DUSKY V. UNITED STATES, 362, U.S. 402 (1960)

- Milton Dusky, was 33-year-old man, who had been diagnosed with schizophrenic and alcoholism, and was upset about his wife leaving him to go with his brother.
- After drinking heavily, he drove with two adolescent boys, who were friends of his son, across state lines, with a 15-year-old girl the boys knew previously.
- Dusky turned the wheel over to one of the youth, who drove to an isolated location, and with his friend, raped the girl.
- Dusky attempted to rape the girl but was unable. He later could not remember what had occurred.

DUSKY V. UNITED STATES, 362, U.S. 402 (1960)

-  The Supreme Court ruled:
- "It is not enough for the district judge to find that 'the defendant [is] oriented to time and place and [has] some recollection of events.'
- Rather, the Supreme Court affirmed in a 0-9 decision:
- Test must be whether "*he has sufficient, present ability to consult with his lawyer with a reasonable degree of rational understanding -- and whether he has a rational as well as factual understanding of the proceedings against him.*"

DUSKY V. UNITED STATES, 362, U.S. 402 (1960)

Dusky v. U.S.
(1960)

Present ability to consult
with attorney with
reasonable degree of
rational understanding

Rational and factual
understanding of
proceedings

DUSKY V. UNITED STATES, 362, U.S. 402 (1960):

- *Capacity:* Attempts to educate are appropriate
- *Present:* Fluctuates over time/may require reassessment
- *Contextual:* Degree of understanding/complexity of charge
- *Reasonable:* Bar is low/not require legal sophistication
- *Rational:* Synthesize information to own situation

JACKSON V. INDIANA 406 U.S. (1972)



JACKSON V. INDIANA 406 U.S. 715 (1972)

- *Jackson v. Indiana (406, U.S., 1972):* Theon Jackson, a cognitively impaired deaf mute who could not read or write or communicate in other ways, was charged with two counts of petty theft.
- He was charged in 1968 with stealing the purse of two women worth four and five dollars, respectively.
- A CST evaluation was conducted and the psychiatrist opined his intelligence was too low for him to understand the charges against him and the probability of him being restored were "rather dim."
- Nevertheless, he was committed to a psychiatric facility for treatment but later petitioned the Supreme Court asserting that this commitment was paramount to a life sentence.

JACKSON V. INDIANA 406 U.S. 715 (1972)



▪ The Supreme Court ruled:

▪ A defendant could not be held longer than the *reasonable period of time necessary to determine whether there is a substantial probability that he would attain competency in the foreseeable future.*

- *If it is determined that he will not, the State must either institute civil proceedings applicable to the commitment of those not charged with a crime or release the defendant.*

IN RE: GAULT 387 U.S. 1 (1967)

- Abraham "Abe" Fortas
- Appointed by Johnson
- Sat from 1965-1969 and stepped down because of ethics controversy
- Believed constitutional protections could be offered youth without undermining informality/flexibility of juvenile court



IN RE: GAULT 387 U.S. 1 (1967)

- Gerry Gault, a 15-year-old boy, was arrested by Sheriff of Gila County in Arizona for making obscene phone calls to a neighbor, Ms. Cook, on June 6, 1964.
- He was arrested and taken to the police station without his parents being informed and despite him saying his friend had made the phone call from their trailer.
- Three hearings in total were held without witnesses being sworn and with neither the petition or probation report being provided to the youth or his parents. The victim never appeared to identify the boys.
- At the end of the third hearing, the Judge sentenced Jerry to six years in detention until he reached the age of 21 years. The maximum sentence for an adult was two months in jail and \$50 fine.

IN RE: GAULT 387 U.S. 1 (1967)



- US Supreme Court concluded:
- "Neither the Fourteenth Amendment nor the Bill of Rights is for adults alone."
- These requirements included adequate notice of charges, notification of both the parents and the child of the juvenile's right to counsel, opportunity for confrontation and cross-examination at the hearings, and adequate safeguards against self-incrimination.
- Abe Fortas wrote in the Court's opinion: *Due process of law is the primary and indispensable foundation of individual freedom. It is the basic and essential term in the social compact which defines the rights of the individual and delimits the powers which the state may exercise.*

SELL V. UNITED STATES, 539, U.S., 166 (2003)

- In 1997, Charles Thomas Sell, a St. Louis dentist with no criminal history, was charged with 56 counts of mail fraud and later with the intent to kill the FBI agent who arrested him.
- He was found incompetent at the Medical Center for Federal Prisoners and the center sought to involuntarily medicate Sell based upon argument that his delusional thoughts made him dangerous.
- In a divided opinion (6-3), the Court held that involuntary administration of medication was permissible if a strong government issue was at stake, if there was a substantial probability that medication would enable the defendants to become competent, and the medication was necessary to restore competency with no less intrusive means being available.

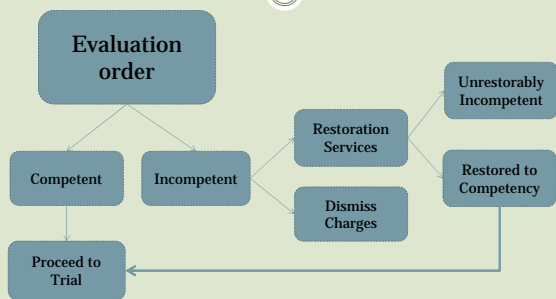
**CALIFORNIA WELFARE AND INSTITUTIONS
CODE SECTION, 709**

- In 2010, a law passed stating that a minor is incompetent to proceed if:
 - "lacks sufficient present ability to consult with counsel and assist in preparing his or her defense with a reasonable degree of rational understanding; OR
 - lacks a rational as well as factual understanding, of the nature of the charges or proceedings against him or her."
- Incompetence may be the result of a mental disorder, developmental disability, developmental immaturity, or other conditions that result in a failure to meet one or both prongs of the standard.
- Because the standard relates to the child's ability to participate meaningfully in the court proceedings, it calls for present competence; it is not enough that the he or she could become competent in the future.

ASSESSING ADJUDICATIVE COMPETENCY

- Competency usually raised by defense but can be raised by judge or DA
- Issue can be raised any point during the trial process until sentencing
- High level of agreement between evaluators and decision by judge
- All defendants presumed competent to stand trial (*Medina v. California, 1992*)
- Incompetency proven by the preponderance of the evidence (*Medina; Cooper v. Oklahoma, 1996*)
- Youth found incompetent suffer from intellectual disabilities, mental illnesses, both, and other conditions often attributed to immaturity.

**LEGAL CONTEXT OF COMPETENCY
ASSESSMENT**



ASSESSING ADJUDICATIVE COMPETENCY

There are many things that a competency assessment is not:

- A vocabulary test
- A knowledge test
- A psychological assessment
- A psychiatric assessment
- A psycho-social summary
- An IQ test
- Scholastic aptitude testing
- A neuro-psychological assessment
- An assessment of sanity at the time of the offense
- A sentencing or transfer evaluation
- An expert legal discourse on legal process and constitutional rights

ASSESSING ADJUDICATIVE COMPETENCY

• But what competency is, always:

- Test must be whether he has *sufficient present* ability to consult with his lawyer with a *reasonable* degree of *rational* understanding -- and whether he has a *rational* as well as *factual* understanding of the proceedings against him. "
- And because this is a forensic assessment, the evaluator must:
 - Remain objective and neutral
 - Understand and explain limits to confidentiality
 - Stay specific to referral question
 - Understand 5th amendment rights and protect these
 - Be investigative and use collateral sources robustly

ASSESSING ADJUDICATIVE COMPETENCY

- Understand the alleged offense, including seriousness and potential penalties.
- Can articulate facts pertaining to the alleged offense
- Understands roles of all of the participants in a trial, including the prosecutor, defense attorney, judge, and witnesses
- Understands purpose of a trial and the adversarial nature of court procedures
- Understands implications, drawbacks, and benefits of a plea bargain
- Understands rights of the defendant including the right to deny an offense and avoid self-incrimination
- Reason through common legal choices and options such as a plea bargain
- Communicate, understand, and retain information
- Assist counsel as reflected in motivation to help/trust defense attorney
- Maintain proper courtroom behavior
- Understands the pros and cons of a potential trial

ASSESSING ADJUDICATIVE COMPETENCY

- Capacity is focus so attempts to clarify and teach are indicated/required
- No need to repeat testing done previously with no inconsistency
- Need to get collateral information to know what has been determined previously and to explore alternate hypotheses.
- Speak with primary care givers for history/ everyday functioning
- Obtain account of the offense but DO NOT include in report, directly or indirectly
- It is a clinical assessment that unfolds and not a question and answer that suggests some quasi-quantitative outcome.

ASSESSING ADJUDICATIVE COMPETENCY

- Jackson F. is a 13 year old boy with a long history of behavioral problems particularly in school settings
- Differential diagnosis include Bipolar Disorder, Depression, and ADHD
- He functions in the above average level of intellectual ability but with wide scatter on subscales and with a diagnosed learning disability
- Charged with assault and battery and assault on a police officer at school
- Records obtained from all past schools, two inpatient hospitalizations, psychological evaluation, neurology consultation, juvenile court petitions, and telephone interview with his mother

TAPE 1: JACKSON F.

ASSESSING ADJUDICATIVE COMPETENCY

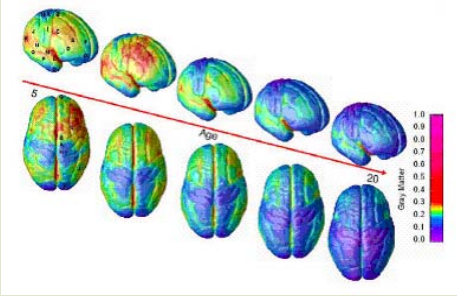
- Calibration involves the question of how much is enough
- Involves the contextual question of the extent to which the juvenile court lowers the bar for determining competency
- How do you address the issue of decisional capacity with youth?
- Need to determine the opinion based upon totality of the information
- Ultimate and penultimate final decision concerning competency
- What does clear incompetency look like?

ASSESSING ADJUDICATIVE COMPETENCY

- Ryan Y. is a 17.9 year old youth charged with two counts of statutory rape and one count of forcible sodomy, one girl aged 12
- Extremely passive child and adolescent, vulnerable to peer pressure, and with an inordinate desire to be liked and accepted by peers
- Tested with Full Scale IQ of 67 and was the recipient of special education from the age of 7 with significant problems in language processing, listening comprehension, reading comprehension, and basic reading skills
- 19 collateral sources of information including IEP reports, educational testing reports, classroom observation summaries, offense information, prior forensic reports, and interview with the mother

TAPE 2: RYAN Y.

DEVELOPMENTAL IMMATURITY NIMH



JAY GEIDD, MD, NIMH

- The adolescent brain is not a broken or defective brain
- It is exquisitely forged by the forces of our evolutionary history to have different features compared to children or adults
- These include increased risk taking, increased sensation seeking, and greater peer affiliation.
- Clear relevance to separation from natal family and less inbreeding

DEVELOPMENTAL IMMATURITY



ROPER V. SIMMONS 543, U.S., 551 (2005)



- In Missouri, Simmons a 17-year-old high school student broke into the home of Shirley Cooke with a friend and binding her with duct tape, drove to a state park and threw her off a bridge. He “wanted to murder someone.”
- 5-4 decision with Justice Kennedy, writing for the majority, stating: “[r]etribution is not proportional if the law’s most severe penalty is imposed on one whose culpability or blameworthiness is diminished, to a substantial degree, by reason of youth and immaturity.”
- It was noted that “adolescents are overrepresented statistically in virtually every category of reckless behavior.” (Arnett, 1992), they lack the freedom that adults have to extricate themselves from a criminogenic setting (Steinburg and Scott, 2003) and they have personality traits [that] are more transitory, less fixed (Erikson, 1968).

**DEVELOPMENTAL IMMATURITY
(SCOTT, GRISSO, WOOLARD, STEINBERG)**

- *Perceived autonomy*
 - Approaching situation as if responsible for making independent decisions about solving problems
- *Perceptions of risk*
 - Youth tend to focus more on the rewards they might obtain rather than the negative effects they may experience based upon some action
- *Time perspective and future orientation*
 - Youth experience time differently and tend to place less weight on long range consequences
- *Abstract and probabilistic thinking*
 - Youth move from relatively concrete thinking to increasingly abstract forms of thought

**MACARTHUR JUVENILE ADJUDICATIVE
COMPETENCY STUDY (GRISSO ET AL. 2003)**

- 33 percent of 11-13 year olds and 25 percent of 14-15 year olds are as impaired on the MacCAT-CA as incompetent adults
- Juveniles of below average intelligence are more impaired than juveniles of average or above intelligence
- Adolescents are more likely to confess, disclose to attorney, and accept pleas in ways that imply conformity with authority figures
- Younger adolescents are less able to recognize the risks inherent to their decisions or think them significant
- Younger youth were less likely to use future consequences when describing their choices

ASSESSING DEVELOPMENTAL IMMATURITY

- Zachary Parker M is an 10 year old boy charged with unlawful and intentional fire setting
- He was tested with an Full Scale IQ of 118 but suffered from a short attention span, difficulty listening to instructions, and an inability to complete assignments on time
- Diagnosed with ADHD at age 3 years and treated with Adderall since age 7 years
- 13 collateral sources of information obtained including educational assessments, classroom observation reports, outpatient psychiatric records, interview with treating psychiatrist, and interview with mother

TAPE 3: ZACHARY M.

IDENTIFYING PRODROMAL SCHIZOPHRENIA

- Increasing recognition of prodromal stage of psychotic disorders: North American Prodromal Longitudinal Study
- Structured Interview for Psychotic Risk Syndrome (SIPS)
- Criteria for Psychosis Risk Syndromes:
 - Brief Intermittent Psychotic Syndrome
 - Attenuated Positive Symptom Syndrome
 - Genetic Risk and Deterioration Syndrome
- Risk of conversion was 35% with decelerating risk over 2.5 years
- More deterioration, higher genetic risk , substance abuse increased risk

PSYCHOLOGICAL TESTS/STRUCTURED INTERVIEWS

- Juvenile's Adjudicative Competency Interview (JACI, 2005)
- MacArthur Competence Assessment Tool for Criminal Adjudication (MacCAT-CA, 1999)
- Evaluations for Competency to Stand Trial- Revised (ECST, 2003)
- Fitness Interview Test-Revised (FIT-R, 1998)
- Competency Test to Stand Trial – Mental Retardation (CAST-MR, 1999)
- Georgia Court Competency Test- Mississippi State Hospital version (GCCT_MSH, 1988)

MALINGERING

- Malingering is a rule out in every forensic assessment
- Intentional production of false or grossly exaggerated symptoms, motivated by external incentives
 - Avoid work or conscription
 - × Or school
 - Evade criminal prosecution
 - Obtain financial compensation or drugs
- V65.2
- Inconsistency across records and areas of functioning best indices but can also use tests or structured interviews such as MMPI-A, SIRS-2, SIMS

MALINGERING (BENDER, 2013)



REPORT WRITING: WHY?

- Meets requirements of the Code
- Helps you discover what you think and why
- Memorializes procedures, reasoning process, and opinions
- Develops compelling basis for opinions & recommendations
- Enables informal use of psycho-legal information by courts

REPORT WRITING: FOR WHOM?

Who is reader	Patient or professional	Attorney or Judge
Privilege	Patient-therapist	Attorney-client
Sources of data	Mainly self report	Multiple sources
Disclosure	See HIPAA	See state/case law
Purpose of report	Assist the patient	Assist attorney/ inform the court
Writer's tone	Empathic/supportive	Impartial/objective
Advocacy	For the patient	For the opinion
Report addresses	Presenting problem	Psycho-legal question
Expertise required	Clinical	Clinical + forensic

REPORT WRITING: INCLUDE WHAT?

- Referral question and limits of confidentiality
- Listing of ALL sources relied upon in reaching opinion
- Social history relevant to inferences/opinions
- Statements/observations of defendant using direct quotes
- Explicit "walk-through" of findings, reasoning, and opinion

REPORT WRITING: EXCLUDE WHAT?

- Prejudicial information that can be used by prosecution
- Any information about the alleged offense, directly and indirectly
- Diagnoses that are not relevant to competency
- Unexplained jargon (use footnotes, or in-text explanations)
- Unnecessary and repeated psych. testing or neuropsychological
- Unsupported conclusions or opinions
- Ultimate issue opinion - take them to the brink, but TOF decides

REPORT WRITING: HOW?

- Chose a structure/format/font to use in all reports
- Create a document that follows the structure of testimony
- Every fact must be traceable back to its origins
- Reasoning should be explicitly detailed and articulated
- Opinion should be predictable by time the reader reaches it
- Choice of words matters and rationality is paramount

REPORT WRITING: HOW?

- Defendant name, date of birth, date of report, and subject
- Referral information and nature of charge (need not describe)
- Sources of data– received and attempted
- Notification of purpose of evaluation and limits on confidentiality
- Relevant background information (family, psychiatric, educational, medical)
- Mental Status (formal MS, psych. testing, diagnostic impression, if relevant)
- Understanding of legal situation and capacity to assist attorney
- Conclusion concerning competency and opinions concerning restorability

REPORT WRITING: CHECK HOW?

- Proof-read. Then have trusted colleague, proof-read again
- Double-check to *make sure your CST report has no statements regarding offense*
- Check the fax number. Again. Use password protected e-mail
- Avoid multiple drafts of the same report
- Check for any flights of fancy or unnecessary aggravating information – you do not want to inadvertently harm the defendant
- The report should be vivid and compelling in its argument

REPORT WRITING: COMMON ERRORS?

- Being a one trick pony and doing what you do best
- Using jargon to impress or not noticing its presence
- Using spell check as only editing and proof reading (TRAIL)
- Thinking longer is better but actually an inconvenience to reader
- Letting the account of the offense creep in inadvertently
- Using colloquial language, without using quotation marks.
- Not using quotes thinking abstract concepts more sophisticated

REPORT WRITING: LESSONS LEARNED

- Highlight relevant material once and try to write in sections
- Finish up a day ahead and re-read in the light of day
- Avoid all hyperbole/embellishment in ideas or word choice
- Assure that there are NO facts that are not attributable
- Assure there is NO account of offense anywhere in report
- Accept inconsistencies and identify these in opinion
- Do your best work as reports have a long tail/stakes are high
- Ensure your CV is properly prepared for court review

REPORT WRITING: RAUL TORRES

- In the past, Raul has exhibited significant deficits in these areas, and his ability to consistently articulate his understanding remains limited, particularly on his first efforts to do so. However, restoration counseling notes suggest that he has made significant progress in knowledge and understanding, and he demonstrated this knowledge and the ability to apply it in a rational manner with me. In these interviews, his knowledge was at times limited, and he could not reliably provide some information when first asked, but with changes in questioning (including simplified wording, repeated queries, and further education) he was able to show improved understanding that clearly went beyond rote repetition or mirroring of what had been said to him and illustrated actual conceptual understanding. Beyond discussion of the facts of court procedure, Raul's comments in discussions about court and other matters indicated that he can reasonably and rationally understand and make decisions about relevant to his legal involvement. For example, comments that a defendant must share fully with his attorney so that the attorney can be prepared to respond if such information is presented by the prosecution, spontaneously offered, illustrate not only factual knowledge but also the ability to take temporal and interpersonal perspective in much more than a rudimentary manner.

REPORT WRITING: RAUL TORRES

- These findings are consistent with observations of teachers who note that despite limitations, Raul can successfully learn with intensive one-to-one support and maintain learned material with continued support, and with the fact that he is expected to receive a standard high school diploma shortly.
- However, it is critical to note that despite having these capacities Raul is a significantly impaired adolescent, with deficits that stem from a combination of intellectual limitations, learning disabilities, the influence of emotional factors, and developmental immaturity. He often has trouble expressing what he knows, and the knowledge and reasoning that he does possess is limited when compared with most of his same-aged peers. He is easily confused, may be easily misled, and, particularly when emotionally activated and/or under pressure, is likely to have great trouble making sound and rational decisions. Given these limitations, two recommendations are offered to enhance his effective participation in his defense and the decision-making that may be required of him:

REPORT WRITING: RAUL TORRES

- If in the course of a trial or other hearing Raul must make important decisions, he would benefit from time to think them through and interpersonal support while doing so. If he is required to make complex or weighty decisions on the spot, or decisions that require him to consider long-term outcomes, his cognitive deficits, impulsivity, and immaturity would likely lead to impairment in reasoning and judgment. Thus, ensuring his understanding, and allowing a break to confer with his attorney if he were required to make unexpected decisions could be helpful.
- If Raul is found competent to stand trial, it may be useful for restoration counseling to continue up to the point of his trial or the case's resolution. Because his deficits in understanding can be addressed through one-on-one support, the provision of ongoing restoration counseling would likely enhance his understanding and self-interested decision-making. If appropriate, the restoration counselor could, in conjunction with his attorney, help Raul consider specific issues that may arise.

RESTORING YOUTH DETERMINED INCOMPETENT

- Requires a return to Jackson v. Indiana:
- A defendant could not be held longer than the *reasonable period of time necessary to determine whether there is a substantial probability that he would attain competency in the foreseeable future.*
- Two goals of providing restoration services:
 - Assist the youth in attaining competency and proceed to trial
 - Determine that youth is unlikely to be restored in the foreseeable future and divert from juvenile justice system

BASIC TENETS OF A GOOD RESTORATION PROGRAM

- Based upon appropriate legal standard
- Time sensitive (96 hr. records/14 days report/3 mo. hearings/1-3 yrs.)
- Community-based (not psychiatrically hospitalized/residential care)
- Individualized and integrative (ACE and CRSP)
- Developmentally and culturally appropriate
- Dyadic in nature (not based upon a group format)
- Training-based (BA with experience and 3 days training/supervision)
- Dose-sensitive (minimum of 2-3 times a week)
- Data-driven (case management tool/goal to establish evidence-based practice)

RESTORATION SUPERVISOR AND ROLE IN PROGRAM

- Licensed mental health clinician, six day juvenile forensic training, and three days of restoration training
- Conducts the Admission Competency Assessment when youth assigned to program:
 - Summary of past and possibly contradictory CST reports, relevant educational and psychological records, opinion concerning competency and present impairments
 - Likelihood of restorability (8 session if considered UICST)
 - Relevant interventions including case management/educational tools
- Face to face supervision of youth and restoration counselor
- Recommends to program administrator when independent competency assessment should be scheduled

RESTORATION COUNSELOR AND ROLE IN PROGRAM

- BA educational requirement with prior experience working with children and three days of restoration training
- Conducts restoration sessions with youth in LRE two to three times a week:
 - Restoration Intensive Case Management (RICM)
 - Psycho-educational Training (PET)
 - Availability for all status and competency hearings (COURT)
- Continues to collect relevant background records, schedules appointments, monthly face to face review with Restoration Supervisor
- Primary conduit between youth and family and the court system and keep all informed about progress and issues in a neutral and non-partisan manner

BEGINNING RESTORATION SERVICES

- Locating the youth and guardian
- Establishing a relationship with youth and family
- Getting releases of information signed/permission to transport, etc.
- Requesting relevant records and retrieving them
- Determining time and place of restoration services
- Determining essential case management activities
- Assessing learning style of youth/primary interests
- On-going assessment of restorability and needs for RICM and PET

RESTORATION CASE MANAGEMENT (RICM)

- Restoration case-management addresses barriers to competency
- Applicable only to barriers that impact adjudicative competency
- Builds upon a trusting relationship with the youth and family
- Involve assessing, arranging, coordinating, monitoring, evaluating, and advocating, transporting, etc.
- Need to consider issues of safety and create a safety plan when necessary
- Imperative to stay neutral to adversarial pulls and not become overly attached to youth or family

RESTORATION CASE MANAGEMENT (RICM)

- Psychiatric review, referral, medication monitoring
- Special educational assessment and referral
- Family services and support (homeless, without food, domestic violence, etc.)
- Medical needs and assessments (glasses, hearing aide, diabetes, head injures)
- Transportation and scheduling assistance
- Communication with family and guardians
- Communication with collaterals (attorney, teachers, court clerk, judge, physician)
- Attendance at status and competency hearings
- Record keeping and supervisory sessions

RESTORATION CASE MANAGEMENT (RICM)

- Psychiatric review, referral, medication monitoring:
 - Review records to assess prior use of medication and response
 - Assessment by appropriate professional
 - Funding for buying medication
 - Purchase and delivery to youth
 - Education of adults responsible for care of youth
 - Compliance with medication/assess side effects
 - Transfer as youth changes living situation
 - Ensure compliance prior to any court appearance

RESTORATION CASE MANAGEMENT (RICM)

- Special education and assessment and referral:
 - Obtain and review all past educational assessments and IEPs
 - Review information contained in the IEPs:
 - Present level of academic performance: Current skills, grade levels, social/emotional factors
 - Behavior Intervention Plan: Interventions for behaviors that interfere with learning process
 - Accommodations : Techniques used to enhance performance such as noise buffers, use of technology, breaks etc.
- Provides counselors and post restoration evaluators the youth's IQ, specific disabilities, and history of onset of disabilities

RESTORATION EDUCATION AND TRAINING

- Interactive learning tool: DJ and Alicia and their day in Court
- Flash cards to go with DJ and Alicia
- Board of juvenile court and adult court
- Penalty Pyramid game
- Red Light/Green Light puppet faces
- Matching Games
- Bingo
- Crossword puzzles
- U-tube videos and sports or movie clips

RESTORATION EDUCATION AND TRAINING

- DJ and Alicia Going to Court Interactive Application
 - 24 chapters with exercises in between each of them
 - Legal capacities
 - Reasoning and decision-making
 - Perceived autonomy
 - Perceptions of risk
 - Time perspective
 - Abstract thinking
- DJ gets transferred to adult court and takes a plea bargain/Alicia goes to court in juvenile court and is found innocent
- NO words all point and click images
- Individual sessions monitored with data transferable to UVA

DEMONSTRATION OF DJ AND ALICIA

ADMINISTRATING THE RESTORATION PROGRAM

- Remain aware that the program is a mental health program positioned in the middle of an adversarial process
- The program must be viewed as neutral by both the defense and prosecuting attorneys –communicate with one, communicate with the other.
- Requires staff to become adept at going into the court room and providing testimony as lay witnesses
- The county or state must be prepared to invest resources to ensure consistent services, by well-trained staff, and reasonable turn around times for entry of youth into program
- Need to be able to track each youth with all appointments, court appearances, supervisory sessions of staff , independent evaluations, different locations of youth, and identity of all attorneys, GALs, judges and specialists.

DEVELOPMENT OF CASE MANAGEMENT SOFTWARE (CMS)

- Creation of software for use by the Program Administrator, Restoration Supervisors, and Restoration Counselors
- Each has access to the level of information relevant to their specific function
- Allows for creation of a paperless program with all records, independent evaluations, progress notes, supervisory sessions, restoration times and activities, court orders, clinical diagnoses, educational assessments, contact information, and evaluation of program by youth and guardian included in it
- Currently accessed using a UVA e-mail address and e-token which accesses the level three servers that supports the program at UVA
- Session-based data for each youth can be transmitted into the CMS after each use of DJ and Alicia
- Demonstration of two action screen from the RY case management software

Demonstration of CMS Application

HOW DO YOU KNOW YOU ARE DONE?

- RC and Supervisor determine the youth is not making progress and never will – UICST
 - ✦ Order an independent outcome evaluation by trained juvenile evaluator
 - ✦ Might say stick with it and continue a while longer
 - ✦ Youth found URIST and diverted from juvenile justice system
 - ✦ Charges against youth are dismissed by the District Attorney
- RC and Supervisor determine youth has been restored to competency
 - ✦ Order an independent outcome evaluation by trained juvenile evaluator
 - ✦ Could lead to a contested competency hearing
 - ✦ Often Judge agrees with evaluator and youth proceeds to trial
- RC and Supervisor determine that youth is still not competent but likely will be in the foreseeable future
 - Letter is sent to court for three month hearing and services are continued

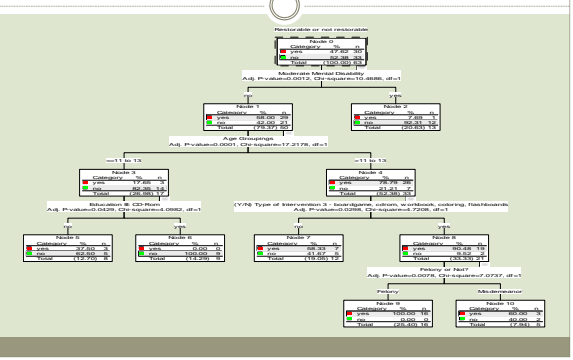
BEFORE OPINING THAT A YOUTH IS UNRESTORABLY INCOMPETENT/COGNITIVE?

- Have you attempted to increase frequency of sessions?
- Have you used multisensory approach to teaching?
- Have you addressed any motivational issues?
- Have you considered learning styles and adjusted treatment accordingly?
- Have you engaged natural support system to learn more about client and used information to adjust treatment approach?
- Are there any issues/concerns about medication non-compliance?
- Have you ruled out substance use as contributing to current presentation?
- Any doubt that symptoms could be improved via inpatient hospitalization?
- Ruled out malingering or motivational deficit?

EMPIRICAL OUTCOMES IN VIRGINIA

- Since July 1, 1999, over 1500 youth court ordered into restoration services
- We have analyzed data on 563 of these youth
 - ✦ Ages ranged from age 8 to 18 years of age
 - ✦ 72.3 percent were restored to competence
 - 61 percent of youngest group
 - 78 percent of middle group
 - 71 percent of oldest group
 - ✦ 6.7 percent had charges dismissed
 - ✦ 20.2 were found to be unrestorably incompetent

CHI-SQUARE AUTOMATED DETECTION ANALYSES – DEVELOPMENTAL DELAY ONLY



EMPIRICAL OUTCOMES IN VIRGINIA

- Factors associated with restoration outcome
 - × Age (25.51***)
 - × Diagnoses (125.7***)
 - Mentally Ill Only (84 percent)
 - Intellectual Disability Only (48 percent)
 - Mentally Ill and ID (50 percent)
 - No mental illness and no DD (91 percent)
 - × Special education status (MiID ** MID ***)

EMPIRICAL OUTCOMES IN VIRGINIA

- 37 percent restored in 120 days and 59 percent in 150 days
- Only 5 percent of cases involved inpatient hospitalization and 7 percent residential treatment
- Only 24 percent were restored in a detention facility
- Most common case management strategies involved mental health services, medication management, and in home services
- CHAID predictors included age, special education, diagnoses, types of learning tools used, seriousness of crime, court room exposure, use of flashcards

HOW MUCH CAPACITY IS ENOUGH?

- And back we go to Dusky:
 - *“ he has **sufficient**, present ability to consult with his lawyer with a **reasonable** degree of **rational** understanding -- and whether he has a **rational** as well as **factual** understanding of the proceedings against him. ”*
- These requirements will be calibrated by the legal complexities facing a youth, their ability to work with an attorney, and mitigated or aggravated by state laws and the philosophy of the juvenile court in which they are tried

TAPE 4: JOSHUA S.
