

Through the Defendant's Eyes: Why Conventional Wisdom on Competency Evaluations Should be Reconsidered

Amy McKelvey, JD

Level

Intermediate

Room

Track

Legal/Clinical

CE

CPA/BBS/CJER/MCLE

Bio

Amy McKelvey, JD is a Deputy Public Defender in San Bernardino County, currently assigned to the Homicide Division. Over the past six years with the office, she has tried over 30 jury trials. In the last eight months, she litigated four mental health-related cases; three competency to stand trial proceedings under Penal Code 1368 and one Not Guilty by Reason of Insanity trial, all of which resulted in favorable verdicts for her clients. She also has several additional competency trials scheduled.

In addition to her trial work, Ms. McKelvey has led trainings within her office including litigating competency cases and is co-authoring a paper with a forensic psychiatrist on the importance of examining a defendant's beliefs about the case to demonstrate how delusional or irrational views can prevent them from rationally assisting in their defense.

She graduated from UC Hastings College of the Law in 2018 with a concentration in Social Justice. During law school and after the bar, she worked in public defender offices across California and completed an internship and post-conviction capital litigation, where her focus was on mitigation and mental health issues.

Narrative

The requirement that only competent defendants face trial lies at the heart of due process. A criminal proceeding cannot be fair if the accused lacks the ability to understand the charges, communicate with counsel, or make reasoned decisions about their defense. Competency is not a mere procedural technicality; it is a constitutional safeguard that preserves both the legitimacy of the justice system and the dignity of the defendant. Allowing an incompetent person to stand trial erodes confidence in the fairness of the courts, risks wrongful convictions, and undermines the foundation of justice itself.

California Penal Code § 1370 codifies this protection by requiring that a defendant both understand the nature of the proceedings and rationally assist counsel. This presentation focuses on the second prong, rational assistance, because it is the most contested and the most vulnerable to error. Defendants may appear superficially oriented and cooperative while harboring psychotic beliefs that prevent rational collaboration with counsel. If not properly examined and documented, these deficits

risk going unseen, leading to findings of competency where none exists. Courts rely heavily on the expertise of forensic psychiatrists and psychologists to bridge this gap, translating complex clinical observations into legal concepts that judges and juries can apply. The clarity, accuracy, and completeness of these evaluations often determine whether a defendant receives treatment or is subjected to a trial they cannot meaningfully participate in.

A central challenge is the role of incriminating statements in competency evaluations. Professional guidelines often urge categorical exclusion to protect against self-incrimination. Yet in practice, these statements frequently provide the most vivid evidence of irrationality. A defendant who explains, "*I set the fire to cleanse the house of evil spirits,*" reveals not just conduct, but the psychotic framework that makes rational participation impossible. Such statements can also support diagnoses, demonstrate impaired insight, and establish statutory findings under Penal Code § 1370 regarding the need for involuntary treatment.

The risk that these statements will later be misused is minimal. Convictions nearly always rest on police investigations, witness testimony, or physical evidence, not competency evaluations. Moreover, constitutional and statutory safeguards already sharply limit prosecutorial use of such statements: *Estelle v. Smith*, *People v. Pokovich*, and *People v. Taylor* make clear that competency statements cannot be introduced to prove guilt or punishment, except in rare and narrow circumstances. By contrast, the danger of exclusion is substantial. Without such statements, evaluations risk becoming conclusory, depriving courts of the strongest clinical evidence of incompetence. The consequence is that vulnerable, psychotic, or otherwise impaired defendants, who are often frightened, confused, and unable to protect themselves, may be wrongly found competent and forced into adversarial proceedings they cannot rationally navigate.

The right to be tried only when competent is not secondary to the right against self-incrimination. Both are fundamental constitutional protections. But in the competency context, due process guarantees that no incompetent defendant is forced to trial and that right is often the right most in need of protection. This presentation argues for a reconsideration of the current categorical exclusion approach. A balanced, case-by-case framework that responsibly includes incriminating statements can preserve Fifth Amendment protections while ensuring that courts receive the clinical evidence necessary to protect due process. Only by integrating clinical realities with constitutional safeguards can the justice system truly prevent the trial of incompetent defendants.

Learning Objectives

1. Identify two case-linked delusions and erroneous beliefs about defenses that demonstrate a defendant's inability to rationally assist counsel
2. Explain why delusions alone are not sufficient to show inability to rationally assist unless they relate to the case and compromise the attorney-client relationship and describe how probing case discussion reveals this connection
3. Describe three strategies for presenting case facts alongside a defendant's delusional beliefs to help judges and juries accurately assess the rational-assistance prong in competency determinations

4. Describe the balance between the rare risk that a defendant's statements from a competency evaluation could be used against them at trial and the far greater constitutional harm of trying an incompetent defendant and assess how safeguards address this tension
5. Demonstrate three methods for structuring interviews and reports that avoid unnecessary incriminating detail while still documenting the irrational perceptions that reveal a defendant's inability to rationally assist