

TRAINING COMPETENCY TO STAND TRIAL IN AN INDIVIDUAL WITH INTELLECTUAL DISABILITY AND BEHAVIORAL HEALTH CONCERNS

ROBIN STOOPS, M.A., LCPC,¹ JULIE HESS, M.S.,¹
TOM SCOTT, LCSW-C,¹ JAMES TOLAN, PH.D.,²
GERARD GALLUCCI, M.D., MHS³ & PATRICIA BRIERLEY-BOWERS, ED.D.¹

¹National Center on Institutions and Alternatives, Baltimore, MD

²DDA Forensic Consultant, Baltimore, MD

³Johns Hopkins School of Medicine, Baltimore, MD

A man was found not competent due to an intellectual disability and dangerous, subsequent to being charged with assault and resisting arrest. By court order, and in order to avoid institutionalization, competency training was conducted in a community agency setting. Competency training included the use of the Slater Method, modeling with labeling, and training on test taking methods over a five week period. Specific generalization techniques were used in order to aid in his ability to respond at the time of re-assessment. Upon re-assessment by an outside examiner, the individual was found to be competent to stand trial, thus avoiding institutionalization.

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The issue of competency to stand trial is a matter carefully considered in mental health law. McGaha and colleagues,⁴ suggest that this concept is possibly the most pervasively studied in the blending of mental health and criminal justice concerns. Much of the research in this area has focused on individuals who have a diagnosed mental illness in addition to legal difficulties. Fewer studies have examined or clarified the issue of competency or capacity of individuals with intellectual disabilities in the courts and criminal justice system.

Individuals with intellectual disabilities are frequently found to be incompetent to stand trial (IST). In the 1972 case of Jackson v. Indiana the Supreme Court ruled that an indefinite detention of defendants for evaluation and determination of one's ability to be restored to competence was a violation of the defendant's due process. The court further placed restrictions on the length of time that defendants could be committed for the purpose of competency restoration.⁷ These restrictions are specific to each individual but cannot exceed the needed time to ascertain if the individual is capable of standing trial.⁷

Felthous³ observes that competence "serves four legal purposes: accuracy, fairness, dignity/integrity, and the defendant's awareness of the reason for punishment." An extension of

competence involves its potential for restoration, whereby the defendant demonstrates an ability to capably participate in the legal proceedings. Noffsinger,⁶ Sigel and Elwork,⁸ and Wall and colleagues¹⁰ all note the paucity of information pertaining to the restoration of competence to stand trial. Wall and colleagues specifically address the lack of programs for individuals with intellectual disability to achieve competency. This is somewhat unexpected, given that the Jackson v. Indiana ruling placed pressure on forensic institutions via time constraints to create effective training modules for the purpose of competency restoration.⁶ It is further noted that "[given] the large number of persons hospitalized at any one time for competency restoration, coupled with individual and societal interests in not trying incompetent defendants, more research on competency restoration techniques is called for."⁶ (p.357) In general, most competency restoration programs in existence are currently comprised of treatment with psychotropic medication as well as educational programs.¹⁰ Noffsinger remarks that two concurrent processes are often implicated: "First, the underlying mental disorder must be treated... [with] accurate assessment, medication treatment of severe mental disorders, and psychosocial rehabilitation. Second, incompetent defendants may need instruction to teach them

legal concepts with details of the trial process.” (p.356-357) Siegel and Elwork⁸ contend that the major deficiency in competency restoration programs lies in the emphasis on the treatment of the mental health diagnosis rather than the legally defined symptoms of IST.

Siegel and Elwork⁸ suggest that defendants with intellectual disabilities who have been found IST can benefit from exposure to training. However, the training and procedures employed must be appropriate for individuals with intellectual and developmental disabilities. Wall and colleagues¹⁰ note that “... while the standard for competency is the same, [for individuals with and without intellectual disabilities] a program to restore persons with...[intellectual disabilities]... to competency must be tailored to their specific cognitive deficits and needs.”

A training tool for competency restoration exists to address this specific need for individuals with intellectual disabilities. The Slater Method was developed at Eleanor Slater Hospital within the Rhode Island Department of Mental Health, Retardation, and Hospitals system. The Slater Method is not a formal assessment instrument, but is meant to be utilized for training purposes to promote restoration of competency in individuals with intellectual disabilities. The Slater Method is currently in its fourth revision and has been noted to demonstrate face validity.¹⁰

Details of the Slater Method are provided by Wall and colleagues.¹⁰ This method presents material to the defendant in a manner which differentiates between the individual’s knowledge of the information and his or her understanding of the information. The first phase of training is knowledge-based. It serves to educate the defendant about the courtroom process, but does not attempt to ascertain concept comprehension. By contrast, phase two, or understanding-based training, “... addresses the more complicated concepts of understanding, appreciation, and reasoning” so that the defendant can “begin to grasp the effect of the charge on his or her life.”¹⁰ (p.194) Following the completion of both phases, the individual participates in role-playing sessions to further examine the defendant’s tolerance of stress from the courtroom proceedings. Photographs of simulated courtroom environments, including personnel, are also used to encourage discussion about what occurs in the courtroom. This also offers a visual representation

of the experience and reinforces knowledge-based concepts used during training.

The training tool is organized into five different modules, consisting of the following content areas: purpose of training, courtroom personnel, courtroom proceedings, communication, and tolerating stress. It is recommended that the material in the modules be presented in systematic order over a varying period of time. Defendants meet with their trainers from one to five days each week, with training sessions ranging from a few minutes to one hour. Training sessions are held in a one-to-one format, which seems to work more favorably with individuals with intellectual disabilities. The trainer reviews each module at least three times, as the authors note that this serves as a minimum guideline for information retention.

Wall and colleagues¹⁰ note that trainers are an essential component in the implementation of the Slater Method and suggest that it is useful if the trainer is already known to the defendant, as would typically be the case in a non-institutional setting. This can potentially encourage a more positive training experience by alleviating some anxiety on the part of the defendant. A trainer can include any member of the mental health team, provided that he or she has clinical experience working with individuals with intellectual disabilities and also is able to follow the instructional manual. The manual provides the trainer with general knowledge and background information on competence to stand trial and discusses issues specific to individuals with intellectual disabilities who have been found IST. In terms of overall techniques which are useful for trainers to practice during the sessions, Wall and colleagues suggest the following: simple language, concrete terms and ideas, avoid leading questions, avoid nonverbal cues, use of open ended questions and repetition of the questions from different perspectives as well as utilizing short sessions. It is important to note that the trainer is not the evaluator of competency; rather their role is to provide instruction to the individual utilizing the specific modules of information in a sequential manner.

There is usually an urgency to restore IST defendants to competency as quickly as possible. This is particularly relevant for those defendants with intellectual disabilities since there are often differences in terms of learning, and ability to

retain and apply information, as well as initial overall intellectual functioning levels. Some individuals may remain permanently IST despite attempts to restore competency. As Wall and colleagues¹⁰ suggest, one potential indicator of progress includes demonstration of retention or minimal learning after being exposed to the material several times. Due to the variance of abilities of individuals with intellectual disabilities and the lack of empirical data, Wall and associates do not offer specific timeframes for determining whether an individual would benefit from use of the Slater Method.

CASE REPORT

Mr. D is a 30-year-old man with diagnoses of schizoaffective disorder, bipolar type, intermittent explosive disorder, and mild intellectual disability. He currently lives in a residential community residence with another peer. Prior to the incident described below, Mr. D had up to 16 hours of unsupervised time each day. Mr. D has a behavioral history that includes verbal abuse, physical aggression, and property destruction, all of which are targeted in his current behavior support plan. He is an individual who is able to express himself well with regards to his needs, desires, and feelings.

Mr. D was involved in an incident at a friend's community residence. Reports indicate that Mr. D assaulted a police officer during this incident and was consequently charged with resisting arrest and three counts of second degree assault. He was court ordered to undergo an evaluation of his competency to stand trial. This assessment was completed one month after the incident occurred and the results suggested that Mr. D was not competent. According to the results, he was not able to understand the courtroom proceedings, courtroom personnel, basic legal concepts, and therefore was unable to consult with his defense attorney to assist with his case. Specifically, he was not able to identify the terms "guilty," "innocent," "probation," "acquitted," "fine," "evidence," "witness," and was unable to explain the accounts of the offense. He also believed that the evaluator of his competency would represent him in court. He was able to recognize the terms "crime," "judge," "misdemeanor," "penitentiary," and "plea bargain." He scored a 26 on the CAST-MR, Competence Assessment for Standing Trial – For Defendants with Mental Retardation.² In order to be considered competent, there is no cutoff

score; however, those judged incompetent score an average of 20.5, whereas those judged to be competent score an average of 29. Along with being incompetent to stand trial, the combination of Mr. D's intellectual disabilities and his intermittent hostility towards others presented a danger according to the evaluator. As a result of these findings, it was suggested that he be sent to a state institution for at least 90 days or until competent to stand trial. The Developmental Disabilities Administration was able to appeal this decision and a court order outlined the contingencies for Mr. D to remain in the community. The court order requested that Mr. D participate in competency trainings while continuing to reside in the community as well as continue to be employed in the community as he did prior to the incident.

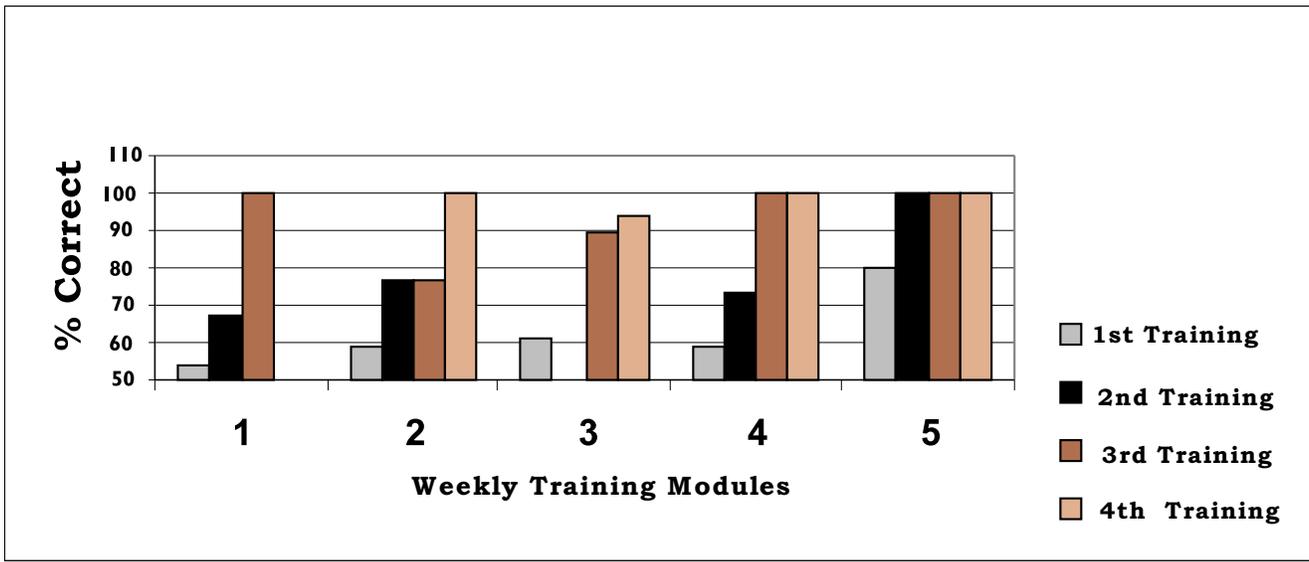
Competency Training

Five different professionals, including a licensed psychologist, a licensed social worker, and three psychology associates each held training sessions with Mr. D utilizing the Slater Method. The trainings took place four times a week for a total of five weeks. Due to Mr. D's work schedule, the training sessions were held every morning and afternoon on two consecutive days and lasted approximately 30-45 minutes. The location of these trainings varied. Trainings took place at Mr. D's residence or in the office of the professional training him that day. The intention of the trainers in this competency training task was to utilize the Slater Method as their only tool.

There were slight variations made to this method for purposes of completing all training sections within five weeks. These trainings were under a time constraint because of the upcoming second evaluation of Mr. D's competency to stand trial. To ensure all trainings would be covered, each session with Mr. D incorporated the use of both the knowledge-based training and the understanding-based training for each module. Another slight variation to the Slater Method was done during week 5/Module 5 – Tolerating Stress. Mr. D demonstrated a strong understanding of the concepts in this module during the first training session and therefore the remaining training sessions for the final week focused on reviewing module five as well as previously trained concepts.

During the initial training sessions it became evident that Mr. D frequently answered impulsively, often perseverated on the previous

TABLE 1. TRAINING RESULTS



question, and had a tendency to answer a question before entirely understanding what was being asked. As a result of this observation, the education of test-taking skills started during Module One - Purpose of Training and continued throughout the remaining sessions. Before beginning each session and throughout the session as needed, Mr. D was reminded to think about the question for a few seconds to avoid answering impulsively. He was also reminded to disregard the previous question and to focus only on the question most recently asked. If he gave an answer that did not accurately represent the question at hand, he was reminded to obtain clarification by repeating the question back to the examiner/trainer.

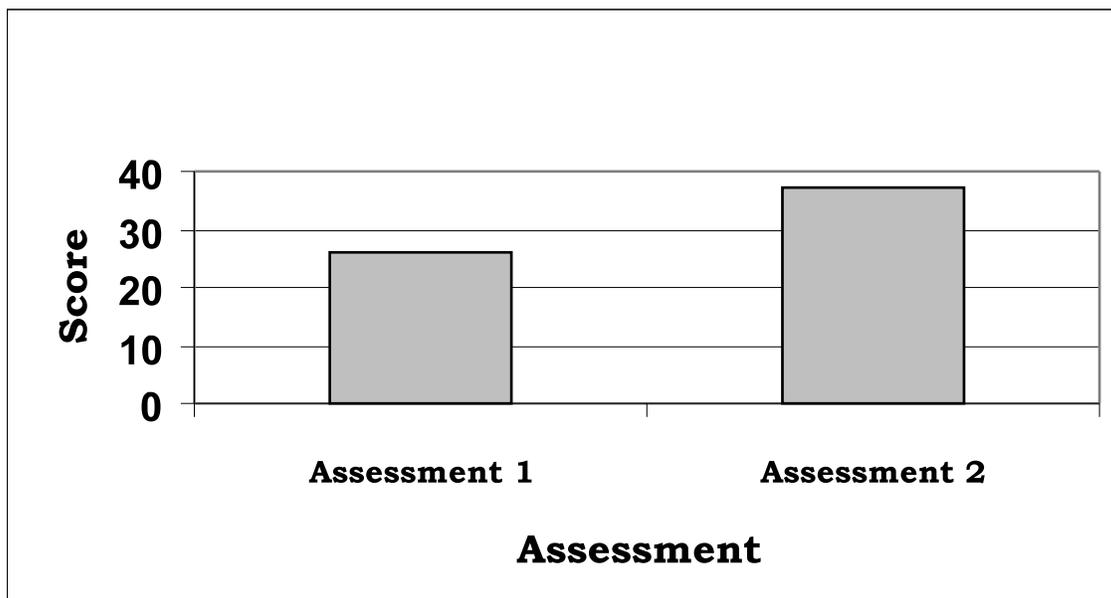
Throughout these five weeks of training, Mr. D continued to show a great amount of motivation and determination. His goals remained the same during this time, which were to avoid the possible consequences of going to jail or being sent to a state residential center; however, the underlying theme maintaining his motivation changed. It appeared that his initial motivation was based solely on the desire to get him out of the situation, which led him to avoid discussing topics for fear of further trouble. He was hesitant to reveal details of the incident that he was involved in to those training him. The trainers reiterated the importance of honesty during this process and reminded him that withholding information would not be beneficial. Over time, Mr. D's willingness to

cooperate increased. Mr. D became motivated not just to get out of the impending situation, but to succeed in the process to help him reach his ultimate goal. It was not the goal that changed, but the means with which he met this goal.

Mr. D's motivation was observed not only during his time spent training, but also by staff at his residence. Simultaneous with the competency trainings, Mr. D was independently or with staff's assistance watching a television show that dramatized legal proceedings and other aspects of law enforcement. This enabled Mr. D to generalize the concepts learned during training sessions to another environment and situation—namely, a television drama series. While watching the show, staff would help Mr. D label the roles of the actors and actresses on the show. Engaging in this activity provided Mr. D with rehearsal of the concepts and vocabulary learned from the Slater Method. This also helped the professionals working with Mr. D to reinforce various concepts by referencing the characters and settings in the show to help Mr. D better understand concepts and terms related to legal proceedings.

Results

Throughout the trainings it was evident that Mr. D was improving in his ability to understand aspects of his situation. As illustrated in Table 1 above, it was apparent that as the trainings progressed for each module, he consistently responded correctly more frequently.

TABLE 2. CAST-MR RESULTS

Additionally, Mr. D's test taking skills were improving. He learned to control his impulsivity when responding to questions by listening to the whole question before providing his answer. According to inter-trainer documentation, these improvements were first noticed during the second training of Module 2 – Courtroom Personnel. During the third training of Module 4 – Communication, he began repeating questions back to the trainer to obtain clarification if he did not understand, instead of answering incorrectly, as previously.

Mr. D was evaluated for the second time to determine if he was competent to stand trial within five months of his initial assessment. He was found to be competent. He was able to identify various terminologies, recognize courtroom personnel and their roles, and specified that he would consult with his attorney as needed. Specifically, he was able to recognize the terms “court,” “judge,” “hearing,” “sentence,” “crime,” “guilty,” “innocent,” “penitentiary,” “felony,” “misdemeanor,” “trial,” “time served,” “probation,” “plea bargain,” “maximum sentence,” “minimum sentence,” and “fine.” During this evaluation, Mr. D was able to convey his understanding that a lawyer would represent him in court and he was also able to provide details about the episode. Table 2 above represents the CAST-MR scores from both the first and second evaluation.

Mr. D's CAST-MR results noticeably improved, scoring a 26 out of 40 the first administration and scoring a 37 out of 40 the second occasion (represents a 27.5% increase). Mr. D's knowledge improved to the extent that his score was slightly above the mean (36.5) of CAST-MR results for individuals who do not have a diagnosis of an intellectual disability. It was the impression of the evaluator that the differences in these two scores directly related to the competency training. Mr. D went to court and his case was placed on the stet docket, thus avoiding institutionalization and incarceration.

DISCUSSION

This case demonstrates important issues in establishing trial competency for individuals with intellectual disabilities. These include the very nature of the intellectual/learning deficit itself, the ability to test and to learn, the environment, and the methods employed. A specific method by itself is not sufficient. Strategies were created, developed, and practiced to ensure success as measured by the CAST-MR.

Competency to stand trial requires a differentiation between those whose competency can be restored through treatment of a psychiatric disorder and those who require training in trial issues based on intellectual disabilities. People with mental illness may have transient symptoms

that impair competency, yet competency can be restored by employing various treatment modalities including pharmacotherapy and psychotherapeutic modalities. There is an implied assumption that the person with a serious mental illness has had, at certain points in their lives, the knowledge and information that allows them to participate in the legal process. An example of this is delusional and/or psychotic processes that may remit with treatment interventions. With these situations, the effort is to restore competency. A person with intellectual disabilities may never have had the initial knowledge of the legal system, and consequently, the effort is directed towards training the person in legal competency. Restoration versus the need for education is a distinct issue that requires recognition.¹ These issues may be further clouded when a person has both intellectual disability and mental illness. In this case both restoration and training may be required.

The team that worked with Mr. D employed an approach that focused on **training** competency as differentiated from **restoration** of competency. The Slater Method was employed to train the person in basic legal procedures to stand trial. This technique has many advantages for those who have intellectual disabilities. It uses a didactic, visual, and sequential approach in teaching a person basic legal procedures. However, it became evident that the Slater Method by itself was not sufficient for Mr. D. Other strategies and interventions were required to successfully train him in trial competency.

In addition to the training methods employed, characteristics of Mr. D may have impacted the outcome. His level of intellectual disability is mild. It is questionable that those with moderate to profound levels of intellectual disability would have had the same success. Indeed, Morris, *et al.*⁵ and Sundram⁹ found that individuals with mild intellectual disabilities are likely to be found competent to make medical and financial decisions while only a few with moderate intellectual disabilities are likely to be found competent. Individuals with severe and profound intellectual disabilities are almost never competent to make decisions regarding their person.

This case highlights some elements of a successful attempt to train competency for an individual with intellectual disability. The Slater Method alone did not appear adequate. Hence other strategies were included. The contribution of each component of the training (test taking

skills, use of the TV program, generalization strategies) is also not clear. Future work should attempt to standardize and isolate the necessary components of this training.

The contribution of each component of the training (test taking skills, use of the TV program, generalization strategies) is also not clear. Future work should attempt to standardize and isolate the necessary components of this training. However, this case does demonstrate one successful method to train competency in a community setting. The methods employed took only five weeks for this individual to gain the needed knowledge. His success at gaining this knowledge allowed him to continue to live in the community with supports and enjoy his work, friends and family.

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CORRESPONDENCE: Patricia Brierley-Bowers, Ed.D., 3 Kenmont Court, Owings Mills, MD 21117; email: pbrirow@comcast.net.