Plain Trials: Culture and Competence in the Courtroom

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Abstract: The presence of Plain people in the justice system historically involves civil disputes. A more recent trend is the presence of Plain people as criminal defendants. In tandem with their appearance in criminal proceedings is the question for some of competence to stand trial. Competence assumes a factual understanding of the legal process, the ability to assist counsel in preparing a defense, and an appreciation of the charges and case. In the decades since the Supreme Court ruled on competence, the evolution of definition, criteria, and assessment have focused on mental capacity and deficits. The contribution of culture has been marginalized. This article reviews the elements of competence to stand trial and restoration of that competence when it is lacking and applies them to Plain people. Two case studies demonstrate the impact of culture. Rarely considered, culture can have a profound influence on comprehension and appreciation of the judicial process and exacerbates issues of competency for a defendant who presents with cognitive impairments.

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> "When we lose the right to be different, we lose the right to be free."
> —Charles Evans Hughes (1862–1948)
> Chief Justice, Supreme Court of the United States

Despite the effort to codify equality, Hughes's observation holds true. The demand for radical social change in the way the justice system operates focuses on scientific evidence, humanitarian principles, and modernization of justice, but such change has not been realized (Arrigo, 2003). Among other intransigent areas of jurisprudence, the fundamental criteria in the United States for competency to stand trial (CST) have not changed in over 60 years, despite the steady rise in motions challenging competence (NeMoyer et al., 2018). That rise is attributed in part to declining mental health services, so that a greater plurality of offenders has become persons with mental disorders (Murrie et al., 2020). Attorneys find themselves representing more clients incapable of understanding the proceedings or contributing to a rational and coherent defense.

Historically, Plain interaction with the courts, even when criminal charges are filed, has been in the interest of civil rights. In *Wisconsin v. Yoder* (1972), one of the most famous of these cases, the Supreme Court of the United States (SCOTUS) supported limited compulsory education for Amish youth (Meyers, 2003). Prior to this decision, legislation among the states resulted in fathers

being arrested on criminal charges for their children's truancy. Plain opposition in recent years continues as a response to the expanding role of regulatory controls and social welfare functions. Civil disobedience is a protest against laws incompatible with Plain beliefs (Kraybill, 2003). The Amish, among others, press for exemptions from numerous regulatory demands, arguing against measures perceived as antithetical to their practices and values (Kraybill et al., 2013).

Less frequently explored are Amish and other Plain people's interactions in criminal courts, cases that have seen a recent uptick. In turn, the media focuses its attention on these and other criminal behaviors (Smith, 2020). Some become notorious—for example, the Bergholz beard-cutting case, in which a renegade Amish group physically assaulted other Amish (Kraybill, 2014). And sexual abuse in Plain communities is a common theme in the popular media reporting (Miller, 2019; Robinson, 2017; Ross, 2020; Todd, 2017). Plain societies may shelter their members from the world, but they cannot shelter them from the consequences of criminal acts investigated by law enforcement and prosecuted by the state.

Plain responses when confronted with legal adjudication, however, are often in stark contrast to those of their worldly counterparts. Those in mainstream culture have at least a passing familiarity with the workings of law enforcement and the justice system, via the *Law and Order* franchise and genre, among other popular sources. Those in Plain culture are far less attuned to even rudimentary expectations for suspect and defendant and often act with a naivete that works against them. For example, ingrained humility means that they routinely confess to an investigating officer, waiving their right to silence (Kraybill et al., 2013). For some, the expectations of the church preclude the services of an attorney, since the consequences of their sin are now in the hands of the state, an authority that exists by the will of God. Even those who accept counsel often limit an attorney's role, dampening an aggressive defense (Cates, 2014). They are accustomed to resolving disputes within the community, without recourse to external sources (Hostetler, 1984).

This distance from the world is a fundamental principle of Plain life. Addressing the insulating nature of this core value, a Plain author recently said, "This is one of the reasons we have been able to withstand many of the negative influences of the world. Having a distinct culture apart from the popular culture of the world around us reduces the pressures and influences we would otherwise be subjected to" (Hoover & Harder, 2019, p. 8). This protection from the world is not absolute, nor is it meant to be. As members mature, they interact with mainstream culture, assuming the attendant risks that exposure entails. Plain communities offer a secure base from which to engage the world, but interactions with the broader population are necessary and anticipated.

That freedom to explore is restricted for those who require greater supervision and care. This is true for adults who may be intellectually disabled, mentally ill, or otherwise limited in their ability to manage activities of daily living successfully. On shopping trips or other visits to the community, they remain supervised by family members, and they experience less interaction and involvement with non-Plain counterparts than others in the group. Their breadth of understanding of cultural norms, social interaction, and appropriate behavior is therefore more confined to Plain

society. They lack an awareness of, and confidence in, interactions with mainstream culture available to less sheltered members.

This lack of assimilation does not mean that they are immune from engaging in socially inappropriate and even criminal behavior. Plain people who have been sheltered can and do become targets of criminal investigation. The willingness to cooperate, even to the detriment of their own defense, can be even more pronounced when these individuals are interrogated and face adjudication. As with any defendant, however, they must be competent to stand trial. The question of their competence is based on precedents established by SCOTUS. While the general criteria are binding, each state defines competence within its statutes. Still, no state specifically considers cultural limitations, an oversight that penalizes Plain people, particularly those with cognitive disabilities.

Determining Competence to Stand Trial

The doctrine of CST is rooted in English common law (Bardwell & Arrigo, 2002), but the fundamental criteria are outlined in a decision by SCOTUS (*Dusky v. United States*, 1960). Despite its outsized influence, *Dusky* is a brief decision. The majority opinion does not expound on the criteria to be employed. The two elements of competence outlined include sufficient ability at the time of the proceedings to consult with an attorney with a reasonable degree of rational understanding, and the ability to maintain a rational and factual understanding of the judicial process. State statutes often adapt *Dusky* into three elements, bifurcating the second element into a factual understanding of the proceedings and the ability to appreciate the consequences of the judicial process (Jacobs et al., 2008). Landmark clarifications from SCOTUS address the criteria for competency and self-representation (*Godinez v. Moran*, 1993; *Indiana v. Edwards*, 2008).

Since the initial ruling, some analysts argue that the focus of competency has narrowed, from a broad-based consideration of the impact of psychosis and intellectual disability to the mental capacity of the client in the legal arena (Bardwell et al., 2002). Recommendations that assessment of competence include observation of the client in communication with the attorney support this narrowed construct (Cox et al., 2019; Cox et al., 2021). Despite this perceived shift, the presence of psychosis and cognitive limitations remain strong predictor variables for defendants found incompetent to stand trial (Cooper & Zapf, 2003; NeMoyer et al., 2018; Tarescavage et al., 2017). Research examining legal, clinical, and social variables has supported the finding that impaired orientation, thought disorder, or an intellectual disability limits factual and rational understanding (Ericson & Perlman, 2001; Gay et al., 2015).

Meta-analyses have found that both global intellectual ability and specific intellectual functions such as verbal memory and executive functioning identified those considered not CST (White et al., 2014). Even a meta-analysis that equivocated on the value of intellectual ability as a mediating factor for competence supported the importance of cognitive ability as a consideration (Pirelli, Gottdeiner, & Zapf, 2011; Pirelli, Zapf, & Gottdeiner, 2011).

Despite the essential criteria of a “rational understanding” in the original ruling, “rationality” remains an elusive construct (Brakel, 2003). While clinical syndromes such as psychosis and

intellectual disability are not the only considerations in CST, they are often primary elements. Emotions are a negligible factor in considering competency, but for those with mood or neurocognitive disorders, accompanying affective instability can be an overlooked contributory factor in the inability to participate meaningfully in adjudicative decisions (Maroney, 2006).

Far less attention is given to reliability and validity in the assessment of CST. The interrater reliability of two mental health professionals assigned to assess the same defendant, a common practice, is assumed to be moderate (Guarnera & Murrie, 2017; Mossman, 2013). Given the nature of competency assessments, moderate reliability may be the best outcome possible, although the quality of these assessments remains an open question (Commons & Miller, 2011; Frumkin, 2006; Gowensmith, 2019; Hill et al., 2021). The potential for a defendant to feign incompetence is a persistent risk (Soliman & Resnick, 2010). The potential for persons with a mild intellectual disability to feign a greater lack of competence than exists has been demonstrated experimentally, although its incidence in actual assessments remains unknown (Everington et al., 2007).

Restoration of competence, the goal in cases where such a return is considered viable, remains poorly studied, and the studies that have been done indicate that such efforts have a poor success rate with specific populations (Fogel et al., 2013; Heilbrun et al., 2019; Kivisto et al., 2019). "Restoration" as the ability to assimilate a factual understanding of the legal process has been found to vary with the degree of intellectual disability. The more severe the disability, the less likely that competency can be restored (Anderson & Hewitt, 2002). Developmental, neurological, and neurocognitive disorders are all associated with poor restoration of competence, even after prolonged periods of hospitalization, often one year or longer (Upton et al., 2020). SCOTUS limited the duration of efforts to restore competence in *Jackson v. Indiana* (1972), but failed to clarify what that duration should be. Accordingly, length of time before restoration is considered impossible varies from state to state, with no empirical data to support a reasonable length of time (Heilbrun et al., 2021).

Culture in the Court: An Overlooked Consideration

The need to consider cultural factors in all areas of forensic work, including competence assessments, is recognized (Weiss & Rosenfeld 2012), but little has been done to implement change (Fogel et al., 2013; Pirelli & Witt, 2018). Instead, in the criminal justice system, attention has long focused on racial disparities (Clemons, 2014; Enders et al., 2019), with a primary emphasis on African Americans, although bias toward Hispanics has also been noted (Hicks, 2004; Koffler, 2018; Varela et al., 2011).

And even the urgency of resolving racial disparity has been trumped by the nagging reality of the wrongfully convicted (Gould, 2007). DNA testing points to the fallibility of the evidentiary system used to obtain convictions and has created demands for reform from still another direction. The beleaguered justice system has had few resources and little time to invest in the nascent investigation of culture and its impact on criminal proceedings. For example, African Americans who find themselves arrested may also be immersed in a culture of poverty (Miller, 2020). The impact of culture is sometimes subtle, more often blatant, but always present. Yet cultural

advocacy is usurped by demands for reform that come forward with empirical data, numbers that demonstrate the disparity of racial minorities in the justice system or the percentage of convictions overturned on the basis of DNA. Field research on the impact of culture cannot compete for attention with this evidence.

The importance of considering culture increases in proportion to the cognitive limitations of the defendant. For those who find the courtroom experience alien but have adequate cognitive problem-solving skills, the process is daunting but can be negotiated. For those whose problem-solving skills are impaired, the combination of cultural impediments and cognitive limitations can create overwhelming difficulties in comprehending and participating meaningfully in the judicial process.

Plain People: Cultural Impact on Competence to Stand Trial

For the Plain defendant facing criminal charges with average intelligence or above, cultural considerations remain, but are outside the question of CST. Still, a salient impact often occurs when Miranda rights are waived. The right against self-incrimination is perceived as a benefit to the world, but not to those who place their trust in God. Another salient impact occurs in the frequent reluctance to accept representation by legal counsel. Again, the preference is to rely on God's authority. And in the hierarchical structure of Amish society, the ministry may instruct a Plain defendant to appear pro se, representing himself rather than retaining counsel or accepting counsel appointed by the court. While the judicial system is a unique experience, the competent defendant quickly grasps a fundamental factual understanding of courtroom proceedings; engages in an articulate and rational manner with counsel (if appointed or retained); and demonstrates an appreciation of the risks and benefits of alternative approaches to the case. Cultural beliefs, such as the need for unflagging honesty, and resistance to manipulations by an attorney, even in the interest of the defendant, still create cultural barriers to a vigorous defense. These impediments, however, are choices that reflect values integral to Plain culture and the ways in which these beliefs and values run counter to the mainstream. They risk more severe consequences in conviction and sentencing, but they do so based on the same principles that have driven over 300 years of Anabaptist beliefs. At present, courts do not operate in a manner that accommodates these beliefs, thereby hampering Plain defendants but leaving open the question of how severely this cultural blind spot impedes the service of justice.

SCOTUS has addressed the issue of competence and counsel in two primary decisions. In *Godinez v. Moran* (1993), the Court ruled that competency to waive the right to counsel or plead guilty met the same criteria as *Dusky*. The Court revisited this point in *Indiana v. Edwards* (2008). In that case, it held that judges could consider a defendant's mental capacity and determine whether a defendant who requested to conduct his own defense was mentally competent to do so. If the defendant was determined incompetent, the court could appoint counsel. These decisions indicate a minimal standard of competence to waive the right to counsel or plead guilty, but a higher standard of competence to mount a defense.

For any defendant who (a) demonstrates impaired intelligence, (b) demonstrates compromised executive functions (ability to assimilate and analyze information effectively), or (c) exhibits a brain disorder or dementing process that compromises memory or cognitive processes, CST becomes a consideration. For Plain defendants who exhibit such limitations, the protection and shelter they have received, limiting their ability to negotiate mainstream culture, potentiates these deficits. The SCOTUS decisions, however, do not address this contribution.

Consider the three elements of competence to stand trial, and the potentiating role in diminishing competence that culture plays for the cognitively impaired Plain defendant.

Factual Understanding

A Plain defendant has often been a student in a Plain school. He has been assimilated into the social environment of his classmates, although the focus of assignments has been on tasks that help him succeed in the type of employment for which he is best suited (Johnson-Weiner, 2007). He is also bilingual. His first language, with which he remains most comfortable, will have been German-based, either Pennsylvania Dutch or Amish Swiss German (Louden, 2016). While he will have learned English, he will not have had the practice that others, less sheltered and more in touch with the world, have had. His interpersonal interactions are limited to those within the settlement—family, church, and school—an environment in which he has been supervised by those who understand and accept his limitations. While he may have been bullied and teased (children act out in any culture), he has avoided exposure to the crueler taunts and treatment visited on those with special needs in the mainstream. As an adult, he is assigned chores and vocational opportunities that match his abilities.

Once under investigation for a crime, he has no reference point for police involvement or the formality of the courtroom. He has no experience being questioned and accused by strangers. The status of judge or jury as arbiter and ultimate authority to determine guilt or innocence is a novel concept. If considered capable, he has joined the church and experienced confession, but that intimate process of admitting sin and finding forgiveness bears little resemblance to the effort to find justice (Kraybill, 2001, pp. 131–135). Whether a defendant who can parrot the roles of court officers has internalized a rational, factual understanding of the judicial system is a question that exceeds the limits of most assessment techniques (Bardwell et al., 2002).

Ability to Assist Counsel

As previously noted, Plain defendants often waive their rights, offering confessions to police during the investigation of a crime (Kraybill et al., 2013). While it is standard practice to advise those suspected of crimes of their rights, regardless of cultural background, the process is fraught with ambiguity. Authors of a national study of language and vocabulary used in the standard Miranda warning said, “The encounters of most suspects with Miranda are tantamount to 5th amendment roulette” (Rogers et al., 2008, p. 132). While this phase of the process is not considered in CST, it is often the first point at which cultural considerations impact the judicial system. Defendants who have confessed minimize the leverage to mount a defense, bargain for a plea, or

question the credibility of witnesses against them, having admitted the basic facts with which they are charged. Defendants instructed by their ministry not to hire an attorney or allow one to be appointed by the court submit as passive participants to the judicial system.

When these events happen with Plain defendants who exhibit no deficits that would limit their CST, there is a deliberate choice to forego judicial participation. When the defendant is steeped in these cultural expectations *and* demonstrates impairments, he exhibits trust in authority that is naïve to the point of danger. "Authority," however, is not his defense attorney, even if one is hired or appointed. Rather, authority is the family, church, and community, where a rational understanding relies on God's will and a trust in brutal honesty with state authority. For the defendant to override the teachings of cultural values and beliefs and offer rational assistance to a defense counsel is improbable. To do so, he must jettison the values of a lifetime, the dependency on his family, church, and settlement, and trust a stranger from another culture. He would need to have faith that this individual, a member of the world from which he has been sheltered, is acting in his best interest.

Appreciation of the Proceedings Against the Defendant

If the Plain defendant lacks a factual understanding of the judicial process and cannot rationally participate in his own defense, it becomes impossible to form a requisite appreciation for the risks and benefits that attach to his case. For those in mainstream culture, the rudiments of plea bargains, open sentencing, bench trials, or jury trials can be difficult but attainable concepts. For the Plain defendant with intellectual limitations, these are alien concepts. Nothing has prepared him to grasp the fundamental risks and benefits, for example, of a bench trial in which a judge presides and will pass judgement, versus a jury trial, in which his peers decide the case. Confession, the defendant's closest analogous experience, is a process of forgiving and leaving a sin in the past. The worst punishment he will have observed is the ban, or a period of excommunication for particularly grievous sins, before being offered the opportunity to return to full fellowship with the church. Judgment has been a response to confession, not a formal process of offering evidence, refuting that evidence, and a conviction or acquittal. And if convicted, the concepts of aggravating and mitigating factors can be understood, but their application and use as a balance in sentencing remains abstruse. The ability to appreciate a process for managing transgressions that contradicts the fundamental handling of sin in one's culture requires a transition in perception that a sheltered defendant is incapable of making.

Restoration of Competence

And if a Plain defendant is judged not CST? Restoration of competence usually assumes a disorder that can be treated by committing a defendant to a psychiatric facility. There the defendant remains until such time as mental health professionals determine that competence has been restored. This model works well for persons exhibiting a clinical syndrome such as a psychosis or mood disorder, where medication is a principal component in restoration.

For the Plain defendant, such an approach has questionable merit. Tolerance for mental health services among Plain communities has increased (Nolt, 2011). Still, that does not translate to the efficacy of placing cognitively impaired Plain defendants in psychiatric hospitals, away from friends, family, and the community in which they are sheltered, and attempting to educate them on the justice system. Too often, the outcome is not a defendant restored to competence, but a defendant who has learned to accommodate the expectations of the hospital authorities.

Two Case Studies of Competency to Stand Trial

Culture is not prominent in the court's consideration of cognitive capacity, as the preceding literature review demonstrates. Despite this judicial disinterest, the combination of cognitive limitations and Plain culture potentiates the disruption of competency in a way that culture or cognition alone would not. The author, a clinical psychologist, was involved in each of the following cases. Documentation of both is in the public domain, but in order to respect the privacy of those involved, recognizable information has been omitted or sufficiently altered to shelter identities.

The first involved a late adolescent Amish male, baptized into the church. He was investigated by law enforcement on charges of child molesting against his niece. The incident had initially been handled within his community. He publicly confessed to his church when the sin was revealed and was placed under the short ban, or a brief period of excommunication. Upon completion of the ban, he requested forgiveness and was received back into the fellowship of the church, with the understanding that his sin was left behind. Only later was the allegation reported to civil authorities.

Prior to interrogation, the detective interviewing him provided both verbal and written Miranda warnings. He waived his rights, signing a written copy. He later explained that he generally understood that he could "be in trouble" if he told the truth, but his choices, as he perceived them, were to respond to the investigating officer honestly, or defy the expectations of the church and request an attorney. He disclosed as much information about the abuse as he could recall, including specific dates. Based on this confession he was charged with felony child sexual abuse.

Now faced with criminal charges, the potential for representation by an attorney again became an issue. The defendant and his family consulted with the ministry and were told that the matter was in God's hands, and that obtaining legal counsel would demonstrate a weakness in their faith and participation in a worldly process. Accordingly, this adolescent announced his intent to the court to represent himself pro se.

A criminal prosecution, as anyone unfortunate enough to be familiar with the process knows, involves a sequence of appearances, "due process" to assure that the defendant is treated justly (Pierce, 1996). In the initial appearances, the defendant seemed baffled by courtroom procedure. Because there was no defense attorney, the prosecutor challenged his CST and moved to have the defendant evaluated. Two mental health professionals were assigned to complete independent assessments and report their findings and opinions to the court.

The first examiner utilized a standard assessment process for CST. The only mention of cultural background in either report or testimony was to note that the vocabulary of the courtroom might be alien to the defendant, and would require more detailed explanation than normal, due to limited verbal skills and the difference from the vocabulary found in his culture. This examiner found extreme variability between the defendant's verbal and perceptual intellectual abilities, assessed using a screening measure. While his perceptual abilities (those requiring nonverbal reasoning, visual-spatial skills, and visual-motor abilities) were average or above, his verbal skills (expressive and receptive vocabulary, immediate auditory memory, and verbal logic and abstraction) were poor. He was noted to have difficulty making eye contact when discussing aspects of the sexual abuse and expressed significant remorse over his behavior. He was described as anxious and depressed, and experienced helplessness and hopelessness due to his current situation.

Arguing against CST was the defendant's ability to participate meaningfully in the process. Legal terminology was alien, and his limited verbal skills would be a further impediment to comprehending court proceedings. Arguing for CST was a strongly developed moral code and a demonstrated ability to retain factual information about the judicial system.

With the caveat that the court would need to assure the defendant's comprehension of the proceedings, the first examiner opined that the defendant was competent to stand trial. In court, testimony was elicited and placed into the record solely by the prosecutor. The defendant, still acting pro se, was offered the opportunity to question the witness, but declined.

The second examiner, the author, emphasized cultural background. The defendant had completed the 8th grade in an Amish school, but he and his family indicated that he struggled academically. He had a brief and sheltered *Rumspringa* before joining the church. While his peers engaged in large and raucous alcohol-fueled parties, either visiting or hosting youth from other settlements, the defendant rarely participated, remaining home or spending time with smaller groups of friends. He had been working in construction since leaving school, but unlike his peers, he was not developing a specific skillset, such as becoming a carpenter. Instead, he was serving as a general laborer. Although fluent in English, he was most comfortable in the Amish Swiss German spoken at home. Several times, the examiner was required to rephrase or simplify questions. This was more likely to occur in transitioning to a new topic (in which the context of a question was not immediately available) or when the question involved an affect-laden topic (less frequently discussed with non-Amish).

The defendant was administered a full IQ test, with results similar to the screening administered by the first examiner. His verbal abilities were the weakest, falling in the Borderline range. His perceptual abilities and short-term auditory memory fell in the Low Average range. His greatest strength was visual processing speed, or ability to analyze and respond to visually presented information. This ability fell in the Average range. His overall intellectual functioning fell in the Borderline range, but for purposes of considering CST, verbal abilities were salient. His weakness in this area was consistent with his reported difficulty in school and also predicted difficulty with factual understanding in the courtroom.

He was administered a standardized instrument to determine his CST, the MacArthur Competence Assessment Tool—Criminal Adjudication (Poythress et al., 1999). Use of this standardized instrument, however, proved to have its own difficulties. The first two sections pose questions based on a fictional account of a fight between two men playing pool in a bar. Prior to administering this instrument, the examiner had to explain to the defendant the game of pool and the frequency with which pool tables are found in bars. In addition, the third section assumes that the defendant is represented by counsel. As the defendant had confessed and was represented pro se, some items that questioned his interactions with his attorney were speculative, and he was encouraged to answer as he thought he might respond. Because of his lack of experience with the legal system, items had to be reread and reworded to meet his experiential level. (Virtually any standardized assessment of competence would have required modifications to be administered.)

Even with these adjustments and modifications, the defendant's factual understanding of the legal system and adjudication was significantly impaired. He understood little of the roles of court officers, the elements of an offense, or his options in pleading guilty or accepting a plea bargain. The ability to reason and assist counsel via recognizing relevance and evaluating alternatives was mildly impaired, as was appreciation of his own circumstances. These findings of impairments were obtained despite straining the valid administration of the instrument by offering the defendant much more coaching than would normally be considered appropriate.

Given impairments imposed by verbal intellectual abilities and culture, the second examiner opined that the defendant was not competent to stand trial. The difficulties of verbal comprehension combined with cultural limitations in experiencing anything akin to the courtroom setting indicated that he would not be able to understand the process of adjudication. Even if the court intervened and appointed an attorney, his marginal cognitive ability to assist counsel, combined with the cultural reluctance to participate meaningfully in such a venture, would again limit his competence. In court, testimony was again elicited and placed into the record solely by the prosecutor. The defendant was offered the opportunity to question the witness but declined.

Having heard testimony from both experts, the court ruled that the defendant was CST. The court then proceeded to sentence the defendant to mandatory outpatient counseling and a period of informal (unsupervised) probation. Despite ruling that the defendant was competent, cultural factors seemed to play a part in sentencing, remanding him to probation in the community rather than incarceration.

In the second case, a man from a Plain community in his early twenties was charged with felony child molesting. The alleged victim was a non-Plain male neighbor, a friend of the defendant's younger siblings. The defendant had been diagnosed with neurological issues at birth and was identified from an early age as intellectually disabled. He struggled in the Plain school he attended, and teachers accommodated his needs. He was graduated with his class at the end of 8th grade, despite failing to meet the academic criteria to do so. As a child, the friends he developed were younger than himself, and as an adult, he identified with adolescents as peers. Once baptized into the church, he remained sheltered. The limitations created by his disability were understood by those in the settlement. He learned English as a second language but remained more comfortable

speaking Pennsylvania Dutch. He was unable to work independently but could handle simple tasks in the house and around the family farm with adequate supervision.

The abuse was alleged to have occurred while the defendant was playing with the younger children, friends of his siblings. The victim was able to provide specific dates and times, and these were corroborated as matching dates and times when he had been present at the defendant's family home.

The defendant was interviewed by a detective who provided verbal and written explanations of his rights, using the standard Miranda warning. The defendant signed a written waiver and initialed each right separately. He later explained that he did not understand the nature or purpose of the Miranda warning, but had complied with the expectations and request of a male authority figure. Noteworthy is the fact that his parents had not obtained legal guardianship, never having needed it in their collective culture. In mainstream culture, they would have been more likely to have done so and exercised greater control over the conduct of a police interview.

The defendant answered all questions placed to him by the detective, explaining the sexual activity that had occurred between him and the alleged victim. When later questioned by his attorney, the defendant expressed the belief that he was explaining how the alleged victim coerced him. The defendant failed to comprehend that legally he was confessing to perpetrating sexual acts against a child. To further complicate this interrogation, because of the beliefs and values of his church, the defendant accepted partial responsibility, since he had voluntarily participated, despite perceiving himself as the victim. In this case, the ministry permitted a public defender to be appointed, but because of the confession during interrogation, defense options were limited.

The prosecutor was sympathetic to the mitigating circumstances and offered a plea bargain with minimal incarceration and extended probation. His parents explained the agreement in Pennsylvania Dutch, to be sure that the defendant understood. He refused. While he accepted blame for engaging in sinful behavior, he continued to perceive himself as tempted and misled by the alleged victim. To assume full responsibility was to lie and risk his place in heaven.

At this point, there was concern that he lacked a factual understanding of the judicial process (the risks and benefits of a plea bargain versus taking the case to a jury trial), and that he was not able to reasonably assist counsel. His attorney filed a motion to assess CST.

Two mental health professionals completed assessments. They agreed that he did not meet the minimal standards for competency, and the court ordered him placed in a state psychiatric hospital for restoration. Reports on his progress focused on education about courtroom proceedings and adjudication. After several weeks, he was judged to have mastered this understanding at the minimal required threshold, and CST was considered restored.

During the jury trial that followed, family members described him as disengaged, with little comprehension of the judicial proceedings. The little assistance he gave his attorney was channeled through family members, rather than coming directly from the defendant. The jury returned a verdict of guilty, and he was sentenced to a lengthy period of incarceration.

His case was considered appropriate for postconviction relief, a procedure that allows a defendant to bring more evidence or raise additional issues after a judgment has been made and a

sentence imposed. It was at this juncture that the author was requested to complete further psychological testing.

The defendant was administered an IQ test. His intellectual abilities clustered at the upper end of the Extremely Low to Borderline ranges of intelligence, with a Full-Scale IQ in the Extremely Low range. This finding was consistent with previous intellectual testing and also consistent with a diagnosis of an intellectual disability. His family was administered a semistructured interview about adaptive behavior to determine his functioning in communication, daily living skills, and socialization. His best communication skills were at approximately a seven-year-old level. His best daily living skills were at approximately a fourteen-year-old level. And his best socialization skills were at approximately an eight-year-old level. These findings were unexpectedly low. Given his measured intelligence, adaptive behaviors would have been assumed to be higher. Analysis suggested that his life in a collective culture, and the shelter provided there due to his disability, contributed significantly to this suppression of adaptability.

The defendant was also administered the Evaluation of Competency to Stand Trial—Revised (ECST-R) (Rogers et al., 2004). This is a semistructured interview designed to assess the elements of competence espoused in *Dusky,* as well as any effort to feign incompetence. It was chosen because this was the instrument used to determine restoration of competency. Items were reworded and reframed to accommodate his level of understanding.

On the ECST-R, the defendant demonstrated no attempt to feign incompetence. He did exhibit a severe impairment in his ability to consult in a rational and effective manner with counsel. He demonstrated moderate impairments in a factual understanding of the judicial process and a rational understanding of his circumstances. His overall responses indicated a moderate impairment in his CST. These were findings after competence was alleged to have been restored. Despite these findings, the court denied the motion for postconviction relief.

Analysis and Recommendations

The criteria for CST, as outlined in *Dusky*, are designed to assure that defendants have a basic knowledge of the proceedings and can participate with an attorney to conduct a reasonable defense. SCOTUS has further clarified competence, most recently in *Indiana v. Edwards*, to say that a court can compel a defendant found competent under *Dusky* to accept counsel rather than conduct their own defense, if the court believes the defendant incapable of doing so.

In the preceding cases, each defendant was ultimately determined to meet the *Dusky* criteria. Cultural factors were not addressed by the court but had a pervasive influence in the judicial process. While not directly impacting CST, the responses of both defendants to the Miranda warning were culturally influenced. Neither defendant was able to comprehend the information provided, but each responded to an authority figure in a culturally appropriate way, acquiescing to perceived expectations. In doing so, they unwittingly waived their rights, and their confessions limited options for defense.

Neither defendant understood the court proceedings. Instead, they relied on cultural expectations rather than comprehension of the judicial process. The first defendant appeared pro

se, as ordered by his ministry, while the second gambled with a jury trial rather than risk lying. The second defendant was also an emancipated adult, rather than under a guardianship, because he was a member of a collective culture where legal supersession of decision-making was unnecessary. Ironically, the decision to remain faithful to their culture resulted in sentences that were polar extremes.

The first defendant drew opposing opinions from the two mental health professionals who assessed his competence. Still, at a minimum, both agreed that he would need assistance to understand the proceedings. The court was left with a difficult choice. If it ruled that he was not CST, restoration was the next logical step in due process. If competence was restored, he would continue to express the desire to appear pro se. If it ruled that he was competent, he would also continue to express the desire to appear pro se. Ultimately, the court could either allow a marginally competent adolescent to represent himself while facing a felony charge or order the appointment of an attorney, risking a confrontation with the Plain community. The court is not required to explain its rationale in sentencing, and it did not do so in this case. It seems probable, however, that the decision to sentence the defendant while he still appeared pro se, and to impose an unusually light sentence for a felony conviction, was a means of avoiding the complex issues that pursuing the case would have created.

The second defendant was allowed legal counsel, and because of that representation, the prosecutor faced an advocate who was familiar with the judicial system. The question of CST was appropriately raised, but routine procedures for restoring competency were employed (placement in a state psychiatric facility), and he was reported restored on the basis of too narrow and too shallow an educational process. His passivity in the face of a trial reflected his lack of competence and demonstrated an inability to consult with his attorney or appreciate his own situation. This detachment was the result of living in a collective culture, an environment creating shelter and protection and limiting the demands placed on him to those that he could readily meet. The combination of culture and intellectual disability proved his undoing.

The failure of the courts to address culture does not diminish its impact. Any Plain person who appears in court enters an alien world. The values and beliefs of the settlements in which these two defendants lived would have made the judicial system a series of difficult choices for any member of their community. For those with cognitive limitations, the combination of disability and culture made the judicial system incomprehensible. Their understanding of authority, morality, and consequences extended only as far as their experience, which meant family and church rules and expectations.

CST is far more nebulous than courts and mental health professionals acknowledge. *Dusky* is silent on criteria to *determine* competency, and further rulings have focused on the criteria for representation. *Dusky* and statutes that codify its criteria are concerned with outcome. Standardized measures can assist examiners in their process (Bardwell et al., 2002; Fogel et al., 2013; Jacobs & Zapf, 2008). But in generating reliability and validity these measures draw samples from the mainstream and are not intended to reflect the experience of Plain defendants.

For legal counsel working with Plain defendants, an awareness of the impact of culture on the ability to negotiate the maze of the judicial system is crucial. Because culture has not been recognized as a precedent does not negate its importance. Particularly for Plain defendants who present with a history of neurocognitive deficits, intellectual disabilities, or developmental delays (which often will not be expressed in this way by those close to them, but will instead be termed "slow," or "trouble learning"), the potentiation of culture on CST needs to be considered. Even for Plain defendants who are not otherwise impaired, their willingness to be forthright, their failure to consider the protocol of the judicial process, and their lack of understanding about the impact of their statements and behavior are all considerations for attorneys responding to their needs.

For those in the helping professions who work with Plain people and are made aware of their involvement with the courts, the knowledge that they may be easily overwhelmed, misunderstand, or remain far too convinced that the judicial system is predicated on being truthful at all times can be important areas of education. Assisting Plain defendants in understanding the role of an attorney and their basic rights (the right to remain silent and the right to an attorney, in particular) can reduce their risk.

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