

RETHINKING “RATIONAL” IN THE DUSKY STANDARD:
ASSESSING A HIGH-PROFILE DELUSIONAL KILLER’S
FUNCTIONAL ABILITIES IN THE COURTROOM IN THE
CONTEXT OF A CAPITAL MURDER TRIAL

By John Matthew Fabian, PSY.D., J.D.*

I. INTRODUCTION

Bizwanath Halder is now a life sentenced convicted killer, recently found guilty by jury trial of the Case Western Reserve University (“CWRU”) shootings that occurred on May 9, 2003. He was initially indicted on over 300 counts of felony offenses, including crimes such as aggravated murder, kidnapping, burglary, and terrorism. In fact, this was the most heavily indicted criminal case in Cuyahoga County (Cleveland) and Ohio history. Mr. Halder’s unforgettable acts of violence ultimately stemmed from a bizarre and eccentric delusional mindset that not only led to violence, but significantly impaired his ability to *rationally* assist with his defense relevant to his competency to stand trial.

The purpose of this article is to provide a description of Mr. Halder’s mental illness and relate his psychiatric condition to his functional abilities relative to his competency to stand trial. The author will discuss the theoretical components of competency to stand trial, ultimately focusing on the definitional vagueness of “sufficient present ability to consult with his lawyer with a reasonable degree of rational understanding” germane to the landmark competency to stand trial decision in *Dusky v. United States*.¹

* John Matthew Fabian, PSY.D., J.D., is a forensic psychologist in independent practice in criminal and civil litigation. Dr. Fabian specializes in pretrial forensic psychological evaluations, sexually violent offender examinations, capital litigation evaluations, and examinations in torts for emotional distress. He has an academic appointment in the Graduate Department of Psychology at Cleveland State University and is published in numerous peer review, law review, and bar journals.

1. 362 U.S. 402, 402 (1960).

The author will comment on the judge's ultimate *moral* opinion in the Halder case relevant to the defendant's competency and contrast this finding with the objectives of a forensic mental health expert.

II. PSYCHOPATHOLOGY AND ITS CONNECTION TO COMPETENCE TO STAND TRIAL: WHAT DOES THE RESEARCH SAY?

Before delving into Mr. Halder's mind and psychiatric disorders, the author will briefly outline data in the field of forensic psychology/psychiatry relevant to psychopathology and findings of competency to stand trial ("CST") and incompetency to stand trial ("IST").

About one out of five defendants referred for a competency evaluation are found incompetent to stand trial. Most of these defendants who are ultimately found incompetent to stand trial suffer from serious psychiatric disorders such as psychotic disorders, namely schizophrenia, or the developmental disorder of mental retardation.² Conversely, some data indicates the mere presence of a psychiatric disorder, even schizophrenia, does not equate with a finding of incompetency.³ Other data reveals that defendants with schizophrenia score lower on measures of understanding, reasoning, and appreciation related to the adjudication process.⁴ More specifically, the following

2. See RICHARD ROESCH & STEPHEN GOLDING, *COMPETENCY TO STAND TRIAL*, 46-47 (1980). The authors found that over half of the defendants found incompetent to stand trial in their study had a history of previous psychiatric hospitalizations. V.G. Cooper and P.A. Zapf, *Predictor Variables in Competency to Stand Trial Decisions*, 27 *LAW & HUM. BEHAV.* 423 (2003). The authors found in their study that offenders with psychotic disorder diagnoses were five times more likely to be adjudicated incompetent. *Id.* at 429. Older offenders, African-American offenders, unemployed offenders, and single offenders were more likely to be adjudicated not competent to stand trial. *Id.* at 430. Those with no diagnoses, minor nonpsychotic disorders, substance abuse disorders, and violent offenses were likely to be found competent. *Id.* at 429. Janet I. Warren et al., *Opinion Formation in Evaluating the Adjudicative Competence and Restorability of Criminal Defendants: A Review of 8,000 Evaluations*, 24 *BEHAV. SCI. & L.* 113 (2006). The authors found that incompetent defendants were older, minority status, who had fewer prior convictions, and were less likely to have committed a violent offense, sex offense, or drug offense. Incompetent defendants were more likely to have been diagnosed with a psychotic, organic, or intellectual/learning disorders and less likely to be diagnosed with personality, attention or adjustment disorders. *Id.* at 125.

3. THOMAS GRISSO, *COMPETENCY TO STAND TRIAL EVALUATIONS: A MANUAL FOR PRACTICE*, 9 (1988). The author indicates that some studies reveal that 10-25% of defendants found competent have psychotic disorder diagnoses.

4. See Steven K. Hoge et al., *The MacArthur Adjudicative Competence study: Diagnosis, psychopathology, and Competence-Related Abilities*. 15 *BEHAV. SCI. & L.* 329,

have been correlated with incompetency, especially in the area of assisting one's defense: prior psychiatric hospitalizations; thought disorder symptoms; delusional beliefs; paranoia and hallucinations; symptoms of severe mental illness in general; a lack of understanding of the adversarial process and certain statements about courtroom behavior; and poor performance on assessments of psycholegal ability'.⁵

Attorneys are more likely to doubt their clients' competence in felony cases than in misdemeanor offenses and when their clients are less helpful and less actively involved in their cases.⁶ Interestingly, when considering the two prongs of competency—understanding the nature and objectives of the court proceedings versus the ability to assist in one's defense—incompetent defendants are more likely to be impaired in the second prong.⁷ That is, offenders with psychotic

342-43 (1997).

5. ROESCH & GOLDING, *supra* note 2, at 156. Incompetent defendants were more likely to experience speech disorganization, delusions, hallucinations, poor interactional behavior and alcohol abuse. Barry Rosenfeld & Alysa Wall, *Psychopathology and Competence to Stand Trial*, 25 CRIM. J. & BEHAV. 443 (1998). Findings of disorientation and lower intelligence are related to a defendant's inability to understand their charges and court proceedings. The authors found that while mania is related to findings of IST, depression, substance abuse, and higher intelligence are not. *Id.* at 453-54. It is important for an examiner to related a defendant's symptoms severity to his competence rather than attend to mere diagnostic categories. *Id.* at 457. See R.A. Nicholson, & W.G. Johnson, *Prediction of Competency to Stand Trial: Contribution of Demographics, Type of Offense, Clinical Characteristics, and Psycholegal Ability*, 14 INTERNATIONAL J. L. & PSYCH. 287 (1991). The authors found that psychopathology and poor psycholegal ability were related to incompetency findings. *Id.* at 296. Psychotic offenders and offenders with lower IQ's were more likely to be found incompetent. *Id.* at 294. See R.A. Nicholson and K.I. Kugler, *Competent and Incompetent Criminal Defendants: A Quantitative Review of Comparative Research*. 109 PSYCH. BULL. 109, 355 (1991). The authors found that 51% of psychotic defendants referred for competency evaluations were found IST in contrast to 10% of nonpsychotic defendants. *Id.* at 360. See Jodi L. Viljoen et al., *An Examination of the Relationship Between Competency to Stand Trial, Competency to Waive Interrogation Rights, and Psychopathology*, 26 LAW & HUM. BEHAV. 481 (2002). While the authors found defendants with a history of psychotic disorders had more impairment in their understanding of the nature and objectives of the legal proceedings, understanding potential consequences, and in their ability to communicate with counsel, psychosis had a limited predictive value. *Id.* at 497-98. Many offenders who were not diagnosed with major mental illness were found to have significant legal impairment. *Id.* at 498. See R.A. Nicholson et al., *A Comparison of Instruments for Assessing Competency to Stand Trial*, 12 LAW & HUM. BEHAV. 313 (1988). The authors found no correlation between psychosis and performance on competency assessment instruments. *Id.* at 320. See R.K. Blashfield et al., *An Analogue Study of the Factors Influencing Competency Decisions*, 22 BULL. AM. AC. PSYCH. & L. 587-94 (1994).

6. Norman G. Poythress et al., *Client Abilities to Assist Counsel and Make Decisions in Criminal Cases. Findings from Three Studies*, 18 LAW & HUM. BEHAV. 437, 450 (1994).

7. See Warren et al., *supra* note 2. The authors found that 84.6% of those found incompetent were impaired in their understanding of the nature of the court proceedings while

disorders are more likely to be impaired in their ability to assist in their defense while defendants who are impaired in orientation and intellectual functioning are more likely to not understand the charges and proceedings.⁸

In contrast, some research that supports psychosis and impairment also sites high rates of impairment in defendants without a diagnosed major mental illness.⁹ While some examiners tend to equate mental illness with incompetency, it is critical to consider a defendant's psychopathology and how it impairs his functional/legal abilities when considering assessments of CST.¹⁰

III. SEVERITY OF CRIME AND COMPETENCY: IS THERE A RELATIONSHIP?

Offenders charged with serious offenses such as homicide are more likely to be referred for competency evaluations than those charged with less serious crimes.

Although some empirical data suggests that competency decisions

97.4% found incompetent were impaired in their ability in assisting defense counsel. *Id.* at 126. See Rosenfeld & Wall, *supra* note 5. The authors found that a diagnosis of psychosis and psychotic symptoms were more highly correlated with the ability to assist in one's defense than they were with ability to understand charges and proceedings. Symptom ratings of disorientation and overall intelligence were more highly correlated with defendants' ability to understand the charges and proceedings than they were with ability to assist. *Id.* at 454. Thought disorder symptoms, disorientation, delusional beliefs, and past clinic findings of incompetency were related to competency determinations. *Id.* at 455.

8. Rosenfeld & Wall, *supra* note 5, at 456.

9. See Viljoen et al., *supra* note 5. The authors used a Fitness Interview Test ("FIT") and found that 41% of the defendants with psychotic disorders, 24% of those with affective disorders, 13% of those with substance abuse disorders, and 40% with no major mental illnesses were impaired on one or more sections of the FIT. *Id.* at 493. The psychotic defendants with schizophrenia performed the worst on their ability to communicate with counsel. Those psychotic defendants performed more poorly on the FIT than other psychotic individuals diagnosed with schizoaffective disorder, delusional disorder, psychotic disorder not otherwise specified and bipolar disorder. *Id.* at 495. Defendants with lower IQ's had more difficulties with understanding the nature and objectives of the court proceedings. For certain offender groups, more prior arrests were correlated with more advanced abilities to communicate with counsel. *Id.* at 496.

10. See Hoge et al., *supra* note 4. The authors found that offenders in both forensic hospital and jail settings with schizophrenia were more likely to demonstrate impaired legal abilities. *Id.* at 341-42. *But see* R.A. Nicholson et al., *A Comparison of Instruments for Assessing Competency to Stand Trial*, 12 LAW & HUM. BEHAV. 313, 320 (1988). The authors found no correlation between defendants' psychosis and performance on several competency instruments.

are unrelated to current legal charge, other data indicates otherwise.¹¹ It is likely that the relationship between the severity of crimes committed and findings of incompetency are diminished when the defendant's mental illness is considered.

One may assume that a judge is less likely to find an offender charged with a homicide as incompetent, due to the remote chance the offender would be found unrestorable and released into the community causing a media frenzy. While there may be a substantial number of incompetent defendants charged with serious violent offenses, there is empirical support indicating that such incompetent defendants will spend longer periods of time in the psychiatric hospital for competency restoration than their competent counterparts.¹² Overall, the research does not consistently indicate that offenders who are charged with severe crimes are more likely to be found competent or incompetent to stand trial.

IV. THE DEFENDANT'S DELUSIONAL DISORDER

Although Mr. Halder had a documented mental health history of alcoholism, depression, and mixed personality traits, he was never treated as a psychiatric inpatient. Despite some historical psychiatric impairment, he was also a brilliantly intelligent individual with an estimated verbal IQ of about 120. He had earned various degrees,

11. See H.J. Steadman & J. Braff, *Crimes of Violence and Incompetency Diversion*, 66 J. CRIM. L. & CRIMINOLOGY 73 (1975). The authors found that although homicide accounted for 1% of total arrests, almost 22% of the competency referrals were charged with homicide. *Id.* at 76. The following studies reveal no significant relationship between legal charge and findings of incompetency: Nicholson et al., *supra* note 5, at 318; J. Reich and L. Tookey, *Disagreements Between Court and Psychiatrist on Competency to stand trial*, 47 CLINICAL PSYCHIATRY, 29, 29 (1986); R. Rogers et al., *Fitness evaluations: A retrospective study of clinical, criminal, and sociodemographic characteristics*, 20 CAN. J. BEHAV. SCI. 192, 194 (1988); See Nicholson & Kugler, *supra* note 5. The authors found only a small statistically significant correlation between type of offense and competency decision in inpatient settings. *Id.* at 366. Type of offense may be more related to the decision for a competency to stand trial evaluation than on decision as to one's competency to stand trial. *Id.* See P.A. Zapf & R. Roesch, *Fitness to Stand Trial: Characteristics of Remands Since the 1992 Criminal Code Amendments*, 43 CAN. J. PSYCH. 287, 290 (1998); Robert E. Cochrane et al., *The Relationship Between Criminal Charges, Diagnoses, and Psycholegal Opinions Among Federal Pretrial Defendants*, 19 BEHAV. SCI. & L. 565, 580 (2001). Importantly, when considering relations between crime severity and competency outcome, the presence of mental illness must be considered. Research indicates that severity of crime and findings of incompetency may not be so related, rather findings of psychosis and incompetency may be the more telling relationship.

12. See ROESCH & GOLDING, *supra* note 2, at 150.

including a MBA, at CWRU prior to his notorious crimes. Mr. Halder had a troubled work history, and had even sued previous employers such as IBM for wrongful discharge due to racial discrimination decades earlier. He touted wisdom and expertise on many subjects and spent countless hours on the internet, forging his ideas to agencies, government employees, business groups and anyone who would listen. Unfortunately, he was a socially inept recluse, who lived amongst stacks of documents, isolated himself, and had no friends other than his computer.

While at CWRU he created a website, shrewdly named the Worldwide Indian Network (“WIN”) with the objective of assisting potential Indian entrepreneurs in collaborating together in forming businesses. He would provide a meeting grounds for businessmen, and would enjoy a cut of any profits that they earned. As part of his grandiose delusional mindset, he believed this business would earn him millions, and he would ultimately change the world’s economy by billions of dollars. When confronted with the fact that his business had never earned him a cent, he simply could not absorb or appreciate this fact. Mr. Halder’s fanatical dream was halted when someone crashed his website and made derogatory and cruel remarks about him on his webpage. He took this ridicule as a personal vendetta and he became obsessed with finding his villain.

Mr. Halder hired a civil attorney to assist with a lawsuit against CWRU and other joined parties, claiming defamation of character. This lawyer eventually withdrew from the case. Mr. Halder refused to work with this attorney as he believed his counsel was bribed by CWRU as part of the conspiracy. His attorney indicated that even after he found the person responsible for the computer crashing, Mr. Halder refused to acknowledge these facts and could not integrate them into his reality. Rather, Mr. Halder had his own irrational and delusional based reality. Subsequently, he proceeded *pro se* and filed an incredibly proficient lawsuit. Despite not having a law degree, his motions for discovery, summary judgment, and judgment notwithstanding the verdict for example, were handled consummately; however, there was one critical problem. Mr. Halder’s lawsuit was based on a delusion, or a bizarre false belief not grounded in reality. His lawsuit was ultimately dismissed by a common pleas judge.

Subsequently, Mr. Halder’s life was decimated and while he became depressed, he became obsessed. His obsessions were revenge and retribution against anyone who was involved with crashing his

website and his ego. As Mr. Halder's psychiatric condition wilted, he became markedly paranoid, isolative, depressed, defeated, and angry. Now he had two delusional thought systems. In addition to his grandiose beliefs concerning altering the world's economy, he was paranoid about being victimized and he had a goal of assisting mankind in fighting cyber-crime in order to prevent future computer catastrophes as he previously endured.

After his lawsuit failed, Mr. Halder began writing letters to congressmen, senators, the mayor of Cleveland, the President of the United States, FBI, Cleveland Police Department, Cuyahoga County municipal and common pleas courts, and countless other agencies and individuals who he thought held political clout. To his morose dismay, no one assisted Mr. Halder and this rejection helped fuel his anger and frustration, ultimately leading to an attempted mass murder. His delusional condition worsened, and he believed there was a conspiracy fueled by CWRU against him. He was focused on one individual, a computer lab technician at the CWRU Weatherhead School of Business, who he undoubtedly believed was the culprit of his computer crash.

After spending months dwelling and antagonizing about his business failure and not believing anyone was taking his plight seriously, Mr. Halder decided he had no other alternatives than to act as a vigilante and take the law into his own hands. On the fateful day of May 9, 2003, Mr. Halder gathered weapons and ammunition, armed himself with an army style helmet, and gained access to the business school at CWRU. After he shot and killed one victim and wounded multiple others, Mr. Halder himself was shot and wounded by SWAT/FBI professionals. After being treated at the hospital, Mr. Halder was sent to Cuyahoga County Jail and sat there for over two and a half years until his recent conviction by jury trial.

This author evaluated Mr. Halder on several occasions between August of 2004 and February of 2005. Relevant diagnoses included delusional disorder, mixed type, with persecutory and grandiose delusions. He also was suffering from depression that had exacerbated since the offense, as well as a severe mixed personality disorder.

V. EXPERT OPINIONS REGARDING DIAGNOSIS & COMPETENCY TO STAND TRIAL

There were ultimately four opinions relevant to Mr. Halder's competency to stand trial. Three experts (including this author) opined that Mr. Halder was able to understand the nature and objectives of the

court proceedings, but was unable to rationally assist with his attorney, and was ultimately incompetent to stand trial. The one expert opining to his competency indicated that Mr. Halder did not have a mental condition pursuant to Ohio Rev. Code Ann. §2945.371. Rather, this expert believed that Mr. Halder had only a personality disorder¹³ and ultimately was *unwilling* rather than *unable* of assisting in his defense due to severe personality disorder traits which were not beyond his control.

VI. DO EXPERTS USUALLY AGREE? CONCORDANCE OF CLINICAL OPINION IN COMPETENCY CASES

Forensic psychologists and psychiatrists usually agree with one another as to findings of CST and IST and diagnoses.¹⁴ Roesch (1979) found that psychologists' judgments made on the basis of a brief interview were highly related to judgments based on more extensive inpatient competency assessments.¹⁵ Cooper and Zapf (2003) found that forensic examiner decisions of competency to stand trial appear unbiased and mostly relate to the defendant's functional abilities.¹⁶ Critically, Skeem and her colleagues (1998) found that while forensic examiner agreement on psychopathology and general competency are

13. It should be noted that the statutory language of competency to stand trial in the State of Ohio pursuant to OHIO REV. CODE ANN. §2945.37(G) (LexisNexis 2006) includes, "A defendant is presumed to be competent to stand trial. If, after a hearing, the court finds by a preponderance of the evidence that, because of the defendant's present mental condition, the defendant is incapable of understanding the nature and objectives of the proceedings against the defendant or of assisting in the defendant's defense, the court shall find the defendant incompetent to stand trial. . . ." The statute does not define the term "mental condition." The forensic psychology and psychiatry community perceive mental conditions related to competency to entail major psychiatric disorders, i.e., psychotic disorders such as schizophrenia, and affective disorders such as bipolar disorder and depression. The legal term "mental condition" could incorporate personality disorders, but a finding of incompetency based solely on a personality disorder finding would be rare.

14. See Rosenfeld and Wall, *supra* note 5, at 451-52. The authors found that clinicians in their study agreed as to defendants' CST 99.5% of the time. The clinicians had the same diagnoses 50% of the time. *Id.* at 452.

15. See R. Roesch, *Determining Competency to Stand Trial: An Examination of Evaluation Procedures in an Institutional Setting*, 47 J. CONSULT. & CLIN. PSYCH. 542 (1979); See A.L. McGarry, *Competency to Stand Trial and Mental Illness*, WASHINGTON D.C. U.S. GOV. PRINTING OFFICE (1973); Norman G. Poythress & H.V. Stock, *Competency to Stand trial: A Historical Review and Some New Data*, 8 J. PSYCH. & L. 131 (1980). Pairs of evaluators agreed as to competency in 100% of the cases. *Id.* at 138. However, evaluators do not necessarily agree about the criteria for a determination of competency.

16. Cooper & Zapf, *supra* note 2, at 433.

high, opinion as to specific psycholegal deficits averaged only 25%.¹⁷ Further, many forensic mental health professionals fail to focus specifically on a defendant's functional legal abilities relevant to competency to stand trial.

VII. THEORETICAL FORMULATION OF COMPETENCY TO STAND TRIAL

A thorough competency evaluation necessitates an expert providing more than a mere assessment of mental illness. Rather, the examiner must present the logic that associates the observations of mental illness to the specific abilities and capacities with which the law is concerned.¹⁸ These abilities are not conceptualized in a unitary construct of competency, rather they involve a constellation of abilities (explained below).

Whether a defendant is competent to stand trial largely depends on a contextualized analysis—namely, the seriousness of the charges, complexity of the case, the defendant's expectations in the case, the client's relationship with his attorney(s), the lawyer's skill, etc.¹⁹ Importantly, the American Bar Association's Criminal Justice Mental Health Standards state that competency examiners should consider a defendant's mental ability and its association to the severity of charges and the complexity of the case.

Competency to stand trial consists of the consideration of different legal constructs/components. The *functional component* includes whether the defendant understands and believes he can do certain activities required in a specific context— that being a courtroom and potentially a trial situation. Functional abilities include *factual understanding*; *rational understanding* (decision making abilities); and *consulting* and *assisting* counsel.

Factual understanding is essentially an understanding/cognitive prong—whether the defendant understands the nature and objectives of

17. Jennifer L. Skeem et al., *Logic and Reliability of Evaluations of Competence to Stand Trial*, 22 LAW & HUM. BEHAV. 519, 541 (1998).

18. See THOMAS GRISSO, *EVALUATING COMPETENCIES: FORENSIC ASSESSMENTS AND INSTRUMENTS* (2nd ed. 2003).

19. See GRISSO, *supra* note 18; Ronald Roesch et al., *Conceptualizing and Assessing Competency to Stand Trial: Implications and Applications of the MacArthur Treatment Competence Model*, 2 PSYCHOL. PUB. POL'Y & L. 96 (1996). The authors state that competency to stand trial can be conceptualized by psycholegal abilities including "communicating a choice, understanding relevant information, appreciating the nature of a situation and its likely consequences, and rational manipulating of relevant information." *Id.* at 96.

the legal proceedings. It includes comprehending simplistic issues such as recognition that one could be punished for their crimes; the adversarial nature of the courtroom; the role of a judge and jury; the various ways one can plea; and the definition of plea bargaining for example.

Functional abilities relevant to consulting and assisting counsel may include whether the defendant understands his situation as a defendant in a criminal prosecution; whether he comprehends his attorney's roles and inquiries; whether he can respond to these inquiries with rational and relevant information; whether he has motivation to participate in his defense; whether he can tolerate the stress of a trial situation; whether he is able to testify about the facts of the court case and question prosecution witnesses appropriately; and whether he can maintain a collaborative relationship with counsel and assist in planning legal strategy.²⁰

Decisional competence may be distinguished from competence to assist counsel. Decision making concerning legal defense strategy entails cognitive capacities for rational thinking in the context of the defendant's factual situation.²¹ Rational understanding and decisional abilities relate to whether the defendant can appreciate the importance of relevant legal information in his case;²² whether the defendant can understand, reason, and choose among various courses of action;²³ whether he can apply logical thought processes to distinguish the benefits and risks of decisional options; whether he has delusional beliefs relevant to his trial process; whether he can protect himself in court and utilize legal safeguards made available to him (such as applying a plea bargain to his case); and whether he should choose to testify. A defendant must appreciate their legal predicament and recognize the significance of the legal information as applied to oneself. They must possess sufficient reasoning ability to rationally process

20. GARY MELTON ET AL., *PSYCHOLOGICAL EVALUATIONS FOR THE COURTS: A HANDBOOK FOR MENTAL HEALTH PROFESSIONALS AND LAWYERS*, 124 (2nd ed. 1997).

21. See Richard J. Bonnie, Note: *The Competence of Criminal Defendants: Beyond Dusky and Drope*, 47 U. MIAMI L. REV. 539 (1993).

22. Appreciation may include the ability to express a preference, to understand relevant information and appreciate the significance of the information in one's own case. *Id.* at 571. Deficits in appreciation appear to usually involve a psychotic defendant and a defendant whose delusions distorted their beliefs about the desirability of a difficult course of action. *Id.* at 573.

23. A reasoned choice includes an ability to rationally manipulate information, weigh the information to reach a decision, and compare the benefits and disadvantages of decisional options. *Id.* at 575.

information regarding legal decision making.²⁴

VIII. ANALYSIS OF THIS AUTHOR'S OPINION RELEVANT TO MR. HALDER'S COMPETENCE TO STAND TRIAL

A. *Mental Illness and Functional Legal Abilities in the Courtroom*

There were two major issues relevant to the defendant's competency to stand trial in this case including: a) whether Mr. Halder suffered a delusional disorder and/or personality disorder and; b) whether he could rationally assist with his defense. It is beyond the scope of this paper to discuss the intricacies and differences between a delusional disorder and a personality disorder; however, this author believes it was clear that he suffered from both disorders and overall had a mental condition pursuant to the statute.

The critical piece to Mr. Halder's competency lay in the examination of his human capacities and functional abilities in the courtroom that must be assessed in light of the application of legal criteria relevant to competency to stand trial. One of the arduous tasks of determining Mr. Halder's competency involved the definitional ambiguity of the term "rational."²⁵ The U.S. Supreme Court in *Dusky v. United States* (1960), held that the test for determining competency must be "whether he [the defendant] 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."²⁶ Although Ohio's competency to stand trial standard includes "whether the defendant is capable of understanding the nature and objectives of the court proceedings and assisting in his defense,"²⁷ experts often rely on the *Dusky* language that includes the

24. When considering theoretical analyses of competency to stand trial, Professor Bonnie considers the literature regarding competency to be treated. He considers one's ability to give reasons that are both plausible and not powerfully influenced by delusional beliefs; the ability to demonstrate a rational manipulation of the information, and the ability to give a reason for the decision that has a plausible grounding in reality. Bonnie, *supra* note 21, at 571-76.

25. See MARK C. BARDWELL & BRUCE A. ARRIGO, CRIMINAL COMPETENCY ON TRIAL: THE CASE OF COLIN FERGUSON (2002). See Bruce A. Arrigo & Mark C. Bardwell, *Law, Psychology, and Competency to Stand Trial: Problems with and Implications for High-Profile Cases*, 11 CRIM. JUST. & POL'Y. REV. 16 (2000).

26. *Dusky v. United States*, 362 U.S. 402, 402 (1960).

27. OHIO REV. CODE ANN. §2945.37(G)(3)(a) (LexisNexis 2006).

term “*rational*.”²⁸ It is this author’s premise that Mr. Halder could not rationally assist with his defense.”²⁹

This expert believed Mr. Halder possessed a mental condition, namely, a delusional disorder, which was hallmarked by his illogical thought processes. He functioned in his own irrational reality. This psychotic disorder impaired foundational functional capacities relevant to his competence to proceed in court. It was important to provide the court with specific information relevant to his delusional disorder symptoms and the law’s requirements relevant to competency.

In addition to assessing functional abilities, it is critical to examine person-context interactions. Specifically, did Mr. Halder’s functional abilities (detrimentally affected by mental illness) meet the demands of the specific situation he faced? Mr. Halder was not charged with a simple misdemeanor, rather he was charged with a serious sophisticated felony with over 300 counts listed in the indictment. This legal situation required a higher degree and sophistication of abstract thinking and reasoning skills relevant to his ability to appreciate his legal predicament.³⁰ Depending on the nature of a crime, a defendant may be competent for certain types of legal decisions but not for others.³¹ Simply, the demands of a specific criminal case vary significantly.

After initiating the evaluation with the defendant, it became clear to this author that Mr. Halder’s irrational thought patterns interrupted with his functional abilities to make sound/rational legal decisions. On a concrete level, Mr. Halder had no difficulty understanding factual information about the legal proceedings such as the role of a judge and jury, the definition of evidence, and the terms plea bargain and guilty

28. See S. Jan Brakel, *Competency to Stand Trial: Rationalism, “Contextualism,” and Other Modest Theories*, 21 BEHAV. SCI. & L. 285 (2003). Most states do not incorporate “rationality” into their competency standards. *Id.* at 286.

29. The *Dusky* “rational” standard will be discussed further in Part XI.

30. See ROESCH & GOLDING, *supra* note 2, at 89. Most of the functional aspects of competency fall in the area of appreciating the legal situation. Does a defendant appreciate what is expected of them if they take the witness stand; do they know what may happen if they waive the right to a jury trial or right to counsel; do they know what will happen if they plead guilty; do they appreciate the adversary role of a prosecutor; are they able to trust a judge to a realistic degree? *Id.*

31. See R. Roesch et al., *Defining and Assessing Competency to Stand Trial*, in HANDBOOK OF FORENSIC PSYCHOLOGY 327 (I.B. Weiner & A. K. Hess eds., 2nd ed. 1999). Some defendants must choose to testify, consider an insanity defense or plea bargain. See John T. Philipsborn, *Updating Approaches To Client Competence: Understanding the Pertinent Law and Standards of Practice*, 29 THE CHAMPION 12, January/February 2005, at 18. Many examiners do not consider the nature and complexity of the charges when evaluating for competency.

plea. In fact, prior to his act of violence, he wrote an incredible civil brief against CWRU and other joined parties he believed were a part of his website demise. Although he knew how to brief case law and file briefs and motions in a timely fashion, Mr. Halder's legal work was useless as it was based on a delusional conspiracy. Considering his criminal case, Mr. Halder cited numerous irrelevant cases and was unable to rationally apply case law to his own legal situation. Any case material he considered was in his belief relevant to his (delusional) theory against CWRU and meaningless to his attorneys.

A descriptive example follows of Mr. Halder's ability to retrieve case law but inability to appreciate such information and rationally integrate it into his case. While it is pertinent for a defendant to request legal information needed to make informed legal decisions, Mr. Halder's demands were impossible and aligned with his delusional mindset. Ultimately he was never satisfied with his lawyers' efforts, and he became more alienated and distrusting of his counsel.

After the first day of this author's testimony as to his competency, he requested this author to visit him in jail. He said, "I think I know what it is you're talking about." Mr. Halder then began to quote case material from *Furman v. Georgia*.³² He was fixated on Justice Stewart's opinion and said, "organized society is unwilling or unable to impose upon criminal offenders the punishment they deserve, then there are sown the seeds of anarchy, of self help, vigilante justice and lynch law."³³ Mr. Halder was attempting to compare Stewart's line of reasoning to the facts of his own case. Specifically, he continued to persevere that there was a conspiracy against him by CWRU and that society failed in punishing the criminals (CWRU). Clearly, he could not rationally and logically apply the opinion in the *Furman* case with the facts of his own. He continued: Society is not taking any correct action to punish cyber criminals and CWRU could have ended the whole thing through the legal process before July of 2000. Instead, CWRU made two decisions: (1) they defended and protected the unlawful actions of the computer technician who crashed my website and 2) they destroyed my website and personal life and my business was destroyed. I could have saved some but not all of mankind's problems and I want to make equality between the classes.

Mr. Halder was clearly unable to rationally integrate and

32. 408 U.S. 238 (1972).

33. *Id.* at 308.

manipulate case law into his defense. Instead his persecutory delusional mindset continued to focus on his appropriate actions as a vigilante to seek revenge against CWRU.

B. Irrational Legal Decision Making

When considering Mr. Halder's unwillingness to exercise potentially helpful legal options, one must consider his inability to demonstrate a rational manipulation of information and apply it to his own legal situation. One must also consider his outlook on his court case and any self-defeating attitudes. While his legal decisions were not grounded in reality and were delusional in nature, Mr. Halder also had a lack of self-regard and in a sense wanted to die.³⁴ During the evaluation Mr. Halder implied that this court process was about this author and society rather than about him. He was attempting to sacrifice his life and fight cybercrime for the betterment of humanity. Mr. Halder had no sense of self-regard—he lacked a willingness to exercise autonomy and demonstrated an unwillingness to consider alternative legal options.³⁵

When contemplating legal decisions pursuant to assisting counsel in his defense, Mr. Halder clearly could not apply a plea bargain or insanity plea to his legal decision making tasks (even though he comprehended their definitions). He could not appreciate the significance of the information as applied to his case and process this data in a rational manner when reaching a decision. For example, Mr. Halder indicated he would not consider a plea bargain if offered, despite the fact that the state had damning evidence against him. The attorneys expressed their concern in that Mr. Halder would not describe his motives and actions surrounding the crime with them. This refusal impeded their ability to focus on intent when considering a potential plea bargain negotiation, i.e., asserting that Mr. Halder never intended to actually kill anyone with prior calculation and design necessary for a

34. See Christopher Slobogin & Amy Mashburn, *The Criminal Defense Lawyer's Fiduciary Duty to Clients with Mental Disability*, 68 *FORDHAM L. REV.* 1581 (2000). The authors assert that a defendant's self-regard is a component of his competency to stand trial. *Id.* at 1584.

35. *Id.* at 1598. The authors describe the United States Supreme Court's decision in *Godinez v. Moran*, 509 U.S. 389 (1993). Moran had a basic understanding of various legal options and consequences of those decisions yet the "reasons" for his actions such as representing himself *pro se* and waiving mitigation at his capital sentencing proceeding were the product of his beliefs that he deserved the death penalty and that his life was worth nothing and not worth fighting for. Slobogin & Mashburn, *supra* note 34, at 1607.

conviction of aggravated murder with capital specifications. Mr. Halder did not trust his attorneys and refused to specifically discuss his thoughts, behaviors, and intent concerning the offense with them.³⁶

Mr. Halder did not want to accept a plea bargain if offered. First, he yearned to be acquitted in criminal trial, which would allow him a better chance to relitigate his civil lawsuit against CWRU. Secondly, he did not simply want a media forum to communicate his CWRU conspiracy theory; rather, he wished to take the witness stand and use the courtroom as a forum to warn the world that cyber-crime was going to take over and it must be stopped.³⁷ Mr. Halder wished to assist the universe in an uphill task of fighting cyber-crime to prevent future victims similar to him. Mr. Halder wished to take the witness stand despite its disastrous ramifications and he had no intention of rationally protecting himself in the courtroom. He was unwilling to give up to his delusional beliefs and was more concerned with communicating his cause than preserving his life. This author does not believe Mr. Halder possessed the ability to use logical thought processes to compare and contrast the risks and benefits of his legal options.

In addition to Mr. Halder's inability to rationally appreciate a plea bargain, he also experienced difficulty assimilating an insanity plea.³⁸ Importantly, Mr. Halder did not believe he had a mental illness. A defendant's inability to perceive his own mental illness, and resultant rejection of a viable insanity plea, should be relevant to the assessment of competency.³⁹ It may be impossible for examiners while performing

36. Mr. Halder was able to discuss his motivations regarding the offense with the expert witnesses in this case.

37. Mr. Halder did wish to talk to the media, but not as a substitute to telling his story to the jury on the witness stand.

38. This author did not evaluate Mr. Halder for insanity. Mr. Halder did not formally reject an insanity plea.

39. See Thomas R. Litwack, *The Competency of Criminal Defendants to Refuse, for Delusional Reasons, a Viable Insanity Defense Recommended by Counsel*, 21 BEHAV. SCI. & L. 135 (2003); Richard Bonnie et al., *Decision-Making in Criminal Defense: An Empirical Study of Insanity Pleas and the Impact of Doubtful Client Competence*, 87 J. CRIM. L. & CRIMINOLOGY 48 (1996). The authors indicate in their study that attorneys often make the decision to pursue an insanity defense on their own without meaningful client interaction, and essentially pre-empt their client's participation in the decision making process. *Id.* at 57. See also Greg Wolber, *Denial of Mental Illness as a Barrier to Competency to Stand Trial*, 23 AM. J. OF FORENSIC PSYCHOL. 65 (2005); Richard Bonnie, *The Competence of Criminal Defendants: A Theoretical Reformulation*, 10 BEHAV. SCI. & L. 291 (1992). In *Frendak v. U.S.*, 408 A.2d 364 (D.C. 1979), the court held that a competent defendant is entitled to refuse use of an insanity defense even if it may work, if there are rational grounds for declining to invoke the defense. Bonnie, *The Competence of Criminal Defendants*, *supra*, at 309. In this

competency evaluations to determine whether a defendant has a viable insanity defense, yet, it is appropriate for the examiner to assess the defendant's ability to understand such a plea and assimilate it to his own legal predicament.

When considering a plea bargain arrangement (if offered) and an insanity plea, Mr. Halder was able to concretely understand the terms and acknowledged he would not be sentenced to death if these arrangements were successful. However, part of his refusal to consider these legal options was due to his wish of only accepting a plea bargain or insanity defense if he could have computer internet access while in prison (if sentenced to life or less) or a forensic psychiatric hospital (if found insane).⁴⁰ Mr. Halder continued to believe he could change the world's economy by utilizing internet access to run his business in the institution. Therefore, he was refusing potential legal options based on his irrational thoughts pursuant to a delusional disorder.⁴¹

Mr. Halder had a difficult time logically articulating a defense strategy.⁴² He continued to repeat that he was a victim to a cyber-crime conspiracy. If he took the witness stand, he would be essentially presenting a delusional defense (testifying to his delusional beliefs). His attorneys did not wish for him to testify, as his demeanor could be perceived by the jury as cold, callous, and lacking empathy and remorse for his crimes. Further, he would have difficulty assisting his attorneys with the cross examination of prosecution witnesses due to his

case, Mr. Halder did not have rational grounds for utilizing the defense. Bonnie states that many of the cases in which a defendant irrationally refuses to utilize an insanity plea include delusional defendants. *Id.* at 309.

40. It is rational thought for a defendant to choose prison for a more definite period of time than consider a not guilty by reason of insanity ("NGRI") defense and a potential indefinite commitment. *See* United States v. Marble, 940 F.2d 1543 (D.C. Cir. 1991). However, Mr. Halder was refusing both legal options due to his desire to have computer internet access in either a prison or psychiatric hospital.

41. *See* Richard Bonnie, *supra* note 39. Bonnie considers whether a defendant should be found competent to make a decision to accept a NGRI defense when his decision making abilities are affected by a delusion. Merely understanding a NGRI plea may be sufficient for competence but a competent refusal of a NGRI plea requires appreciation and perhaps capacity for rational manipulation of information by the defendant. *Id.* at 310-11. *See* Bonnie, *supra* note 21, at 577. Bonnie argues that assessment of the defendant's competence is required when a defendant irrationally refuses an NGRI plea. Impairments of appreciation appear relevant to judicial conceptions of a defendant's competence.

42. The prosecutors argued that Mr. Halder was able to discuss the facts of the court case with the experts in specific detail, but deliberately refused to do the same with his attorneys. It should be noted that Mr. Halder likely was unwilling to consult with his attorneys because he believed they were part of the conspiracy against him.

delusional mindset.⁴³

Critically, Mr. Halder also had paranoid delusions believing that his attorneys, the first judge assigned to the case, the prosecutors, and CWRU were part of a large conspiracy against him. He did not believe he could obtain a fair court proceeding due to his delusional beliefs.

IX. SUMMARY OF OPINION

When providing a decision to the court relevant to Mr. Halder's competency, this author believed that Mr. Halder suffered from a mental condition: delusional disorder. Based on the constellation of factors considered in a determination of one's competency to stand trial, there were multiple areas where Mr. Halder was not prepared or fit to participate in court proceedings, including the following:

He lacked the ability to trust his attorneys and he did not believe he could obtain a fair trial. He believed there was a court conspiracy against him involving CWRU, prosecutors, a judge, and his attorneys.⁴⁴

He could not maintain a collaborative working relationship with his attorneys and assist in planning legal strategy. He could not communicate effectively and rationally with his attorneys. His ability to assimilate case law to his own legal predicament was significantly impaired.

He could not protect himself in court and rationally consider and apply legal safeguards available to him, i.e., plea bargain and NGRI. Mr. Halder could not rationally manipulate legal information specific to the facts of his case due to his delusional disorder. A defendant must possess the ability to evaluate different legal options and make a reasoned decision. This "choice must be grounded in reality and not on some irrational fear or delusion."⁴⁵

He was unable to "appreciate" the nature of his legal situation and

43. Based on this author's experience, testifying to a delusion (in and of itself) is not a bar to competency.

44. See *Torres v. Prunty*, 223 F.3d 1103 (9th Cir. 2000). The U.S. Court of Appeals ruled that it was unreasonable for a district court not to make a more thorough inquiry into the competency of a defendant, when the defendant believed there was a conspiracy against him by his counsel and the trial judge. *Id.* at 1109. Defense counsel asserted that the defendant could not rationally assist in his defense because he believed his attorney was part of a greater conspiracy against him. See *United States v. Nagy*, No. 96-601, 1998 U.S. Dist. LEXIS 9478, at *19-20 (S.D.N.Y. June 24, 1998). Nagy's paranoid delusions of conspiracy against him caused him to be unable to assist in his defense despite factual understanding of the role of lawyers and judges in the courtroom.

45. Roesch et al., *supra* note 19, at 103.

its consequences. A defendant may be able to understand relevant information but be unable to appreciate its significance in his case.⁴⁶ He understood going to trial would result in a probability of a death sentence, yet, he questioned this possibility because he believed the truth about the CWRU conspiracy would come out during the trial. He wished to testify when it likely was not in his best interest. He believed his testimony would allow him to uncover the conspiracy and his victory and acquittal in criminal court would enable him to continue his civil suit against CWRU. He was unwilling to give up his beliefs and cause even if this choice cost him life. Simply, his reasons for legal decisions were not plausibly grounded in reality and were irrational.

Important to this case is this author's belief that there were several factors relevant to the constellation of competency elements in which Mr. Halder was deficient. As Justice Blackmun stated in his dissenting opinion in *Godinez v. Moran*, the Supreme Court has "required competency evaluations to be specifically tailored to the context and purpose of the proceeding."⁴⁷ Mr. Halder's case was a fact-heavy homicide yielding many various legal options and a necessity for rational dialogue between he and his attorneys. Unfortunately, it appeared as though he was pushed through a trial by the system and it is unclear whether his constitutional rights were violated during this process.⁴⁸

X. THE JURIST'S ROLE IN DETERMINING COMPETENCY A MORAL DILEMMA:

*Incompetent → Not Restorable → Release a Mentally Ill Person to
Society → Potential Violence in Society*

*Mentally Ill Person Found Competent → Violation of Constitutional
Rights → Conviction → Prison/Death Penalty → Safe Society*

There are consequences of finding a defendant competent or

46. Bonnie, *supra* note 21, at 573.

47. *Godinez v. Moran*, 509 U.S. 389, 413 (1993).

48. It should be noted that attorneys who doubt their client's competency report that their clients are more passive participants and lack the ability to engage in legal decision making in their cases. The degree of defendant involvement in a case may be due more to the attorney's inclinations rather than the defendant's capacities. See S.K.Hoge et al., *Attorney-Client Decision-Making in Criminal Cases: Client Competence and Participation as Perceived by their Attorneys*, 10 BEHAV. SCI. & L. 385 (1992).

incompetent to stand trial. If a mentally ill defendant whose competency is in question is ultimately found competent to stand trial, his constitutional rights to due process through a fair trial may be in question. He may be "pushed" through a court proceeding, readily convicted, sent to prison where psychiatric treatment and care is sacrificed for security, and society is guaranteed protection as the defendant is incapacitated.

Conversely, if a delusional disordered defendant whose competency is in question is ultimately found incompetent, he may likely be unrestorable. If found not competent, he will not be convicted of the crime and is presumed to be innocent of the crime(s). In Ohio, he may only have a year to be restored to competency, and if not, he may be civilly committed indefinitely. There is always a concern that the defendant will not be restored, and will ultimately be released to society which is an adverse outcome in the eyes of the district attorney.

While the agreement rate between mental health professionals' opinions and court determinations of competency to stand trial are quite high (above 90%), the judge in this case did not agree as to his incompetence and ultimately found Mr. Halder competent to stand trial.⁴⁹ Many judges ignore the rule that expert witnesses cannot provide evidence to the ultimate issue of competency.⁵⁰ When judges rely on examiners to determine competency, the findings are considered more clinical than legal in nature. Appropriately, the jurist made it clear that she was the party making the ultimate decision as to the defendant's competency.

In this case, the judge was cornered with a very difficult decision. If found incompetent, Mr. Halder was likely unrestorable and would be committed indefinitely under Ohio Rev. Code Ann. §2945.39.⁵¹ A

49. See Keith R. Cruise & Richard Rogers, *An Analysis of Competency to Stand Trial: An Integration of Case Law and Clinical Knowledge*, 16 BEHAV. SCI. & L. 35 (1998); Melissa L. Cox & Patricia A. Zapf, *An Investigation of Discrepancies Between Mental Health Professionals and the Courts in Decisions About Competency*, 28 LAW & PSYCHOL. REV. 109 (2004); Patricia A. Zapf et al., *Have the Courts Abdicated Their Responsibility for Determination of Competency to Stand Trial to Clinicians?* 4 J. FORENSIC PSYCHOL. PRAC. 27 (2004). The authors found a 99.7% agreement between the court and the examiners relative to defendants' competency to stand trial. *Id.* at 39.

50. See MELTON ET AL., *supra* note 20, at 138.

51. A criminal court may retain jurisdiction over a person found incompetent to stand trial, if:

at a hearing, the court finds both of the following by clear and convincing evidence:

- (a) The defendant committed the offense with which the defendant is charged . . .
[and] (b) The defendant is a mentally ill person subject to hospitalization by court

judicial finding of incompetency may “rob” society of the chance to take out its moralized societal aggression on the offender.⁵² Further, the state was concerned Mr. Halder could eventually walk the streets again if found incompetent and unrestorable. In contrast, if found competent, Mr. Halder could go to trial mentally unfit, ultimately violating his constitutional rights to a fair court proceeding.

Judge’s are concerned about violent crime more so than nonviolent crime. As previously mentioned, some empirical data suggests that defendants may have a greater chance being found IST if they committed a nonviolent crime than if they committed a violent crime.⁵³ One study found that defendants charged with a homicide or sex crime were twice as likely as other offenders charged with crimes against persons or property to be found competent.⁵⁴ There may a few reasons for this finding. There are likely a greater number of referrals for CST evaluations for serious offenses. Secondly, many serious offenses such as aggravated murder are premeditated in nature and are not common amongst mentally ill individuals. There may be a tendency for judges to be tough on crime and wish to see serious felons processed through the criminal justice system without being found IST and not guilty by reason of insanity.⁵⁵ There is also a presumption in favor of a defendant’s competency.⁵⁶ Just because a defendant is mentally ill does not mean he

order

OHIO REV. CODE ANN. §2945.39(A)(2).

52. See Michael L. Perlin, *Pretexes and Mental Disability Law: the Case of Competency*, 47 U. MIAMI L. REV. 625, 656 (1993).

53. See Deborah K. Cooper & Thomas Grisso, *Five Year Research Update (1991-1995): Evaluations for Competence to Stand Trial*, 15 BEHAV. SCI. & L. 347, 354 (1997); ROESCH & GOLDING, *supra* note 2. The authors found that 48% of the defendants charged with minor crimes were found IST while 8% of the defendants charged with violent offenses were found IST. *Id.* at 151. See B.J. Bittman & A. Convict, *Competency, Civil Commitment, and the Dangerousness of the Mentally Ill*, 38 J. FORENSIC SCI. 1460 (1993); James H. Reich & Linda Tookey, *Disagreements Between Court and Psychiatrists on Competency to Stand Trial*, 47 CLIN. PSYCHIATRY 29 (1986). The authors suggest that mental health professionals may focus more on the treatment of the mentally ill in their incompetency opinions more so than judges who consider the legal standards. *Id.* at 30.

54. See J.I. Warren et al., *Criminal Offense, Psychiatric Diagnosis, and Psycholegal Opinion: An Analysis of 894 Pretrial Referrals*, 19 BULL. AM. ACAD. PSYCHIATRY & L. 63, 65-66 (1991).

55. See Robert E. Cochrane et al., *supra* note 11, at 579-80. Importantly, when considering relations between crime severity and competency outcome, the presence of mental illness must be considered. Research indicates that severity of crime and findings of incompetency may not be so related, rather findings of psychosis and incompetency may be the more telling relationship.

56. See Bruce J. Winick, *Reforming Incompetency to Stand Trial and Plead Guilty: A*

is not competent to stand trial.

However, the moral dignity of the criminal process includes not trying a defendant who is unable to assist counsel resulting in an unreliable conviction.⁵⁷

While the importance of protection of the community can never be undermined, what about the defendant's constitutional rights under due process? A defendant's due process is violated if he is convicted while legally incompetent.⁵⁸ When a defendant's mental illness significantly impairs their ability to understand the choices they make and their ability to make them rationally, moral dignity concerns should prevent them from making that choice.⁵⁹ The U.S. Supreme Court has similarly ruled that "a criminal defendant may not be tried unless he is competent,"⁶⁰ and the prohibition against trying a mentally incompetent defendant "is fundamental to an adversary system of justice."⁶¹

Morality affects competency proceedings. The legal processes in high media cases are subject to significant political bias.⁶² A judge must determine the level of *person-context interactions*- the level of incongruency between a defendant's personal consistencies in behavioral, psychiatric, and cognitive functioning and the context of the settings (court) in which he functions.⁶³ The jurist must make a judgment based on law which requires a reliance of legal precedent, case law, and an interpretation of the standards of justice mandated by society which ultimately creates the law.⁶⁴ The interpretation of one's competency in light of his individual characteristics and the context of his legal situation constitutes a legal, moral, and social judgment conclusion. Competency to stand trial, similar to sanity, is a moral

Restated Proposal and a Response to Professor Bonnie, 85 J. CRIM. L. & CRIMINOLOGY 571, 608 (1995).

57. *Id.*

58. *Pate v. Robinson*, 383 U.S. 375, 378 (1966).

59. *See Winick, supra* note 56, at 575.

60. *Godinez v. Moran* 509 U.S. 389, 396 (1993).

61. *Drope V. Missouri*, 420 U.S. 162, 172 (1975).

62. *See Perlin, supra* note 52, at 653. The inadequacy of pretrial evaluations, cursory testimony, the misuse and misapplication of substantive standards and the non-implementation of U.S. Supreme Court constitutional directives receive little attention and social ends animate the entire incompetency trial system.

63. *See GRISSE, supra* note 18, at 34-35.

64. *Id.* at 36. When a judge finds the degree of functional deficit or incongruency between ability and demand is enough to make a finding of legal incompetence, then the judge is interpreting the meaning of justice in that instance. *But see Michael Perlin, supra* note 52. Perlin suggests that the ultimate legal decision as to competence often falls to the examiner. *Id.* at 654.

issue; however the former involves an assessment of current functional capacities.

In contrast to the role of the judge, the expert witness must simply describe as clearly and accurately as possible, that which the defendant knows, understands, and believes he can do.⁶⁵ It is his duty to guide the legal fact finder with information relevant to functional abilities within a specific context, and not provide an answer to the ultimate legal question of competence to stand trial. It is not the expert's place to provide a judgmental conclusion ultimately affecting the defendant's disposition; rather, it is the jurist's role to make a conclusion about legal competence based primarily upon moral judgment.⁶⁶

XI. EXAMINING THE "RATIONAL" DUSKY STANDARD

The *Dusky* standard has been criticized for its ambiguous and vague language. Specifically, critics say that it is unclear what constitutes "sufficient present ability" and "reasonable degree of rational understanding."⁶⁷ The *Dusky* language can lead to various interpretations and applications by forensic mental health professionals, lawyers, and judges.⁶⁸ These criticisms seem to be highlighted in high profile cases such as Colin Ferguson and Theodore Kaczynski. Mr. Halder's case was quite high profile in nature and constituted an attempted mass murder and one death. His delusional disorder, in particular his grandiosity and persecutory beliefs, impeded his ability to rationally assist with his defense.⁶⁹

A defendant should not only exhibit abilities to weigh legal options and make decisions in a general sense, but he should be able to demonstrate these capabilities within the context of his unique legal situations and potential trial outcomes such as trial strategy, plea bargaining, accepting mental illness as part of a NGRI plea, and mitigation at capital sentencing.

65. See GRISSE, *supra* note 18, at 38.

66. *Id.* at 40.

67. See ARRIGO & BARDWELL, *supra* note 25.

68. Judges unevenly apply the standard and interpret forensic evaluations differently. *Id.* at 30. See Wolber, *supra* note 39, at 66.

69. Interestingly, an article by William Reid, M.D., Ph.D., suggests that when considering competency to stand trial, "[the defendant] must have a rational and factual understanding of the trial proceedings, and must have the ability to work rationally with his or her defense attorney." William Reid, *Delusional Disorder and the Law*, J. PSYCHIATRIC PRACTICE, VOL. 11(2). All that is required is *ability*; voluntary refusal to cooperate does not suggest incompetence. *Id.* at 3. Notably the author does not define the term *ability*.

Concerning the specific language of *Dusky*, Mr. Halder was incapable of consulting with his attorneys "with a reasonable degree of rational understanding" and it is questionable whether he had a "rational as well as factual understanding of the proceedings against him."⁷⁰ Concerning the language of *Pate*, Mr. Halder exhibited "irrational behavior" and inappropriate "demeanor at trial."⁷¹

In line with Bonnie's formulation of competency to stand trial, it is this author's opinion that Mr. Halder's abilities to understand the charges and criminal process were adequate. However, it is argued that Halder's capacity to rationally appreciate his legal situation and communicate such information to counsel was significantly impaired.⁷² He was unable to provide non-delusional reasons for his legal decisions in question and consider alternative options.⁷³ Further, his decisional competence relating to his ability to consider a plea bargain or insanity defense (two context-specific) decisions was impaired.

While Bonnie asserts that when a defendant disagrees with his counsel, decisional competence warrants special consideration, in this case, Mr. Halder could not even rationally communicate with his attorneys about trial strategy. Many evaluators do not know without being informed about what goes into a legal defense. Rather, their evaluations are based on the defendant's ability to communicate instead of his ability to assist in one's defense.⁷⁴

The *Dusky* standard can be considered a cognitive test focusing on a defendant's thought processes and whether he has a rational understanding and comprehension of the legal proceedings and can interact with his attorneys with reasoned and logical understanding. All states use a variant of the *Dusky* standard,⁷⁵ and only eight states specifically include a requirement that the defendant conduct his defense in a "rational manner."⁷⁶

70. *Dusky v. United States*, 362 U.S. 402, 402 (1960).

71. *Pate v. Robinson*, 383 U.S. 375 (1966).

72. See Bonnie, *supra* note 21, at 586. Irrationality in decisionmaking should raise a red flag and defense counsel should take appropriate steps to secure a psychological assessment.

73. See Slobogin & Mashburn, *supra* note 34; *Rohan v. Woodford*, 334 F.3d 803 (9th Cir. 2003)(indicating that capacity for rational communication once meant the ability to defend oneself, and now means the ability to assist counsel in one's defense).

74. See Philipsborn, *supra* note 31, at 15. An examiner's focus on a defendant's ability to interact does not specifically address the defendant's ability to assist.

75. See Patricia A. Zapf & Ronald Roesch, *Mental Competency Evaluations: Guidelines for Judges and Attorneys*, 37 COURT REVIEW 28, 29 (Summer 2000).

76. See Grant H. Morris, et al., *Health Law in the Criminal Justice System Symposium:*

Critical to this case is the consideration of the Ohio competency statute. The statute states that the defendant must have a present *mental condition*, and the defendant must be incapable of understanding the nature and objectives of the proceedings against him or incapable of assisting 'with his defense.⁷⁷ Although the Ohio statutory language does not use the term "rational," this author referred to the *rationality* language in *Dusky* during the court proceedings.⁷⁸ This author asserted that the ambiguity of the Ohio statute allows the expert witness to utilize the terms "*rational understanding*" and "*rational behavior*" in his report, opinion, and testimony.⁷⁹

While the United States Supreme Court has suggested that the *Dusky* standard is accepted universally in nature,⁸⁰ the Court has also opined that the *Dusky* standard meets the minimum constitutional requirements for competency.⁸¹ Essentially, states must incorporate the *Dusky* standard as their minimum definitional requirement.⁸² This practice of requiring trial competence while providing only a legal definition of the construct has resulted in the absence of precise guidance on how to evaluate and adjudicate competence.⁸³

Even if it is agreed that the "*rational understanding*" and "*rational manner*" language should be considered when assessing competency,

Competency to Stand Trial on Trial, 4 HOUS. J. HEALTH L. & POL'Y 193, 205 (2004).

77. See OHIO REV. CODE ANN. §2945.371. This language is similar to that employed by the United States Supreme Court in *Drope v. Missouri*, 420 U.S. 162, 171 (1975): "It has been long accepted that a person whose mental condition is such that he lacks the capacity to understand the nature and objectives of the proceedings against him, to consult with counsel, and to assist in preparing his defense may not be subjected to a trial."

78. Some states use the terms "rational understanding," while others use "rational manner." The former appears to refer to rational cognitive processes while the latter refers to rational behavior in the courtroom. See G. Morris, et al., *Assessing Competency Competently: Toward a Rational Standard for Competency-to-Stand-Trial Assessments*, 32 J. AM. AC. PSYCHIATRY & L. 231 (2004).

79. The Illinois competency to stand trial standard states that "a defendant is unfit if, because of mental or physical condition, he is unable to understand the nature and purpose of the proceedings against him or to assist in his defense." 725 ILL. COMP. STAT. ANN. 5/104-10 (LexisNexis 2006). The Illinois Supreme Court has interpreted this law using *Dusky* rationality language: "The test to be applied in determining a defendant's mental capacity to stand trial is whether he understands the nature and object of the charges against him and can, in cooperation with his counsel, conduct his defense in a rational and reasonable manner." *People v. Foley*, 192 N.E.2d 850, 851 (Ill. 1963).

80. *Cooper v. Oklahoma*, 517 U.S. 348, 354 (1996).

81. *Godinez v. Moran*, 509 U.S. 389, 402 (1993).

82. States that consider a "*rational manner*" standard must, in line with *Dusky*, also incorporate "*rational understanding*" language. See Morris et al, *supra* note 78, at 242.

83. See Philipsborn, *supra* note 31, at 16.

these are still ambiguous definitions.⁸⁴ In Ohio, the language includes "incapable of understanding or assisting." This language is vague and unspecific, and adding *rationality* to the mix in some ways makes the consideration clearer but yet equally more ambiguous.

Interestingly, some scholars assert that forensic mental health professionals are experts in assessing whether a defendant has a mental illness and can describe how a person's psychiatric disorder may affect his understanding of issues and decision making capacity; however, those professionals cannot decide whether a defendant has "sufficient" ability to consult with his attorney or has a "reasonable" degree of rational understanding, as those decisions are legal policy decisions.⁸⁵ The scholars also point out that a global competency assessment, including the specific assessment of the defendant's functional ability to interact with his attorney and develop legal defense strategy, are important skills to consider.⁸⁶

In Mr. Halder's case, the prosecutors opposed this author meeting with the defendant and his attorneys as the prosecutors believed this process would mold bias in the proceedings. Specifically, the district attorney believed that various attorney-defendant interactions and attorney interpenetrations of these interactions could cause this author to believe in defense counsels' opinions as to Mr. Halder's incompetence. The prosecutors indicated that the only way they would agree to the meeting is if they could be present.⁸⁷

Mr. Halder's case was a significant one in that it was in the forefront of the media, it involved the death penalty, and there was a loss of a life and other serious injuries to victims. Mr. Halder was faced with both the ultimate penalty of death and the potential of various legal options. The facts of his mental status and motive were complicated and deserved intricate rational dialogue between him and his attorneys. In

84. See Morris et al., *supra* note 78, at 243; Functionally, the *Dusky* standard means that the defendant must have the ability to communicate, the capacity to reason "from a single premise to a simple conclusion," the ability to "recall and relate facts concerning his actions," and the "ability to comprehend instructions and advice, and make decisions based on well-explained alternatives." Perlin, *supra* note 52, at 653.

85. Morris et al., *supra* note 78, at 243. Because of the ambiguous *Dusky* language and the difficulties applying these standards, experts have attempted to codify listings of evaluative criteria specifying areas of mental impairment that would indicate a defendant's incompetence. Perlin, *supra* note 51, at 653-54.

86. Morris et al., *supra* note 78, at 244.

87. The judge indicated that this author could assess the defendant however this author saw fit. This author decided not to evaluate the defendant in the presence of both defense and state counsel as there was enough information to make an informed opinion without such data.

most cases that seriously question a defendant's competency, it is not the basic "what's" (fundamentals that are in question), it usually is the "why's" (pertaining to assisting counsel) that are in debate,⁸⁸ i.e., "why CWRU and the judge are trying to harm me," and "why can't I testify in my trial about the CWRU conspiracy so I can use my victory to sue CWRU civilly." A thorough competency examination cannot simply address the "what's"; rather, it must also address the "why's."

XII. TWO FEDERAL COMPETENCY CASES ILLUSTRATING IRRATIONALITY IN THE COURTROOM

Two cases that were brought up in this author's testimony as to Mr. Halder's competency to stand trial were *United States v. Blohm*⁸⁹ and *United States v. Nagy*.⁹⁰ These cases are useful as they demonstrate two defendants' who were capable of understanding the nature and objectives of the court proceedings, yet, due to delusional thoughts, were incapable of rationally assisting in their defenses and, therefore, were ultimately found incompetent.

A. *United States v. Blohm*

In *Blohm*, the defendant was indicted for mailing threatening letters to a federal judge and his clerk.⁹¹ In the letters, Blohm claimed that the court was secretive, the judge was conspiring to suppress evidence sought by Blohm, and there was a conspiracy involving the judge, Arnold Palmer and Richard Nixon.⁹² As a result, Blohm wrote that he was going to bring a "sawed off shotgun to the U.S. Courthouse for the purpose of assassinating" someone.⁹³ The U.S. Government moved to have the court determine Blohm's competency to stand trial.⁹⁴ Because Blohm wished to proceed with trial while his attorney wished to seek a determination of his competence to stand trial, Blohm requested for his counsel to be terminated.⁹⁵ The parties and experts agreed that Blohm

88. See Brakel *supra* note 28, at 286.

89. 579 F. Supp. 495 (S.D.N.Y. 1983).

90. *United States v. Nagy*, No. 96-601, 1998 U.S. Dist. LEXIS 9478, at *19-20 (S.D.N.Y. June 24, 1998).

91. *Blohm*, 579 F. Supp. at 497.

92. *Id.*

93. *Id.*

94. *Id.*

95. *Blohm*, 579 F. Supp. at 498.

had "a factual understanding of the proceedings against him, including a factual understanding of the applicable statutes and procedures."⁹⁶

Similarly to Mr. Halder's case, it was the determination of Blohm's *rationality* regarding his legal decision making about which this dispute centered.⁹⁷ The judge believed that the rationality to be demonstrated was that of "an objective rationality, what would be regarded as rational to the average person, not to the defendant, [and] not to the psychiatrists"⁹⁸

The primary element in the court's decision that Blohm was incompetent were the behavior and testimony of Blohm.⁹⁹ Blohm had testified that the criminal matter he was involved with was an extension of his civil litigation (similar to Halder's case).¹⁰⁰ Similarly, Blohm believed that he only desired the truth and he did not want to file lawsuits and manipulate others.¹⁰¹ He did not believe anyone was going to help him seek the truth and he ultimately did not believe he could receive justice.¹⁰²

The judge also believed that Blohm was not competent because of his belief that there was a conspiracy.¹⁰³ Blohm thought he would be completely vindicated when he had an opportunity to present his conspiracy theory to a jury, and he did not care about the dangers of a trial, such as losing and going to jail.¹⁰⁴ Blohm also believed that the opportunity to have a great deal of attention paid to him, especially by the court, was worth the risk of going to jail.¹⁰⁵ The court found that Blohm's delusional beliefs about the court proceedings raised significant questions regarding his competency.¹⁰⁶

Blohm suffered from a paranoid delusion and was obsessed by the litigation which provided him with purpose and attention. The court believed his psychological needs were being satisfied by his manipulation of the court system in both civil and criminal actions.¹⁰⁷ Blohm's obsession included doing whatever was necessary, including

96. *Id.* at 499.

97. *Id.*

98. *Id.*

99. *Blohm*, 579 F. Supp. at 500.

100. *Id.* at 502.

101. *Id.* at 502 n.2.

102. *Id.*

103. *Blohm*, 579 F. Supp. at 503-04.

104. *Id.* at 503.

105. *Id.*

106. *Id.* at 505.

107. *Blohm*, 579 F. Supp. at 503.

threatening a judge, to keep his obsession (in the form of his litigation) alive.¹⁰⁸ Blohm's delusion progressed to the point that he believed that the court was part of a conspiracy, and his threats to the court were intended to expose the conspiracy.¹⁰⁹

The court stated that Blohm's irrational belief in the conspiracy and his hope of using the criminal trial as a forum to expose the conspiracy was the most pervasive evidence of his incompetency.¹¹⁰ Blohm simply wanted to use the trial to secure official attention to this and other concerns of his. He also rejected the advice of skilled and experienced attorneys who sought an incompetency finding. The court also buttressed its finding of incompetency by noting Blohm's mannerisms, his appearance in the courtroom and his deferential defiance.¹¹¹

The court in *Blohm* cited the anomaly of the situation: 'Blohm was superficially competent, in that he was able to describe accurately the roles of the court and counsel in a criminal trial; and to produce a stream of legalistic papers that cited numerous cases and statutes, thereby displaying perhaps a better knowledge of the law than that of many criminal defendants.¹¹² He was articulate and intelligent—on an intellectual level, he understood his legal position quite well. However, the court believed that Blohm's view of the actual nature of the proceedings and their likely outcome were extremely unrealistic.¹¹³ The court stated:

It cannot be said, under the *Dusky* test, Blohm has a "rational . . . understanding of the proceedings against him" when he believes that his criminal trial will serve primarily as a forum for public exploration of the golf conspiracy It cannot be said that he has a "sufficient present ability to consult with his lawyer with a reasonable degree of rational understanding," when he believes that a trial for criminal charges that could bring him twenty years in prison is merely a vehicle, set in motion by him, to bring out the issues of a closed, apparently meritless, copyright infringement suit In short, Blohm's understanding of the pending criminal proceedings is so distorted that he is unable to consult with his lawyer and assist in his own defense.¹¹⁴

Similar to Blohm, Mr. Halder believed there to be a conspiracy and

108. *Id.*

109. *Id.* at 504.

110. *Id.*

111. *Blohm*, 579 F. Supp. at 504.

112. *Id.* at 504-05.

113. *Id.* at 505.

114. *Id.* at 505 (internal citations omitted).

wanted to present his theory to the jury. Mr. Halder also wanted to use his courtroom testimony as a forum to communicate the CWRU conspiracy. His attorneys also questioned his competence due to his mannerisms in the courtroom, defiance, lack of affect, and lack of remorse. Further, akin to Blohm, Mr. Halder exhibited an excellent and even uncanny knowledge of the law and ability to draft legal documents; however, his belief that his criminal case could lead to a victory in civil court was distorted and not based in rational thought.

B. United States v. Nagy

In *United States v. Nagy*, the defendant, Nagy, called the White House and wished to speak with President Clinton regarding problems with his Social Security Benefits.¹¹⁵ During one of the calls, he threatened to cut the head off of a White House telephone operator.¹¹⁶ Secret Service agents found that Nagy had a history of psychiatric hospitalizations and paranoid schizophrenia.¹¹⁷ After shooting at the agents when they arrived to interview him, Nagy was taken into custody and charged with criminal offenses.¹¹⁸ Subsequently, he was evaluated for competency to stand trial.¹¹⁹

A psychiatrist evaluated Nagy and found him to suffer from a psychotic disorder, probable schizophrenia, paranoid type.¹²⁰ He believed Nagy to possess a grossly distorted perception of reality and, as a result, to be unable to rationally assist with his defense.¹²¹ He found Nagy to understand the functions of the court personnel and the difference between an indictment and complaint, yet Nagy had trouble exercising judgment about the relative import of issues in a criminal trial.¹²² Nagy's preoccupation with multiple paranoid beliefs significantly interfered with his ability to work with his attorney, and to consider rationally defense options and strategies.¹²³

Nagy was an intelligent individual who possessed a significant

115. *United States v. Nagy*, No. 96-601, 1998 U.S. Dist. LEXIS 9478, at *1 (S.D.N.Y. June 24, 1998).

116. *Id.* at *1-2.

117. *Id.* at *2.

118. *Id.*

119. *Nagy*, 1998 U.S. Dist. LEXIS 9478, at *4.

120. *Id.* at *4-5.

121. *Id.* at *5.

122. *Id.* at *5-6.

123. *Nagy*, 1998 U.S. Dist. LEXIS 9478, at *5-6.

level of knowledge regarding legal proceedings. His judgment regarding how to pursue his self interest in the proceedings was grossly diminished by his paranoid concerns. His “quest to obtain recognition and restitution for (likely) imagined slights ha[d] precedence over his pursuing reasonable defense strategies. He perceive[d] a trial as a stage upon which he could publicly decry the multiple injuries he believed had been inflicted upon him.”¹²⁴ Nagy was said to suffer from paranoia and grandiosity which impaired his sense of reality.¹²⁵ He desired a special prosecutor to be assigned to his case because of its importance.¹²⁶ The number of people he sued and the size of the damages—in the billions—and the number of people he believed were in a conspiracy¹²⁷ against him were consistent with his grandiose thinking.¹²⁸

Mr. Nagy was unable to rationally assess the likelihood of winning a trial.¹²⁹ He believed the public attention from the media he would capture by going to trial would “either cause the U.S. Government to repent and compensate him for the injuries he [felt] he [had] suffered or lead a jury to find that his actions were a reasonable response to over a decade of (perceived) government persecution.”¹³⁰ Nagy’s preoccupation with the media was evidence of his view that the trial was not about assessing whether Nagy was guilty but “rather a forum to alert the world of the grief he [had] been subjected to as a result of the conspiracy against him based upon the false accusation that he [was] a spy.”¹³¹

Nagy believed the political problems he had suffered would produce a good defense.¹³² His paranoid beliefs rendered him unable to rationally consider a plea bargain.¹³³ He did not desire to be incarcerated and was motivated to minimize any prison sentence.¹³⁴ He was disposed to reject a plea offer unless it included compensation by the

124. *Id.* at *5.

125. *Id.* at *14.

126. *Id.*

127. Nagy, who was born in Transylvania, Romania, believed that “a priest in Indiana, who had participated in sponsoring Nagy’s immigration to this country” thought Nagy was a spy. Nagy also believed that his landlord shared the same belief. In fact, Nagy believed that the U.S. Government, the Assistant United States Attorney, and each evaluating psychiatrist were involved in the conspiracy against him. *Nagy*, 1998 U.S. Dist. LEXIS 9478, at *12.

128. *Id.* at *14.

129. *Id.* at *5.

130. *Id.* at *6.

131. *Nagy*, 1998 U.S. Dist. LEXIS 9478, at *14-15.

132. *Id.* at *15.

133. *Id.* at *6.

134. *Id.*

government.¹³⁵ Nagy also refused a plea bargain "because it would hinder his pursuit of civil damages against the U.S. Government."¹³⁶ His psychosis based concerns interfered with him accurately assessing his legal affairs.¹³⁷

The judge at the competency hearing, Judge Patterson, opined that:

there is adequate evidence to find by a preponderance of the evidence that the defendant is unable to assist properly in his defense or to act properly in defending himself in a jury trial involving criminal charges. Although he understands the general nature of the proceedings, he has perceptions which distort the adequate knowledge of the full nature of what is required in order to properly defend himself.

Subsequently, Judge Patterson found Nagy incompetent to stand trial, and had him committed for treatment at a suitable facility.¹³⁸

With the help of medication, the treatment facility was able to control Nagy's symptoms, and declared him competent to stand trial.¹³⁹ Nagy objected to his lawyer's request to have a psychiatrist perform an insanity evaluation for purposes of pursuing an insanity defense,¹⁴⁰ and attempted and eventually succeeded in firing his lawyer.¹⁴¹ At another competency hearing held by the court, a psychiatrist stated that Nagy was unable to exhibit a rational assessment of the situation due to his psychosis, and he ultimately could not assist his counsel due to an impaired perception of reality.¹⁴²

Nagy also believed that Judge Patterson was biased against him and was using the psychiatric evaluation as a tool against him.¹⁴³ Nagy embarked on a series of *pro se* lawsuits and appeals and moved to disqualify Judge Kaplan, the judge who had been assigned to the case after Nagy was treated, because Judge Kaplan refused to proceed with trial due to an open issue of competency.¹⁴⁴ Nagy disagreed with Judge Kaplan, and desired to transfer the case to the Eastern District, appoint

135. Nagy, 1998 U.S. Dist. LEXIS 9478, at *6.

136. *Id.*

137. *Id.*

138. *Id.* at *7.

139. Nagy, 1998 U.S. Dist. LEXIS 9478, at *7.

140. *Id.* at *8-9.

141. *Id.* at *10.

142. *Id.* at *8-9.

143. Nagy, 1998 U.S. Dist. LEXIS 9478, at *9 n.2.

144. *Id.*

new counsel, or continue his litigation *pro se*.¹⁴⁵ Thereafter, Nagy filed civil complaints against Judge Patterson, Judge Kaplan, the U.S. Attorney, his former attorney, and multiple psychiatrists.¹⁴⁶ Nagy continually refused to consider the insanity defense, maintaining that he did not suffer from a mental defect. He insisted that efforts to find him incompetent were designed to cover-up the conspiracy against him.¹⁴⁷

Federal District Judge Robert Sweet found that Nagy was incompetent to stand trial based on “paranoid delusions concerning a conspiracy against him and his grandiose notions regarding the function of a trial in this case.”¹⁴⁸ Judge Sweet made the following finding:

Nagy is not properly or rationally able to consider or assist in decisions with respect to his defense, such as whether or not to accept a plea, whether or not to testify at trial, as well as which witnesses should be called, the evaluation of the testimony of witnesses and the significance of exhibits, the consideration of the possibility of a disposition of this case involving monitoring and treatment, rational consideration of an insanity defense, and an ability to control his conduct and testimony at trial . . . Nagy’s desire to proceed to trial so that the conspiracy against him may be exposed is an example of his irrational thought processes The distorted perceptions under which he presently operates impair his ability to rationally understand[] various defense options and strategies, as well as what is required for him to ably assist in preparing his defense.¹⁴⁹

Mr. Halder’s similarly suffered from irrational thought processes, specifically, paranoid and grandiose delusional thought patterns. Both defendants believed there to be a conspiracy against them and did not trust the judge or their attorneys. They both had a solid understanding of the legal proceedings against them, but could not entertain legal pleas and in essence were not able to exhibit proper judgment about their cases.

Due to their delusional thoughts, they could not work with their attorneys and rationally consider defense options and strategies. They both wanted to use a trial situation to communicate to the world how they had been wronged by their respective conspiracies. Further, they sued various parties and both had grandiose beliefs about different

145. *Id.*

146. *Id.* at *10-11. Nagy sued the psychiatrists because he believed they had lied about his mental state.

147. Nagy, 1998 U.S. Dist. LEXIS 9478, at *15.

148. *Id.* at *19.

149. *Id.* at *19-21.

issues: Halder about how he could change the world by trillions of dollars with his business and how he could fight cyber criminals; Nagy sued for enormous damages and desired a special prosecutor. Both were unable to rationally assess the likelihood of winning a trial. The two defendants seemed to believe the conspiracy they suffered from produced a good defense and both desired to ultimately testify to a delusional defense.

Both defendants possessed a paranoid belief system which impaired their abilities to consider plea bargaining or the insanity defense. Their psychotic-based concerns interfered with their ability to accurately assess their legal affairs. In essence, both Nagy and Halder exhibited distorted perceptions that impaired their ability to rationally understand various defense options and strategies and assist in preparing for their defenses. Importantly, Judge Sweet considered various functional elements related to trial competency such as a defendant's evaluation of witnesses, the significance of exhibits, and the consideration of dispositions at sentencing.

Blohm and *Nagy* demonstrate that a "lack of rationality should always trump mere factual knowledge."¹⁵⁰ One scholar suggests that rationality is a *minimum requiremen*, extended to offenders, and mere factuality is not enough; rather, the inquiry stretches to more sophisticated "rationality aspects" of the criminal's mind.¹⁵¹ *Blohm*, *Nagy*, and *Halder* were all intelligent and understood the basic legal concepts. However, they were unable to appreciate their legal predicaments and engage in reasonable and rational legal decision making. Thus, their decisional competence and abilities in assisting their defense counsel were impaired.

XIII. CONCLUSION

Mr. Halder's case is illustrative of a high-profile offender who, like many, suffered from a sophisticated and rare psychiatric disorder, one in which experts for the most part came to the same conclusion. While Mr. Halder understood the nature and objectives of the legal proceedings to some degree and was able to write a detailed legal brief in a prior civil suit, he was unable to appreciate his legal predicament and rationally

150. *See Brakel supra* note 28, at 287.

151. *Id.* at 288. *Brakel* queries, "was it plausible for the trial court to have found Colin Ferguson competent to understand and assist if they considered *rational terms*?" *Id.* at 289.

reason when making legal decisions.¹⁵² It is difficult for evaluators to examine how a defendant processes information and engages in rational decision making.¹⁵³ But these processes need to be examined. When a defendant bases his legal preferences and decisionmaking on irrelevant reasons and outright delusions, his choice does not deserve respect.¹⁵⁴

Again, when considering the language of *Godinez*—“capacity for reasoned choice among available alternatives”—and the language of *Dusky*—“rational understanding of proceedings”—Mr. Halder’s engrained delusions clearly impeded his ability to succeed in these areas. Consequently, this author believes that the court failed to protect the defendant’s right not to be tried or convicted while incompetent, and therefore his due process right to a fair trial was violated.

Determining whether a defendant is competent is often difficult and many cases can be decided either way. After analyzing the ambiguous language in the *Dusky* holding more closely and applying it to unique “close call cases,” this author recommends that the expert witness consider examining the defendant in the presence of his attorney. Notably, in many competency to stand trial assessments, the forensic mental health professional rarely knows the type of defense(s) that may be used, specific factual and discovery issues, or decisions that the defendant might make during the course of legal process. While it is not expected or assumed that an expert witness be a lawyer, it is this author’s contention that a mere understanding of the nature and objectives of the proceedings is not enough to find a defendant competent. The difficulty lies in explaining the reasoning ability relevant to a defendant’s understanding of his legal predicament and capability of assisting in his defense in light of a severe mental illness. Consequently, an examination of the defendant’s ability to reason, communicate, and ultimately assist his attorney gets at the defendant’s functional legal abilities that are most relevant in a competency decision.

152. Unfortunately, Zapf et al, *supra* note 49, found that in the State of Alabama, 90% of the competency evaluations did not address a defendant’s ability to appreciate his role in the proceedings and his ability to reason when making legal decisions. *Id.* at 40. Rather the evaluations focused on the defendant’s knowledge and ability to participate in the proceedings. *Id.*

153. See Winick, *supra* note 56, at 597. The U.S. Supreme Court has stated that defense attorneys will often have the best knowledge of the defendant’s ability to participate in his defense. See *Medina v. California*, 505 U.S. 437, 450 (1992).

154. See Bruce J. Winick, *Restructuring Competency to Stand Trial*, 32 UCLA L. REV. 921, 967 (1985).

Interestingly, the U.S. District Court in *U.S. v. Duhon*,¹⁵⁵ stated that a "multi-disciplinary approach is often critical in resolving competency issues, particularly, where the focus is on a defendant's ability to assist counsel." The court continued, "One of the most evident issues is whether the professional, usually a psychiatrist or a psychologist, really knows what would normally go into the defense of the case."¹⁵⁶

The parties in Halder's criminal case all worked effectively pursuant to their objectives. The initial criminal defense attorneys displayed ethical behavior and professional responsibility when representing the defendant. They reasonably believed that their client had diminished capacity and could not adequately act in his own interest, as a result, they took reasonable necessary protective action, including consulting with individuals or entities who had the ability to take action to protect the client.¹⁵⁷ A lawyer shall make reasonable efforts to expedite litigation consistent with the interests of the client.¹⁵⁸ These objectives may conflict with one another, as a mentally ill defendant may not be able to rationally consider his legal situation and options, yet desire to expedite his legal process. Nonetheless, these attorneys considered their client's mental illness and subsequent impairments on his functional abilities in the courtroom.

The second group of attorneys attempted to present an insanity defense which the judge precluded due to lack of evidence. These attorneys conceded the incriminating nature of the facts during the guilt phase. They properly focused on the defendant's mental illness as mitigating the sentence from death to life without parole by communicating a nexus between the crime and the defendant's mental disorder.

The judge understood her proper role in determining the ultimate legal issue as to competency.¹⁵⁹ The prosecutors properly focused on the defendant suffering from a personality disorder rather than a severe

155. *U.S. v. Duhon*, 104 F. Supp. 2d 663 (W.D. La. 2000). The court reasoned that the defendant was merely provided competency restoration groups in which he memorized factual understanding of the proceedings, yet could not rationally understand these facts or consult with his attorney with a reasonable degree of rational understanding. *Id.* at 677-78.

156. *Id.* at 669.

157. MODEL RULES OF PROF'L CONDUCT R. 1.14 (2006).

158. *Id.*

159. Many judges are frustrated with mental health professionals in that they expect the examiners to speak to the ultimate issue of competency. *Id.* at 42. Competency to stand trial falls on a continuum and is always open for interpretation and argument. An all-or-nothing paradigm demanded within the system is not compatible with clinical realities. *See* Perlin, *supra* note 52, at 658.

mental illness such as a delusional disorder; the former a disorder inconsistent with incompetency findings, and more consistent with an unwillingness to assist in one's defense. They argued that the defendant was knowledgeable about legal issues as he wrote a highly sophisticated legal brief in his prior legal suit and failed to sign his Miranda warning, recognizing the defendant's knowledge of a potential suppression of the evidence claim as he could argue he was never properly Mirandized.

The prosecutors also focused on the defendant's premeditation in the offense, and communicated their belief he knew right from wrong. This issue was more relevant to his defense of insanity rather competency, yet they argued that he also could discuss the facts of his behaviors, intent, and planning of the offense with the various experts, yet he rationally chose not to discuss these issues with his attorneys in a protective fashion.

The prosecution argued that this author's analysis of the defendant's competency was too elaborate and that the bar to competency to stand trial was set too high. Specifically, they cited case law including *State v. McColgan*,¹⁶⁰ in which an appellate district court held that an expert in the case employed an artificially high legal standard in his opinion as to the defendant's competency. They also cited the trial court's opinion that "competency does not require a defendant to evaluate and discuss available legal defenses or to opine as to how his attorney should conduct his defense."¹⁶¹ The state also referred to *State v. Bock*¹⁶² in which the court stated that "[i]ncompetency must not be equated with mere mental or emotional instability or even with outright insanity. A defendant may be emotionally disturbed or even psychotic and still be capable of understanding the charges against him and of assisting his counsel." Finally, the prosecution cited *State v. Berry*,¹⁶³ in which the court held that a defendant who was uncooperative with his defense counsel at various times is not necessarily deemed incompetent to stand trial.

In summary, this author was determined to inquire into the skills

160. No. 04AP-120, 2005 Ohio App. LEXIS 596 (Ohio Ct. App. February 15, 2005).

161. The appeals court noted that many, if not all, defendants would have some difficulty following complex legal concepts. Notably, the defendant in this case experienced neurological damage and developmental delays, ultimately affecting his cognitive functioning. In Mr. Halder's case, he was not cognitively impaired in so far as experiencing developmental delays; rather, he was markedly intelligent, but experienced significant delusions that affected his ability to rationally assist in his defense.

162. *State v. Bock*, 502 N.E.2d 1016, 1019 (Ohio 1986).

163. *State v. Berry*, 650 N.E.2d 433 (Ohio 1995).

that a defendant actually needs in trial.¹⁶⁴ Further, there was a thorough discussion of the examiner's conceptualization of competency to stand trial, description of the nexus between the defendant's impairments and symptoms of psychopathology, and description of the reasoning underlying psycholegal conclusions.¹⁶⁵

While an expert witness may ultimately have to define the term "rational" in accordance with the *Dusky* holding in a subjective fashion, a functional evaluation of a defendant's psycholegal abilities in a competency to stand trial assessment is consistent with psychological theory, research, and the needs of attorneys and judges. While a competency evaluation may focus on a defendant's functional abilities relative to the context of his legal situation, the ultimate opinion is a moral one, in the hands of the judge.

When considering Mr. Halder's mental illness and functional abilities in the courtroom, "the capacity and rationality required of the defendant depends much on context—the type of case, its relative complexity, and the values and stakes implicated in the outcome."¹⁶⁶ While it can be argued that Mr. Halder lacked the ability to consult with his attorneys with a reasonable degree of rational understanding, the severity of the crime and stakes of the case were quite significant and likely ultimately played a role in the outcome.

164. See Perlin, *supra* note 52, at 658; *Drope v. Missouri*, 420 U.S. 162 (1975). When the Court observes that the examining psychiatrist was asked to address medical facts regarding his mental and emotional condition rather than issues bearing on the defendant's competence to stand trial. *Id.* at 176.

165. See Skeem et al., *supra* note 17. The authors state that when reviewing forensic examiners' competency to stand trial evaluations, many court reports describe a basic operationalization of competence and fail to incorporate a defendant's decisional competence. *Id.* at 538. While examiners often discuss foundational abilities and comprehension of charges and court proceedings, they often neglect to focus on higher order decisional capacities relevant to a defendant's capacity of reasoned choice of legal options. *Id.*

166. See Brakel, *supra* note 28, at 285.