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# MENTAL COMPETENCY TO STAND TRIAL WHILE UNDER THE INFLUENCE OF DRUGS

by Victor G. Haddox,\* Bruce H. Gross,\*\*  
and Seymour Pollack\*\*\*

The production of tranquilizers<sup>1</sup> and other psychopharmaceuticals has virtually exploded within the past twenty years, while illegal drug use has also increased to epidemic proportions.<sup>2</sup> The proliferation of illegal drug consumption has been dramatically reflected in the legal system; for example, fifty-one percent of criminal cases currently going to trial in the superior courts of Los Angeles County involve drug related offenses.<sup>3</sup> It is not surprising, therefore, that a substantial num-

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1. Haddox & Pollack, *Psychopharmaceutical Restoration to Present Sanity (Mental Competency to Stand Trial)*, 17 J. FOR. SCI. 568 (1972). The term "tranquilizer" was first used by Benjamin Rush, M.D., founding father of American psychiatry, in describing his "tranquilizing chair." The term came into general usage recently, designating a group of pharmaceutical agents which reduce anxiety and agitation. Unfortunately, the term continued to be applied to more sophisticated psychopharmacological agents (Chlorpromazine, etc.) which in addition to reducing anxiety—"tranquilization"—also possess specific psychopharmaceutical properties which produce remission of clinically overt psychotic symptoms. Thus "tranquilizer" is a misnomer and tends to mislead and misinform the psychiatrically unsophisticated into assuming that reduction of anxiety and agitation is their only function. Note the titles of the following articles as examples of this misinformation: Buschman & Reed, *Tranquilizers and Competency to Stand Trial*, 54 A.B.A.J. 284 (1968); Scignar, *Tranquilizers and the Psychotic Defendant*, 53 A.B.A.J. 43 (1967); Tuteur, *Tranquilizers and "Recovery to Legal Sanity,"* 122 AM. J. PSYCHIATRY 220 (1965); Note, *The Case of the Tranquilized Defendant*, 28 LA. L. REV. 265 (1968); Recent Development, *The Propriety of Using Tranquilizing Drugs to Calm a Person to a Point Where He is Competent to Stand Trial*, 31 OHIO ST. L.J. 617 (1970).

2. G. UELMEN & V. HADDOX, *DRUG ABUSE AND THE LAW* 9 (1974).

3. "At present, narcotic and dangerous drug cases represent approximately 51% of the Courts' criminal workload." Report of the Special Judicial Reform Comm., Superior Court of Los Angeles County, Feb. 1971, at 34.

ber of defendants are under the influence of mind-altering substances during some phase of their involvement with the criminal justice system.<sup>4</sup> Such influence raises serious question as to whether drug influenced defendants are mentally competent to stand trial.

Because the competency of persons under the influence of mind-altering substances is becoming a frequently encountered psychiatric-legal issue<sup>5</sup> and because the possibility of involuntary commitment threatens those found incompetent,<sup>6</sup> it is imperative that those con-

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4. This viewpoint is substantiated by the dramatically increasing number of attacks upon convictions because of alleged incompetency to stand trial while under the influence of drugs.

5. S. Pollack, *Manual on Mental Competency to Stand Trial*, 1970 (manual of limited circulation on file at the Institute of Psychiatry, Law and Behavioral Science, University of Southern California, School of Medicine) [hereinafter cited as *Manual*]. The issue of mental competency is present throughout all stages of criminal proceedings, from the time of giving *Miranda* warnings through mental competency to stand trial, mental competency to be sentenced and even to be executed. Many of these procedures involve the waiving of constitutional rights.

In *Escobedo v. Illinois*, 378 U.S. 478 (1964), the Court noted that, although the defendant may waive his constitutional rights, the waiver must be made voluntarily, knowingly, and intelligently. Thus, if a defendant is under the influence of mind-altering substances to the extent that he demonstrates an incapacity to make a free and unrestrained decision, it follows that the defendant does not have the mental capacity to waive constitutional rights. *Javnor v. United States*, 403 F.2d 507 (9th Cir. 1963).

The Supreme Court held in *Townsend v. Sain*, 372 U.S. 293 (1963), that if an individual's will is overcome so that the confession is not the act of a rational intellect and free will, it will be inadmissible because it is coerced. This coercion may be made by physical intimidation or psychological pressure, and the Court specifically noted that it included statements that are drug-induced. *Townsend*, a heroin addict, was in custody for robbery. He was undergoing withdrawal symptoms and the police physician had given him Phenobarbital and Hyoscine (Scopolamine). Ten minutes later, while under the influence of the mind-altering agents, he confessed to an unrelated murder. Using the reasoning described above, the Supreme Court reversed *Townsend's* conviction, believing that his constitutional rights had been denied. Since waivers of constitutional rights are inherently suspect, waivers obtained from individuals under the influence of mind-altering drugs will most likely be subjected to special judicial scrutiny. If there is a doubt as to whether a defendant possessed a meaningful capacity to make a free and independent choice to waive his fifth amendment right against self-incrimination, it is likely that the court's decision will be similar to that in *Logner v. State*, 260 F. Supp. 970 (M.D.N.C. 1966). There a defendant intoxicated with alcohol and an amphetamine (Syndrox) gave statements linking him with a robbery. The court excluded the statements, holding that the defendant's intoxication had rendered them involuntary.

6. Comment, *Criminal Law—Insane Persons—Competency To Stand Trial*, 59 MICH. L. REV. 1078 (1961). Approximately 50% of committed defendants will have to spend the rest of their lives in a mental hospital. Recent court decisions, such as *Jackson v. Indiana*, 406 U.S. 715 (1972), hold that indefinite commitment of a criminal defendant solely on account of his lack of capacity to stand trial offends the constitutional principles of equal protection and due process. Such a defendant cannot be held more than the reasonable period of time necessary to determine whether there is

cerned with criminal-legal proceedings understand the problems related to such competency determinations. The criminal justice system must also be attentive to problems raised when patient-defendants claim mental incompetency because they were not given needed medication.<sup>7</sup>

This Article will analyze the United States Supreme Court ruling detailing standards for mental competency to stand trial.<sup>8</sup> It will also analyze the trend of recent decisional law to determine when a hearing is required regarding mental competency to stand trial in those cases in which the defendant may be under the influence of drugs. It will discuss whether a defendant may waive his right to be mentally present at a required hearing by voluntarily ingesting drugs and will further discuss the shifting of the burden of proof from the defendant to the government when the incarcerated defendant is under the influence of medication.

For purposes of analysis, cases concerning drug influenced defendants will be divided into three major categories: (1) cases in which the defendant voluntarily takes a drug or medication prior to or during trial; (2) cases in which the detained defendant is administered medication by a representative of the criminal justice system; and (3) cases in which the detained defendant is denied needed medication by a representative of the criminal justice system.

#### GENERAL OBSERVATIONS

Before discussing the three categories of cases, some fundamental concepts regarding mental competency to stand trial and the effect of the use of psychoactive agents on mental competency should be presented. The law deems a defendant mentally incompetent to stand trial because of his demonstrated mental impairment, *not* because he is suffering from a specific illness.<sup>9</sup> The law is unconcerned with the cause of his mental impairment<sup>10</sup> and, instead, directs its attention solely to the resulting demonstrable effects of his mental impairment upon (a)

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a substantial probability that he will attain competency in the foreseeable future. If it is determined that he will not, the State must either institute civil proceedings applicable to indefinite commitment of those not charged with crime, or release the defendant. *Accord, In re Davis*, 8 Cal. 3d 798, 505 P.2d 1018, 106 Cal. Rptr. 178 (1973).

7. Haddox & Pollack, *Psychopharmaceutical Restoration to Present Sanity (Mental Competency to Stand Trial)*, 17 J. FOR. SCI. 568 (1972).

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

9. *But cf. People v. Rogers*, 150 Cal. App. 2d 403, 309 P.2d 949 (1957). See text accompanying notes 45-48 *infra*.

10. *Townsend v. Bushong*, 65 N.E.2d 407 (Ohio 1946).

the defendant's capacity to understand the charges against him and his capacity to understand the significance of his involvement with the criminal justice process, and (b) the defendant's capacity to cooperate with counsel in his defense.<sup>11</sup> As expressed in *United States v. Chisolm*:<sup>12</sup>

Physicians may disagree as to the diagnosis of the disease, but we have little to do with mere names. The real question is: Does the mental impairment of the prisoner's mind, if such there be, whatever it is, disable him, under the rules I have already given you, from fairly presenting his defense, whatever it may be, and make it unjust to go on with his trial at this time, or is he feigning to be in that condition, which, if true, renders him unfit to be kept on trial at this time?<sup>13</sup>

The law is concerned, however, with the manner in which this mental impairment is induced, *i.e.*, the way in which it is brought about.

Many legalists and psychiatrists<sup>14</sup> still do not understand that mental incompetency to stand trial is defined in terms of demonstrable mental impairment, not in terms of mental illness, *per se*. Statutory language has compounded this confusion because most statutes speak generally in terms of sanity and insanity. Moreover, statutes have provided little or no guidelines for defining the critical levels of mental impairment, that is, identifying that critical threshold level that separates mental incompetency to stand trial from mental incompetency.

The case of *Dusky v. United States*<sup>15</sup> is one of the few appellate opinions that directs itself to the critical threshold level of mental impairment that basically differentiates the defendant who is mentally incompetent to stand trial from the party who is competent. In this case, the Supreme Court did not direct itself to the issue of causes of mental impairment or to the manner in which the impairment was produced, but only to the standard that the impairment must assume to dictate a finding of mental incompetency.

At Dusky's competency hearing, the trial court found him to be mentally competent to stand trial because the judge believed that Dusky had the capacity in a factual sense to understand both his relationship to the criminal justice system and to the circumstances of the offenses charged against him,<sup>16</sup> and that Dusky also had the capacity to cooper-

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

12. 149 F. 284 (C.C.S.D. Ala. 1906).

13. *Id.* at 289.

14. See Manual, *supra* note 5, at 55.

15. 362 U.S. 402 (1960).

16. The *Dusky* case is further described in A. MATHEWS, MENTAL DISABILITY AND THE CRIMINAL LAW 103-22 (1970) [hereinafter cited as MATHEWS].

ate in a factual sense with his counsel in the preparation of his defense.<sup>17</sup>

At the competency hearings the government's psychiatric expert witnesses were of the unanimous opinion that Dusky was so mentally impaired by his mental illness that he could not adequately assist counsel in the preparation of his defense.<sup>18</sup> They maintained that Dusky had hallucinated,<sup>19</sup> was delusional,<sup>20</sup> and had paranoid ideas;<sup>21</sup> but in the hearing on appeal the psychiatrist admitted he had not specifically explored how this evidence of irrationality related to Dusky's competency to stand trial.<sup>22</sup> The appellate court noted what it considered to be inconsistencies in expert testimony in that an expert witness admitted that Dusky actually understood the charges against him and that most of the information that Dusky conveyed about the alleged offenses was *factually* accurate.<sup>23</sup> As was pointed out by the Solicitor General, the mental competency standard applied by the hearing judge, and apparently adopted by the appellate court, varied from the standard applied by the psychiatrists:

[I]f the judge meant to say that it is sufficient that the defendant be oriented to time and place and have some recollection of events, we think that the test he applied was too narrow. For example, we do not think that a defendant whose thinking is wholly colored by an insane delusion should be considered competent to assist in his defense even though much of the information which he could convey would be factually accurate. The test must be whether he has sufficient present ability to consult with his lawyer with a reasonable degree of rational understanding—and whether he has a rational as well as factual understanding of the proceedings against him. Although, as noted at the outset, we think that some of the items mentioned by the doctor (such as the facts that defendant felt that the charges were a plot and that his story varied a little) do not show such lack of rational understanding, and suggest that perhaps the doctors were applying too broad a standard, we are not certain that the court was not applying too narrow a standard.<sup>24</sup>

In this borderline case, with the record not presenting a great deal of information, the United States Supreme Court was probably influ-

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17. *Id.* at 109-11.

18. *Id.* at 105-08.

19. *Id.* at 104, 107-08.

20. *Id.* at 106-08.

21. *Id.*

22. *Id.* at 113.

23. *Id.* at 119.

24. Solicitor General's Brief at 11, *Dusky v. United States*, 362 U.S. 402 (1960) [hereinafter cited as Solicitor General's Brief].

enced by the "unanimous conclusion of the disinterested government psychiatrists."<sup>25</sup> Therefore, the Supreme Court concluded from the argument presented by the Solicitor General that "the reports and the testimony do afford a substantial basis for the conclusion of incompetency, particularly the testimony as to hallucinations and the need for medication."<sup>26</sup> The Supreme Court accepted the Solicitor General's argument that, "[A] trial judge ought, at a minimum, [to] have other expert opinion before he undertakes to disregard the unanimous conclusion of disinterested experts."<sup>27</sup> The Court sent the case back for a rehearing, stressing that the threshold of competency to stand trial was "not only the orientation of the defendant and his recollection of facts, but his ability to understand and convey facts with a reasonable degree of rationality."<sup>28</sup>

By these words, the United States Supreme Court defined the threshold level of understanding for mental competency to stand trial. It set the critical threshold level above "factual understanding" which by itself would not suffice to qualify for mental competency to stand trial. A higher level of understanding, that of "reasonable understanding" or understanding with a "reasonable degree of rationality," is necessary. Furthermore, if rational understanding were impaired by drugs, hallucinations, or delusions, such impaired understanding would also negate the defendant's mental competency; however, any such evidence of irrationality would have to be intimately related to the issue of competency to stand trial.

In many ways, evidence of rational understanding is difficult to distinguish from that of factual understanding. The distinction is perhaps best illuminated by an examination of the factual context in *Dusky*.<sup>29</sup> Milton Dusky, a thirty-one year old man, was charged on September 10, 1958, with violating section 1201 of Title 18 of the United States Code<sup>30</sup> by transporting in interstate commerce a girl who had been

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25. *Id.* at 12.

26. *Id.*

27. *Id.*

28. *Id.*

29. MATHEWS, *supra* note 16.

30. Section 1201 then provided in pertinent part:

Whoever knowingly transports in interstate or foreign commerce, any person who has been unlawfully seized, confined, inveigled, decoyed, kidnaped, abducted, or carried away and held for ransom or reward or otherwise, except, in the case of a minor, by a parent thereof, shall be punished (1) by death if the kidnaped person has not been liberated unharmed, and if the verdict of the jury shall so recommend, or (2) by imprisonment for any term of years or for life, if the death penalty is not imposed.

Act of Aug. 6, 1956, ch. 971, § 1201, 70 Stat. 1043.

kidnapped.<sup>31</sup> Dusky, in the company of two teenage youths, Leonard Dischart, age fourteen, and Richard H. Nixon, age sixteen, had encountered the victim while she was walking to a neighborhood drug store to have lunch with another girl.<sup>32</sup> She accepted their invitation to drive her to the drug store.<sup>33</sup> She had met Nixon before, knew Dischart casually, but did not know Dusky.<sup>34</sup> Dusky and his young companions discharged the victim at the drug store and then went to a nearby drive-in where they drank vodka supplied by Dusky.<sup>35</sup> They discussed the possibility of having sexual relations with the girl<sup>36</sup> and subsequently returned to the drug store to wait for her.<sup>37</sup> They offered to drive her home when she left the store.<sup>38</sup> Although refusing at first,<sup>39</sup> she subsequently accepted their invitation.<sup>40</sup>

Dusky drove the car from Ruskin Heights, Missouri, into the neighboring state of Kansas.<sup>41</sup> After having stopped the car on a back road, using a small knife as a threat, the two young boys raped the victim.<sup>42</sup> Dusky was unsuccessful in his attempt to have intercourse with her<sup>43</sup> and then drove all of them back to the original drive-in in Missouri where the victim escaped.<sup>44</sup> As she reported her abduction and rape to the employees of the drive-in, Dusky and his young friends drove away.<sup>45</sup> Dusky and Dischart were arrested the following evening.<sup>46</sup>

Having experienced some difficulty consulting with Dusky in an effort to prepare his defense, Dusky's attorney was convinced that Dusky was incompetent to stand trial;<sup>47</sup> accordingly, he was committed to the Federal Medical Center at Springfield, Missouri, for an examination.<sup>48</sup> Four months after his commitment, a court hearing was held to determine his competency to stand trial.<sup>49</sup>

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31. Solicitor General's Brief, *supra* note 24, at 6-7.

32. *Id.*

33. *Id.*

34. *Id.*

35. *Id.*

36. *Id.*

37. *Id.*

38. *Id.*

39. *Id.*

40. *Id.*

41. *Id.*

42. *Id.*

43. *Id.*

44. *Id.*

45. *Id.*

46. *Id.*

47. MATHEWS, *supra* note 16, at 103.

48. *Id.*

49. *Id.*



At this hearing, the government psychiatrist from the Federal Medical Center testified that Dusky was not mentally competent to stand trial.<sup>50</sup> Dusky was given a diagnosis of schizophrenic reaction, chronic undifferentiated type.<sup>51</sup> The psychiatrist described Dusky's long history of mental difficulty with gross maladjustment which began sometime during his childhood.<sup>52</sup> Psychological test reports at the Federal Medical Center described Dusky as suffering from

inadequacy, anxiety, impulsiveness, poor reality contact, lack of ego strength, auditory and visual hallucinations, depression, nervous tension, morbid preoccupation with hostility, suicide, murder, sexual indulgence succumbing to a state of insanity.<sup>53</sup>

Dusky was placed on Thorazine in therapeutic dosages.<sup>54</sup> This significantly improved his mental state, and when receiving adequate amounts of Thorazine, his mental state appeared relatively unimpaired;<sup>55</sup> but he had episodes of paranoid thinking and behavior and disruption of ego function when his medication was discontinued.<sup>56</sup>

The government psychiatrist's testimony indicated that Dusky understood the criminal charges against him and comprehended his legal predicament as well as the court's role and function,<sup>57</sup> but the psychiatrist maintained that the defendant was unable to assist his attorney in his defense.<sup>58</sup> The following line of inquiry by the judge is extracted from the transcript of the hearing. (Dr. A: the psychiatrist; Mr. D: the defense attorney; Mr. P: the prosecuting United States attorney; and Judge J: the trial judge.) These excerpts are extracted from different parts of the hearing transcript in order to highlight the specific issue under consideration:<sup>59</sup>

Judge J: [I] would like for you to point out to me why, under the circumstances, he [Dusky] would be unable to assist his counsel in preparing a defense to this particular charge.

Dr. A: First, this man is mentally ill. His illness is —

Judge J: [D]o . . . you subscribe to the premise that simply because a man is mentally ill . . . he is unable to work with his counsel in preparing a defense to a charge that might be against him?

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50. *Id.* at 103-22.

51. *Id.* at 103.

52. *Id.* at 104.

53. *Id.* at 107 n.6.

54. *Id.* at 115-17.

55. *Id.*

56. *Id.*

57. *Id.* at 104-05.

58. *Id.* at 109.

59. *Id.* at 103-19.

Dr. A: Not just the fact that he is mentally ill, but the character of his mental illness.

. . . .

Dr. A: The character of this man's mental illness is such that his thinking is distorted. He does not have realistic thinking, he is unable to add two and two, figuratively speaking, and come up with the proper conclusion.

Judge J: We are not concerned with conclusions now. We are concerned with whether or not he knows that this figure is two, and this figure is two. One of the reasons he has attorneys is to arrive at the proper total of four. Now, let's don't talk for the moment about his ability to reach conclusions. Let's talk about his ability to recite facts.

Dr. A: Your Honor, in interpreting facts, which we understand as facts, the statement of the patient that this might be a fact, might not be true because of his distorted thinking, his defective reasoning and judgment, and his inability to interpret realistically anything which is going on. That doesn't apply to everything but there are certain areas, which I am unable to define accurately, just where his thinking is distorted other than in the terms of delusions and hallucinations as part of his mental illness.

Judge J: [Y]ou said that one reason why he was not, in your opinion, capable of properly assisting in his own behalf was the fact that he was mentally ill.

Dr. A: Yes.

Judge J: Now, what else?

Dr. A: This was in terms—I was going to then define what I meant as far as his mental illness is concerned—

Judge J: All right.

Dr. A: —that it affects his reasoning, his judgment, his interpretation of what is going on about him and his ability to answer questions and respond to his attorney or others as a witness. This man's statement cannot be taken to be factual when he is unable to differentiate reality from unreality.

Judge J: Well, now, getting back to the conversations you have had with him as basis for formulating your opinion here about his mental illness as it relates to the precise incident which furnishes the basis of this charge, what statements did he make to you that might demonstrate to us his inability to describe those circumstances and those events?

Dr. A: . . . [V]ery little of the actual decisions that I have made in my own mind are based on information relative to the offense.

In other words, when this man tells me that we have a microphone in his room behind the radiator by which we are calling him bad names, this is not concerned with the offense whatsoever; this is part of my mental examination and [my] interpretation of the mental illness, which is of such severity that he is unable to reason or interpret accurately.<sup>60</sup>

. . . .

Judge J: He was at this date, and in your opinion I believe you testified, still is oriented as to time, place and person?

Dr. A: Yes.

Judge J: He realizes he is in court today, he realizes that he was down there pursuant to a Court order for psychiatric examination?

Dr. A: Yes.

Judge J: He knows who his attorney is, he knows what he is charged with having done?

Dr. A: Yes.

Judge J: And to some extent at least he knows some, or expresses a knowledge of some of the incidents leading up to the commission of the offense that he is alleged to have committed?

Dr. A: Yes, sir. . . .<sup>61</sup>

. . . .

Judge J: . . . I am of the opinion that the evidence that has been developed thus far, showing as it does that the defendant is oriented as to time and place and person, understands the nature of the charge that is pending against him, understands that he is actually being charged with an offense, understands what that offense is, and as far as his ability to recite facts is concerned, in my opinion is able properly to assist in his own defense to the extent that he can develop those facts with his own attorney, it is my conclusion that he properly should be kept here and not returned to the Medical Center, and that he is competent to stand trial in the narrow sense of that term as used under Section 4244.<sup>62</sup>

60. *Id.* at 111-13.

61. *Id.* at 115.

62. *Id.* at 118. The judge's reference is to 18 U.S.C. § 4244 (1970), which provides:

Whenever after arrest and prior to the imposition of sentence or prior to the expiration of any period of probation the United States Attorney has reasonable cause to believe that a person charged with an offense against the United States may be presently insane or otherwise so mentally incompetent as to be unable to understand the proceedings against him or properly to assist in his own defense, he shall file a motion for a judicial determination of such mental competency of the accused, setting forth the ground for such belief with the trial court in which proceedings are pending. Upon such a motion or upon a similar motion in behalf

The federal standard articulated by the United States Supreme Court in *Dusky* directed itself to the critical threshold level of mental impairment:

[T]he "test must be whether [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.*"<sup>63</sup>

When the Solicitor General's brief and the above quoted transcript material are considered, it becomes apparent that the United States Supreme Court's opinion in *Dusky* substantially clarified prior ambiguity regarding the legal definition of *understanding* as this term relates to the issue of mental competency to stand trial. The trial court and the appellate court assumed that a higher threshold level of mental impairment than that eventually enunciated by the Supreme Court was necessary before a defendant could be found mentally incompetent to stand trial. The trial court believed that if the defendant had the capacity to *identify facts*, *i.e.*, if he could recognize "2" as "2," this capacity would qualify him as mentally competent to stand trial; it was not necessary that the defendant be able to reason rationally with these facts, *i.e.*, the defendant need not be able to add "2 + 2" and arrive at a total of "4." Under the trial court's standard, the defendant was competent to stand trial even though he was incapable of reasoning logically from a simple premise to a simple conclusion. The trial court assumed that the defendant's attorney could apply this level of reasoning to facts supplied by the defendant; therefore, it was unnecessary that the defendant himself possess a similar degree of rationality. If, however, the defendant was unable to supply these facts, he would presumably be incompetent to stand trial.

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of the accused, or upon its own motion, the court shall cause the accused whether or not previously admitted to bail, to be examined as to his mental condition by at least one qualified psychiatrist, who shall report to the court. For the purpose of the examination the court may order the accused committed for such reasonable period as the court may determine to a suitable hospital or other facility to be designated by the court. If the report of the psychiatrist indicates a state of present insanity or such mental incompetency in the accused, the court shall hold a hearing, upon due notice, at which evidence as to the mental condition of the accused may be submitted, including that of the reporting psychiatrist, and make a finding with respect thereto. No statement made by the accused in the course of any examination into his sanity or mental competency provided for by this section, whether the examination shall be with or without the consent of the accused, shall be admitted in evidence against the accused on the issue of guilt in any criminal proceeding. A finding by the judge that the accused is mentally competent to stand trial shall in no way prejudice the accused in a plea of insanity as a defense to the crime charged; such finding shall not be introduced in evidence on that issue nor otherwise be brought to the notice of the jury.

63. 362 U.S. at 402-03 (emphasis added), quoting Solicitor General's Brief, *supra* note 13, at 11.

As was previously mentioned, the Supreme Court set the critical threshold for mental incompetency at a lower level than did the trial court and the court of appeals.<sup>64</sup> The Supreme Court held that in order to be mentally competent to stand trial a defendant must have a capacity for a *reasonable degree of rational understanding*. Even though expert testimony in the *Dusky* case indicated that Dusky understood the charges against him, his legal predicament, the purpose of his psychiatric examination, and his relationship with the court, the attorneys and the psychiatrist, the Supreme Court held that Dusky lacked this critical capacity (as described in Dr. A's testimony).

The legal standard for mental competency to stand trial thus becomes clearer in that a base line for impairment of reasoning ability is now established. The defendant's capacity for reasoning is highlighted as a qualitative criterion, and the point at which his reasoning capacity is sufficiently impaired to prevent him from standing trial is set at that point where he is unable "to consult with his lawyer with a reasonable degree of rational understanding"<sup>65</sup> and is incapable of "a rational as well as factual understanding of the proceedings against him."<sup>66</sup> In other words, mental impairment to the extent that simple conclusions could not rationally be developed from readily identified simple premises would henceforth qualify for mental incompetency to stand trial. The defendant's capacity for factual understanding as manifested by his capacity to be "oriented to time and place" and his capacity for "some recollection of events," is a necessary but not a sufficient standard for mental competency to stand trial.

In previous articles<sup>67</sup> it has been suggested that: (1) The threshold level of mental impairment for incompetency to stand trial is arbitrary and is defined by social policy to fulfill social needs through law; (2) a high threshold level of mental impairment is required for mental incompetency to stand trial;<sup>68</sup> and (3) the social policy leading to a high

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64. See notes 15-62 *supra* and accompanying text.

65. 362 U.S. at 402.

66. *Id.*

67. Haddox & Pollack, *Psychopharmaceutical Restoration to Present Sanity (Mental Competency to Stand Trial)*, 17 J. FOR. SCI. 568 (1972); Pollack, *Principles of Forensic Psychiatry for Psychiatric-legal Opinion-making*, in LEGAL MEDICINE ANNUAL (C.H. Wecht ed. 1971); Manual, *supra* note 5.

68. In the prior discussion of *Dusky* (see text accompanying notes 24-26 *supra*) it was seen that the threshold level of mental impairment for mental incompetency to stand trial was set by the court at that degree of mental dysfunction at which the defendant was incapable of reasoning rationally from valid identified premises to logical simple conclusions. This level itself connotes a considerable degree of mental impairment; that is, a relatively high threshold level of mental impairment is identified rather than a low threshold level.

threshold level of mental impairment for incompetency is derived from a number of interrelated factors such as the presumption of mental competency to stand trial, the accused's constitutional right to a speedy trial, and the pressures from the over-crowded system of criminal justice to process defendants through the system as quickly as possible.<sup>69</sup> However, no prior article on mental competency to stand trial has highlighted the significant contribution of the *Dusky* case to the establishment of a base line level of mental impairment necessary to identify mental incompetency. Most psychiatrists apparently believe that the law is silent on the degree of mental impairment necessary for a finding of incompetence to stand trial.<sup>70</sup>

#### MENTAL COMPETENCY TO STAND TRIAL WHILE UNDER THE INFLUENCE OF DRUGS

Just as courts are concerned with the individual's kind and degree of impairment, rather than the type of illness causing the impairment, so should they be concerned with the specific *effects* of the use of drugs rather than with the mere *fact* that drugs are used. In both contexts the courts should focus on the effects rather than on the causes.

Courts generally have shown a propensity to erroneously focus on the causes of mental impairment, rather than on its identification. Frequently, pharmaceutical agents prescribed by psychiatrists reduce mental disturbance with the result that increased mental competency can be demonstrated.<sup>71</sup> On other occasions, these same pharmaceutical agents may produce or increase mental impairment leading to mental incompetency to stand trial. This apparent paradox has led to confusion, giving some judges, attorneys, and psychiatrists the impression that a defendant who is under the influence of drugs is necessarily mentally incompetent to stand trial. This approach is obviously erroneous because it could lead to a conclusion that a defendant is incompetent to stand trial *because* he is under the influence of drugs even though those same drugs may be the influencing agents that actually (1) improve the defendant's ability to comprehend the significance of his involvement with the criminal justice system and (2) improve his

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69. It is beyond the scope of this Article to scrutinize the many other factors involved in the standard of mental competency to stand trial established by statutes or courts, or to challenge the application of this policy in requiring a high threshold level of impairment as a condition precedent to a finding of mental incompetency to stand trial.

70. Manual, *supra* note 5.

71. Haddox & Pollack, *Psychopharmaceutical Restoration to Present Sanity (Mental Competency to Stand Trial)*, 17 J. FOR. SCI. 568, 571 (1972).

ability to cooperate rationally with counsel in the preparation of his defense. It is thus suggested that an application of a "per se rule" concerning drug use and influence is too simplistic and that each case should be determined by applying the *Dusky* two-pronged test of mental impairment to the particular defendant.

*A. Cases in Which the Defendant Voluntarily  
Uses a Drug Prior to or During Trial*

One identifiable major category of defendants is that of accused persons who use drugs immediately before or during trial. These individuals may or may not be in custody but their use of drugs is voluntary, intentional, and self-administered, *i.e.*, not administered by a representative of the criminal justice system.

The courts have generally used a reasonable application of the two-pronged test in disposing of cases involving such defendants. Moreover, they have uniformly held that: (1) the use of narcotics does not, by itself, render a person incompetent and (2) the defendant has the burden of producing evidence to raise a bona fide doubt as to his competency *when he claims on appeal* that the trial court should have held a competency hearing *sua sponte*. Although no cases are found involving a denial of a request for a hearing at the trial level, general mental competency rules which require a hearing whenever a doubt is raised in the mind of the court would be clearly applicable in this context.

*United States v. Tom*<sup>72</sup> and *Heard v. United States*<sup>73</sup> illustrate the approach taken by the courts in this area. In *Tom*, it was argued on appeal that due to the influence of narcotics, petitioner had been unable to understand the nature of the charges against him or to assist in his own defense during the trial and thus was denied his constitutional right to due process.<sup>74</sup> The court responded:

It appears not to be disputed that Tom was taking narcotics at the time of the trial. But the record does not show, and we have *no reason to believe, that the use of narcotics per se renders a defendant incompetent to stand trial*. Whether it had such an effect in this case was an issue of fact, as to which the *petitioner had the burden of proof*. . . .

There is adequate evidentiary support for Judge Edelstein's conclusion that the petitioner did not sustain the burden of proving his in-

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72. 340 F.2d 127 (2d Cir. 1965).

73. 263 F. Supp. 613 (D.D.C. 1967).

74. 340 F.2d at 127-28.

competency. Norman Lau Kee, Esq., who represented Tom at the trial and had known him for a number of years, noticed "nothing unusual" in his appearance or demeanor at trial, and he testified that Tom "appeared to respond to my questions without too much difficulty." These observations were supported by the testimony of Mr. Rosner, who had represented the government, and Leslie Hall, a medical technician who had talked with Tom at the close of the trial. In addition, Tom conceded that he had worked evenings as a dealer in a card game during the course of the trial, and his statements at the time of sentencing do not indicate that he was then incompetent.<sup>75</sup>

In *Heard*, the issue raised was whether petitioner's recognized addiction to narcotics (together with other vague allegations of mental aberration) required the trial court to order a hearing for mental competency *sua sponte*.<sup>76</sup> The appellate court denied petitioner's motion to vacate his conviction,<sup>77</sup> finding that petitioner had not presented enough evidence to raise a bona fide doubt concerning his competency.<sup>78</sup> The factual material presented by petitioner was held to amount to nothing more than "the bare fact of his recognized addiction to narcotics over a long period of years and certain nebulous allegations that his behavior at trial evidenced incompetency."<sup>79</sup>

Petitioner's allegations were contradicted by his conduct in submitting to his attorney and the judge a list of doctors whom he desired to subpoena.<sup>80</sup> This action was described by the court as an action which "demonstrated a reasonable degree of rational understanding both as to the proceedings against him and as to the tactical presentation of an insanity defense."<sup>81</sup>

At first glance, the two preceding cases, and the line of cases which they represent, might seem invalid because defendants were not entitled to a hearing *sua sponte* although they were admittedly taking drugs during trial. However, these cases are medically sound as use of drugs does not, *per se*, render one unable to understand the charges against him or render one unable to cooperate with counsel in his defense. Chief Judge Bazelon discusses this specific issue in *Hansford v. United States*:<sup>82</sup>

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75. *Id.* at 127-28 (emphasis added and citations omitted).

76. 263 F. Supp. at 617.

77. *Id.* at 618.

78. *Id.*

79. *Id.* at 616.

80. *Id.* at 617.

81. *Id.*

82. 365 F.2d 920 (D.C. Cir. 1966).



Current medical knowledge indicates that use of narcotics often produces a psychological and physiological reaction known as *an acute brain syndrome*, which is a "basic mental condition characteristic of diffuse impairment of brain tissue function." The characteristic symptoms of the syndrome are impairment of orientation; impairment of memory; impairment of all intellectual functions including comprehension, calculation, knowledge and learning; impairment of judgment; and lability and shallowness of affect.<sup>83</sup>

However, Judge Bazelon continued:

This is not, of course, to say that a defendant under the influence of narcotics is necessarily incompetent. Narcotic use does not invariably produce an acute brain syndrome, nor is every syndrome of the same degree of severity. The effects of narcotic use will vary depending on the amount of drugs taken, the degree of tolerance developed by the individual, and the idiosyncratic reaction of the person to the drugs.<sup>84</sup>

Medically speaking, although an organic brain syndrome may be present (and if severe enough would make the defendant mentally incompetent to stand trial), the great majority of narcotic influenced defendants do not experience the acute brain syndrome to the extent that they are so significantly mentally impaired as to be identified as mentally incompetent.<sup>85</sup>

In each of the preceding cases, the court simply found that the evidence pointing to the likelihood of an impairment was insufficient; the failure to call a hearing *sua sponte* was not error, plain or otherwise. The psychiatric-medical data adduced above establishes the validity of a distinction between impairment sufficient to warrant a hearing and impairment which, though significant, is nonetheless insufficient to warrant a hearing. Moreover, it is submitted that an approach calling for a *sua sponte* hearing in each case in which drug use is present<sup>86</sup> would impose an unmanageable burden on the criminal justice system.<sup>87</sup>

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83. *Id.* at 922 (footnote omitted and emphasis added).

84. *Id.* at 923. See AMERICAN PSYCHIATRIC ASSOCIATION, DIAGNOSTIC AND STATISTICAL MANUAL: MENTAL DISORDERS 14-15 (1952); A. NOYES & L. KOLB, MODERN CLINICAL PSYCHIATRY 86-87 (6th ed. 1963).

85. Opinion of Victor G. Haddox, M.D. (forensic psychiatrist), based upon approximately 500 case interviews of individuals under the influence of narcotics.

86. Such an approach was demanded by the court in *Hansford v. United States*, 365 F.2d 920 (D.C. Cir. 1966).

87. Approximately 20,000 arrests are made monthly in Los Angeles County on drug-related offenses (based on communication with John Miner, former Head, Medical-legal Section, Los Angeles County District Attorney's Office). The already overburdened courts would be unable to, *sua sponte*, evaluate and adjudicate every defendant who might be addicted. An added and insurmountable problem would be the lack of suffi-

Another identifiable subdivision in the category of drug-using defendants is that of persons who use psychologically active drugs with the specific intent of inducing mental incompetency. Incompetency to stand trial is the purpose of these defendants' drug use rather than a by-product of it. In addition to the problems encountered with other drug using defendants, the following issue is raised by defendants who use drugs with the specific intent of inducing incompetency to stand trial: Does one who voluntarily uses drugs with the intent of rendering himself mentally incompetent to stand trial, thereby waive his right to be mentally present at his trial?

Constitutional guarantees and public policy basic to the issue of mental competency to stand trial afford the criminal defendant the right to be present at trial in mind as well as in body. One might question whether such a basic right can be waived by a defendant's actions. A criminal defendant unquestionably has the right to rationally and meaningfully waive his constitutional rights; this implies that the defendant had the capacity to rationally understand his waiver and its consequences. It also implies that the defendant provide the court with ex-

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cient psychiatrists to medically-psychiatrically evaluate such a large number of defendants.

Some jurisdictions, *e.g.*, California (CAL. PENAL CODE § 1369 (West 1972)), have taken the posture that the defendant has the burden of going forward on the issue of mental competency to stand trial, even though he may not wish to establish incompetency. In order to overturn the denial of a competency hearing, the defendant must present the appellate court with sufficient evidence of incompetence to indicate that the trial judge should have declared a doubt as to the defendant's competence. The cases indicate that a confirmed history of drug use prior to a legal hearing and prior to trial, and even undisputed evidence of narcotic use during the trial, are not sufficient, by themselves, to raise a bona fide doubt as to mental incompetency. If this evidence is insufficient to raise a doubt as to mental incompetency for the purpose of holding a competency hearing, it could not, by itself, be considered adequate evidence to demonstrate mental incompetency to stand trial for the purpose of appellate review.

CAL. PENAL CODE § 1369 (West 1972) provides:

The trial of the question of insanity must proceed in the following order:

1. The counsel for the defendant must open the case and offer evidence in support of the allegation of insanity;
2. The counsel for the people may then open their case and offer evidence in support thereof;
3. The parties may then respectively offer rebutting testimony only, unless the Court, for good reason in furtherance of justice, permits them to offer evidence upon their original cause;
4. When the evidence is concluded, unless the case is submitted to the jury on either or both sides without argument, the counsel for the people must commence, and the defendant or his counsel may conclude the argument to the jury;
5. If the indictment be for an offense punishable with death, two counsel on each side may argue the cause to the jury, in which case they must do so alternately. In other cases the argument may be restricted to one counsel on each side;
6. The court must then charge the jury, stating to them all matters of law necessary for their information in giving their verdict.

PLICIT evidence of his waiver. A basic question can be raised as to whether a criminal defendant can waive his right to be mentally present at trial absent such explicit waiver. In *People v. Rogers*,<sup>88</sup> a California appellate court implicitly assumed that a defendant may waive his constitutional right to be present at trial without making an explicit waiver to the court<sup>89</sup> and that his actions, by themselves, qualify for such waiver.<sup>90</sup> Other court rulings uphold this position.<sup>91</sup>

The *Rogers* case analyzed this question as it relates to drug use. In *Rogers*, the court held that one may waive his right to be present at trial when using medication with the intent of inducing incompetency.<sup>92</sup> Rogers, a diabetic, injected a large dose of insulin on the fourth day of his trial<sup>93</sup> and wilfully abstained from eating a sufficient breakfast.<sup>94</sup> As a result, he allegedly experienced insulin shock<sup>95</sup> and during trial stated to the court: "I don't think I can go on, Your Honor. I have these blackouts from insulin."<sup>96</sup>

The court pointed out that this condition was largely self-induced<sup>97</sup> and that the defendant by his own actions had impaired his mental state to the extent that he was unable to assist in his defense.<sup>98</sup> In noting that Rogers had been granted thirteen previous continuances based upon ill-health,<sup>99</sup> the court held that his self-induced insulin shock amounted to a waiver of the right to be mentally present:

The defendant, by his own actions, induced the condition existing in the afternoon of the fourth day of the trial. This amounted to a waiver of the right to be mentally present granted by section 1043 of the [California] Penal Code. If this were not the rule, many persons, by their own acts, could effectively prevent themselves from ever being tried. A diabetic can put himself in insulin shock by simply taking insulin and then not eating, or by refusing to eat, or can disable himself by failing to take insulin. Surely, the Legislature in adopting section 1043 did not intend such an absurd result. Moreover, in the instant case there is some evidence that the claimed symptoms were feigned. The trial judge saw and

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88. 150 Cal. App. 2d 403, 309 P.2d 949 (1957).

89. *Id.* at 415, 309 P.2d at 957.

90. *Id.*

91. See cases collected in 23 C.J.S.2d *Criminal Law*, § 975a, p. 899 (1961); Annot., 100 A.L.R. 478, 480 (1936); Annot., 1913c Am. Ann. Cas. 1146.

92. 150 Cal. App. 2d at 415, 309 P.2d at 451.

93. *Id.* at 409, 413, 309 P.2d at 953, 955.

94. *Id.*

95. *Id.*

96. *Id.* at 409, 309 P.2d at 953.

97. *Id.* at 412-13, 309 P.2d at 955.

98. *Id.* at 413, 309 P.2d at 955.

99. *Id.* at 405, 309 P.2d at 950.

heard the defendant. He heard the doctor's testimony. He could tell far better than we can tell from a cold record whether defendant was able to proceed.<sup>100</sup>

A state of mental incompetency that is deliberately self-induced by a rational defendant for the purpose of inducing his subsequent mental incompetency suggests that the defendant had the mental capacity for competency to stand trial; in *Rogers* the appellate court noted that the trial court was correctly concerned more with the demonstration of such mental capacity than with the alleged evidence of mental impairment which was the effect of the defendant's voluntary, rational, and exploiting act.<sup>101</sup> It appears that the appellate court was more strongly impressed with the defendant's exploiting and manipulative maneuvers than with the significance of his mental impairment. The latter, if at all present, was also considered to be transient and reversible.

It is not known how much weight the appellate court accorded to the transience and reversibility of Rogers' alleged mental impairment. It would be interesting to see how the court would deal with the issue of a defendant who had deliberately shot himself in order to avoid standing trial, and in so doing had significantly and permanently impaired himself mentally so that he would never again be capable of standing trial. Such an issue, it is submitted, might be resolved by the defendant being found mentally incompetent to stand trial irrespective of the fact that his impaired mental state had resulted from his voluntary, rational and manipulative act.

*B. Cases in Which the Detained Defendant is Administered  
Medication by a Representative of the Criminal  
Justice System*

A second major category of defendants is that of detained parties to whom a mind-altering substance is administered by a representative of the criminal justice system. Although judicial rulings have not expressly articulated different standards in cases involving such defendants, it is submitted that there is (and should be) a higher degree of judicial concern and scrutiny applied in these cases, when on appeal the question is raised whether the trial court should have ordered a competency hearing sua sponte. This point of view is substantiated by the greater number of cases in this category in which the courts have vacated sen-

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100. *Id.* at 415, 309 P.2d at 957.

101. *Id.* at 415-16, 309 P.2d at 957.

tences. It is also supported by language used by the courts in these cases; this language indicates a high degree of judicial concern whenever a representative of the criminal justice system administers a psychologically active substance to the defendant.

The foregoing is aptly demonstrated by *Hayes v. United States*.<sup>102</sup> Petitioner alleged that he was incompetent to stand trial because prior to, during and following the trial he was suffering from a mental derangement which resulted from a heavy sedation by an unknown narcotic administered to him for physical injuries.<sup>103</sup> He alleged that it was not until he was confined at the United States Penitentiary, Leavenworth, Kansas, and given an opportunity to recover from the heavy sedation of narcotics that he realized that he had been convicted of a serious crime.<sup>104</sup> Petitioner thus argued that his sentence should be vacated and a competency hearing should be held.<sup>105</sup> The court observed:

Where a prisoner files a motion under §2255 [28 U.S.C. §2255 (1970), dealing with habeas corpus applications] to vacate his sentence on the ground of mental incompetency at the trial, the court undoubtedly has the right to require him to set forth a sufficient basis of background, incidents, or other elements to give indication of the possibility of such a question. Prisoners, of course, are not entitled and need not be permitted, after their conviction, to make bald charges of mental incompetency to stand trial, for the purpose simply of obtaining an excursion from the penitentiary. But once a prisoner has set out enough in a §2255 motion to give factual indication of such a possibility in respect to his trial, the court must dispose of the question by a hearing.

. . . These allegations of head injuries, arrest beatings and drug administrations may or may not be true, but they constitute elements, asserted as facts, of such a character as to be able to raise a possible question. Appellant's expressions, conduct and actions on the trial may have capacity to shed some probative light on the question. They cannot, however, of themselves be declared to be legally conclusive that no narcotic drugs were administered to appellant, or that, if any such drugs were administered, they had been of a nature or in amount which could not have affected his powers and faculties in the trial proceedings.

*It is hardly necessary to add that certainty as to the lack of any mental effects from drugs upon a defendant in his trial and conviction*

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102. 305 F.2d 540 (8th Cir. 1962).

103. *Id.* at 542.

104. *Id.*

105. *Id.* at 543.

*is a matter of particular judicial solicitude.*<sup>106</sup>

Thus it would appear that when the possibility exists that a defendant may have become mentally incompetent to stand trial because of some action of a representative of the criminal justice system, special judicial concern exists and the court is called upon to handle the case in a special way. It seems that the burden of going forward with sufficient factual evidence to require a hearing on mental competency to stand trial is less when the alleged mental incompetency is induced by a representative of the criminal justice system.

*Manley v. United States*<sup>107</sup> is a case directing itself to the burden of proof. Here, appellant had a documented thirty year history of addiction.<sup>108</sup> He was arraigned following a two week confinement without drugs.<sup>109</sup> During a recess, he was visited by a doctor who administered two injections out of the presence of the attorney.<sup>110</sup> One injection was Numorphan,<sup>111</sup> a narcotic, and the other was Largon,<sup>112</sup> a tranquilizer. When court was reconvened, defendant's attorney stated that he was unable to confer intelligently with the defendant<sup>113</sup> and requested his commitment to an institution for a mental examination.<sup>114</sup> The court inquired whether the defendant had received medical treatment that day<sup>115</sup> and was informed that the defendant had received "a shot of some type."<sup>116</sup> Although neither court nor counsel knew with certainty the nature of the injections,<sup>117</sup> the Assistant United States Attorney mistakenly believed that the injection "was not a narcotic type"<sup>118</sup> and so informed the court. Following another recess, defendant's demeanor had changed sufficiently for his attorney to inform the court that the defendant was ready for arraignment,<sup>119</sup> and a plea of guilty was entered.<sup>120</sup>

The appellate court held that the administration of the drug was sufficient evidence to require a hearing and the court specifically discussed the placement of burden of proof:

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106. *Id.* (emphasis added and citation omitted).

107. 396 F.2d 699 (5th Cir. 1968).

108. *Id.* at 700.

109. *Id.*

110. *Id.*

111. *Id.*

112. *Id.*

113. *Id.*

114. *Id.*

115. *Id.*

116. *Id.*

117. *Id.*

118. *Id.*

119. *Id.*

120. *Id.*

While it may be that generally the burden of proof is on a defendant to show that he was under the influence of a narcotic to such an extent that his judgment would be impaired, . . . here the government's innocent misrepresentation that appellant was not under the influence of narcotics curtailed proper . . . inquiry by the court, and the burden of proof of appellant's competence, under these circumstances, was upon the government.<sup>121</sup>

A high degree of judicial scrutiny exists in issues other than the limited one of mental competency to stand trial when defendants are administered psychologically active agents by an employee or agent of the criminal justice system. This is demonstrated by *State v. Murphy*,<sup>122</sup> in which a drug influenced defendant testified in his own defense.<sup>123</sup> The defendant was convicted of murder in the first degree<sup>124</sup> and sentenced to death.<sup>125</sup> During the trial at 8:30 a.m. on the day the defendant was to testify, a fellow prisoner, who was serving as medical trustee under the supervision of the jail physician, gave the defendant Equanil, a minor tranquilizer.<sup>126</sup> At about 9:00 a.m., two additional pills of Trancopal, another tranquilizing medication, were given to the defendant.<sup>127</sup> He was then conducted to the court room and took his place on the witness stand at about 10:00 a.m.<sup>128</sup>

According to undisputed testimony, the defendant's appearance, demeanor, and manner of speaking while on the witness stand were markedly different from what they had been during the numerous pretrial interrogations.<sup>129</sup> During this period on the witness stand his relating of the crime was casual, cool, not at all perturbed.<sup>130</sup> Indeed it exhibited a lackadaisical attitude.<sup>131</sup> His attorney stated:

I noticed a change that was beyond comprehension in my humble opinion as a layman. It was an entirely different approach to the entire subject matter and I was at a loss to understand it.<sup>132</sup>

Appellant did not claim that the tranquilizing drugs affected the content of his testimony.<sup>133</sup> The contention to the trial court, and on

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121. *Id.* at 701 (citation omitted).

122. 355 P.2d 323 (Wash. 1960).

123. *Id.* at 324.

124. *Id.*

125. *Id.*

126. *Id.* at 325.

127. *Id.* at 326.

128. *Id.*

129. *Id.*

130. *Id.*

131. *Id.*

132. *Id.*

133. *Id.*

appeal, was that, but for appellant's cool, casual, and somewhat lackadaisical attitude, induced by the tranquilizing drugs, the jury might not have imposed the death penalty.<sup>134</sup> The appellate court granted a new trial<sup>135</sup> because there had been such a significant change in the defendant's attitude that the jury may have received the erroneous impression that the defendant's attitude toward the crime was callous and insensitive.<sup>136</sup>

The court granted a new trial without any specific finding of defendant's inability to aid counsel or inability to understand the charges against him. This liberal ruling probably resulted from the court's belief that the state was responsible for an erroneous impression upon the jury, since one of its representatives administered the medication which substantially altered the defendant's mental state. Such alteration in emotional state could be considered equivalent to mental impairment that could have substantially reduced the defendant's mental capacity to assist in his own defense by reducing his capacity to provide more emotionally appropriate testimony.

It thus appears that if a defendant were to receive a potentially mind-influencing drug from a representative of the criminal justice system, whether such drug were given to the defendant with or without his knowledge, understanding, or consent, and irrespective of the reasons for which such drug might be given to the defendant, the court would hold greater concern for the defendant's mental competency to stand trial. Such concern could take the following forms: (1) shifting the burden of proof on the competency issue from the defendant to the government, (2) vacating the decision and ordering that a competency hearing be held, and (3) reversing the decision and ordering a new trial. We can assume that the court's greater concern for the defendant's mental competency to stand trial stems from the fact that the defendant is involuntarily confined and can thereby be manipulated and influenced to his detriment. It is submitted that due process concerns underlie the greater judicial scrutiny accorded these cases.

*C. Cases in Which a Detained Defendant is Denied  
Needed Medication by a Representative  
of the Criminal Justice System*

This third category of cases includes defendants who require certain medication in order to attain or maintain a level of mental compe-

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134. *Id.*

135. *Id.* at 377.

136. *Id.*



tency. Denial of medication to these defendants will produce mental incompetency just as supplying medication to the defendants in category two produced mental incompetency. There are two subclasses of cases in which detained patient-defendants who do not receive needed medication become mentally impaired: (1) those defendants who require medication to prevent severely disabling drug withdrawal symptoms<sup>137</sup> and (2) those patient-defendants who need medication to improve thought processes impaired by disabling mental disorders.<sup>138</sup>

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137. Physical dependency on drugs is dramatically demonstrated when, after addiction is present, the drugs are withheld. The abstinence syndrome thus provoked consists of dilation of the pupils, twitching of the muscles, goose flesh, lacrimation, rhinorrhea, yawning, and sneezing. If allowed to continue, the symptoms may become alarmingly severe, with profuse sweating, elevation of temperature and blood pressure, vomiting, and dehydration.

Withdrawal symptoms are physiologically determined and have been produced in dogs, cats, and monkeys, as well as in spinal and cerebral preparations. Wikler, *Reactions of Dogs Without Neocortex During Cycles of Addiction to Morphine and Methadone*, 67 A.M.A. ARCH. NEUROL. & PSYCHIATRY 672 (1952). Through the use of drugs, a new biological dependency similar to thirst or hunger has been created.

A chemically induced abstinence syndrome may be affected with administration of the drug Nalline (n-allyl-normorphine) to a person who is addicted. Nalline is antagonistic to the effects of morphine, despite the fact that it is also an opium derivative. Discovered in 1912 (Weijlard & Erickson, *N-allyl-normorphine*, 64 J. AM. CHEM. SOC'Y 869 (1942)), it is used chiefly by obstetricians who employ it to rid the newborn of possible lethargic effects from narcotics previously given to the mother.

138. With the advent of accelerated pharmaceutical research and increasing knowledge, compounds have been developed which are therapeutic and effective in treating mental disorders. In 1953, Chlorpromazine became available in the United States for purposes of drug investigation; and since that introduction, the antipsychotic "major tranquilizers" (phenothiazine derivatives), antidepressives, and other psychotropic agents, as well as the so-called "minor tranquilizers" have become widely prescribed drugs. See Delay, Deniker & Harl, *The Therapeutic Use of a Phenothiazine with Selective Central Action* (RP 4560), May 26, 1952, (Centenary Meeting of the Societe Medico-Psychologique, Paris). See also, Hamon, Paraire & Velluz, *Remarques sur l'action du 4560 RP sur l'agitation maniaque*, 110 ANNALES MEDICO-PSYCHOLOGIQUES 331 (1952). The efficacy of these psycho-pharmaceutical agents is well documented through dramatic shortening of length of hospitalization with readmissions correlated with cessation of maintenance medication. See Brill & Patton, *Analysis of Population Reduction in New York State Mental Hospitals During the First Four Years of Large-Scale Therapy with Psychotropic Drugs*, 116 AM. J. PSYCHIATRY 495 (1960). See also Engelhardt, et al., *Phenothiazines in the Prevention of Psychiatric Hospitalization*, 186 J.A.M.A. 981 (1963); Englehardt, et al., *Prevention of Psychiatric Hospitalization with the Use of Psychopharmaceutical Agents*, 173 J.A.M.A. 147 (1960); Hobbs, Wanklin & Ladd, *Changing Patterns of Mental Hospital Discharges and Readmissions in the Past Two Decades*, 93 CAN. MED. ASS'N J. 17 (1965); Odegard, *Pattern of Discharge from Norwegian Psychiatric Hospitals Before and After the Introduction of Psychotropic Drugs*, 120 AM. J. PSYCHIATRY 772 (1964); Pollack, *The Effect of Chlorpromazine in Reducing the Relapse Rate in 716 Released Patients*, 114 AM. J. PSYCHIATRY 749 (1958); Rittelmeyer, *Ten Years of Tranquilizers*, 14 NEW PHYSICIAN 89 (1965); Schnore & Kere,

These cases underscore the importance of looking to the specific beneficial significance of the mind-influencing drugs. The court, interested in the question of mental competency to stand trial, should be concerned only with the kind and degree of drug influence, irrespective of the purposes for which the drugs are used. Drugs, in other words, may be necessary to attain mental competency to stand trial, and the courts should be concerned with this mental state as the end result rather than with the means whereby it is produced. Similarly, the courts should be concerned with the mental state resulting from the non-use of a necessary drug as this relates to and affects mental competency to stand trial.

Some courts, as previously noted, have erroneously believed that the use of psychopharmaceutical agents automatically leads to mental incompetence for trial purposes;<sup>139</sup> that such is surely not the case can be seen from those cases in which the *non-use* of such agents may itself lead to mental incompetence. There are few cases on this point, but those reported have adopted this reasonable approach. It is important to recognize that in all of these cases the necessary treatment or non-treatment was under the control of representatives of the criminal justice system.

In *Sewell v. Lainson*,<sup>140</sup> the Supreme Court of Iowa took judicial notice that an opium addict is nerve wracked and mentally ill when denied the drug and that he approaches mental normalcy *only* when he has access to the opiate.<sup>141</sup> Petitioner was an opium addict for twenty-five years<sup>142</sup> and testified that, if he did not obtain his usual dosage, he became ill.<sup>143</sup> He requested the sheriff at the county jail to obtain morphine for his use during incarceration.<sup>144</sup> About thirty or forty minutes before the hearing at which he entered his plea of guilty, the sheriff came to his cell and gave him 3½ grains of morphine which the addict administered to himself by hypodermic injection.<sup>145</sup> Peti-

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*Length of Hospitalization Before and After Tranquilizers*, 9 CAN. PSYCHIATRY ASS'N J. 43 (1964). The misuse of these potent substances may produce psychological states not contemplated by the manufacturers. A defendant may deliberately misuse such psychologically-active agents to produce a state of mind so disturbed that he is mentally incompetent. See *People v. Rogers*, 150 Cal. App. 2d 403, 309 P.2d 949 (1957), for a startling example of this type of drug misuse.

139. See text accompanying note 71 *supra*.

140. 57 N.W.2d 556 (Iowa 1953).

141. *Id.* at 559.

142. *Id.* at 558.

143. *Id.*

144. *Id.*

145. *Id.*

tioner later contended that the court erred in finding he was not under the influence of narcotic drugs at the time of the hearing and entry of his plea of guilty.<sup>146</sup> The court, in taking judicial notice that an opium addict is ill *when denied the drug*,<sup>147</sup> stated that, if the opium had not been furnished to petitioner, he would have been before the court "with much more cause, complaining that his plea of guilty was entered when he was not mentally competent to realize what he was doing because of the nervous and other physical sufferings occasioned by deprival of his habitual narcotic."<sup>148</sup> Thus, the court found that non-use of the narcotic would have had a deleterious effect. Rather than automatically and fatally condemning the use of a mind-influencing agent, the court correctly looked to the beneficial effects of the drug.

It is obvious that in cases such as *Sewell* the state is faced with a dilemma. Addicts deprived of their narcotics may experience withdrawal symptoms so severe that they are physically and mentally incapacitated from meaningfully following the evidence produced at trial or from cooperating rationally with counsel. The defendant might become so preoccupied with his real or imagined suffering as to lose all interest in his case and desire *only* that the trial or hearing end as quickly as possible. Thus, deprival of mind-improving psychopharmaceutical drugs, with such deprivation involuntarily imposed upon a defendant in custody, may be a basis for allegations of mental incompetency. Yet, the defendant's receipt of such agents, as in *Sewell*, might be the basis of an identical claim of mental incompetency. It becomes obvious that legal concern should be not with the use or non-use of drugs, but rather with their effect on the defendant's capacity to attain the standard for mental competency to stand trial.

The same problems are present when the detained defendant suffers from a mental illness to the extent that he requires appropriate mind-influencing drugs as psychotropic medication. Specific medication may be prescribed to alleviate clinical symptoms of a mental illness which might otherwise be so severely incapacitating that the defendant-patient would not possess the mental capacity to stand trial. The treating physician must be aware that his decision to prescribe medication is not only a psychiatric decision, but also one that has medical-legal implications and is affected by variables other than those that direct patient treatment.

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146. *Id.*

147. *Id.* at 559.

148. *Id.* See *Hansford v. United States*, 365 F.2d 920, 923 (D.C. Cir. 1966), where Judge Bazelon stated that a competency hearing is constitutionally required if it appears that a defendant may be suffering from withdrawal symptoms during trial.

The severity of side effects of the drug and their special significance for mental competency must be considered by the psychiatrist when the patient-defendant goes to bar. Because of the absence of well-established medical criteria of drug effects on competency, the psychiatrist's clinical acumen is taxed by his need to evaluate and predict the effects of the drug upon the defendant's competency to stand trial. The psychiatrist must be familiar with the possible side effects of the drug. Because of variable responses of patients to medication, the psychiatrist must examine the defendant with the interview directed toward evaluating his mental functioning as it relates to the issue of mental competency.<sup>149</sup>

Many patients receiving psychiatric medication are able to function successfully in their customary daily activities as a consequence of their maintenance dosage of drugs. To varying degrees these drugs suppress the signs and symptoms of their mental illness and may even hold previously overt psychotic symptomatology in complete remission. Courts have questioned the defendant's mental competency to stand trial when he is receiving a therapeutic maintenance dose of medication which produces a remission of the very symptoms which would otherwise cause that defendant to be adjudicated as mentally incompetent to stand trial.<sup>150</sup> Such reasoning by these courts is inconsistent with contemporary psychiatric knowledge.

Most courts adjudicate the question of the use of psychotropic medication in order to eliminate psychotic symptomatology by following the reasoning of the court in *State v. Rand*.<sup>151</sup> The court there held that a defendant is competent to stand trial "under properly administered tranquilizing drugs"<sup>152</sup> that enable him to confer with his attorneys in a manner which meets the test set forth in *Dusky*.<sup>153</sup>

In cases such as *Rand*, drugs are needed to induce improvement in the mental state, and not to prevent debilitating withdrawal effects. In *Rand*, as in *Sewell*, the court properly looked to the effect of use or non-use of the mind-influencing drug and found that appropriate drug use was necessary to engender mental competence to stand trial.

The focus of legal concern in all such cases is the same: What are the psychiatric effects of the drugs on the defendant? Will the

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149. Haddox & Pollack, *Psychopharmaceutical Restoration to Present Sanity (Mental Competency to Stand Trial)*, 17 J. FOR. SCI. 568, 575-76 (1972).

150. See text accompanying note 71 *supra*.

151. 247 N.E.2d 342 (Ohio 1969).

152. *Id.* at 349.

153. *Id.* See the discussion of the *Dusky* standard in the text accompanying notes 15-64 *supra*.

use of the drug induce mental competency or produce mental incompetency; and will the non-use of the drug promote mental competency or produce incompetency?

The courts appear to be especially critical of inadequate treatment of detained defendants whose mental impairment would render them mentally incompetent to stand trial unless they were to receive adequate and appropriate psychotropic medication.

#### CONCLUSION

Mental competency to stand trial is the most frequently litigated psychiatric-legal issue in criminal law.<sup>154</sup> Courts have directed themselves to a clarification of the issue by attempting to identify the threshold level of mental impairment that would disqualify a defendant from being mentally competent to stand trial. The *Dusky* standard is the best expression of a base line definition for mental incompetency to stand trial. It excludes a defendant from being mentally competent to stand trial when he demonstrates mental incapacity either to consult with his counsel with a reasonable degree of rational understanding or to have a rational as well as a factual understanding of the proceedings against him. The defendant's capacity for rational understanding can thus be set as the critical threshold level differentiating mental competency from mental incompetency for trial purposes. The critical threshold for rational understanding that would disqualify the defendant from mental competency to stand trial is described as the inability of a defendant to reason logically from readily identified valid, simple premises to logical, simple conclusions. This critical threshold level of mental impairment must be reached before the presumption of mental competency to stand trial is rebutted.

Using the above identified criteria courts have directed themselves to clarifying the effect of drug use and non-use on mental impairment for purposes of standing trial and have also directed attention to the manner in which mental impairment was produced. A survey of cases involving mental competency to stand trial indicates that the courts are becoming increasingly concerned with the *effects* of the use or non-use of drugs rather than with the mere *fact* of such use or non-use.

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154. Manual, *supra* note 5, at 1.