

“The Mendocino Method”
A Cost-Effective Jail-Based Trial Competency Training Program
J. Holden, PhD

Mendocino Method
for
Restoration of Trial Competency

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ACTIVITY: Jail-Based Restoration of Competency: The Mendocino Method
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| • Taylor Fithian, MD | Urmil Patel, PsyD | Anthony Cazzolino, MD |
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Tale of Two Meetings.....

2008: Living Solutions-- RC, SocServ, Public Health, Jail, BH

- Invitation to visit jail
- Report to Regional Center– worst situation; SIB, catatonia, indeterminate
- Community Placement Project contract:
 - receive training
 - develop and administer curriculum
 - write progress and closing reports

2014: Judges, DA, PD, Jail, County Counsel, Behavioral Health,

- BH pilot project, training mentally ill misdemeanor defendants

“Dusky v United States” *US Supreme Court, 1960*

*“It is not enough for the district judge to find that the defendant is oriented to time and place and has some recollection of events, but that **the test must be whether he has sufficient 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.**”*

California Penal Code Section 1367

*“A defendant is mentally incompetent for purposes of this chapter if, **as a result of a mental disorder or developmental disability, the defendant is unable to understand the nature of the criminal proceedings or to assist counsel in the conduct of a defense in a rational manner.**”*

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Acronym Quiz

- SMI
- DSH
- DOC
- IST
- MIST
- FIST
- JBCT
- ROC

Competency Determination & Recommendation

- Defense attorney raises doubt of competency (*at any point in proceedings*)
- Judge suspends proceedings and orders competency evaluation by psychiatrist or qualified psychologist
- Judge makes finding of competency and proceedings resume, or of incompetency and orders treatment placement recommendation by Regional Center (*if defendant is intellectually/developmentally disabled*) or by county Mental Health for SMI misdemeanor defendants (*MISTs*) or state Mental Health for SMI felony defendants (*FISTs*)
- All recommendations were for placement in developmental center or state hospital competency treatment programs — *3-12 month waiting lists common while defendants languished in jail*

Detention For Competency Training

“... cannot be held more than the reasonable period of time necessary to determine whether there is a substantial probability that he will attain that capacity in the foreseeable future.”

U.S. Supreme Court, Jackson v Indiana, 1972

CA: max 1 year misdemeanor, 3 years felony, or MCT

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Defendant Essentials
For Competency “Restoration”

MOTIVATION
(paranoia, depression, anger, anxiety)

CAPACITY
(ID, Dementia, TBI)

The Mendocino Method

Baseline Parameters

- **The standard for competency is uniform**, regardless of age, gender, race, physical or mental ability/disability, education, IQ, socioeconomic status, diagnosis, medication compliance, etc.
- Defendant only needs to be competent during course of trial, not cured
- No standard instrument for assessing trial competency
- No standard qualifications for trial competency trainers
- No standard curriculum for trial competency training

Hence cometh the regulators, for there is nothing so simple that it cannot be made complicated

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Underlying Program Design Principle

“THE KISS PRINCIPLE”

Kelly Johnson
Aircraft Systems Designer, US Navy
1960

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Politically Correct KISSes

- “Keep it simple, silly”*
- “Keep it short and simple”*
- “Keep it simple and straightforward”*
- “Keep it small and simple”*

***“Simplicity is the ultimate
sophistication”***

Leonardo DaVinci

Existing “Restoration Of Competency” Programs

Institutional

- Atascadero, Patton, Metropolitan, and Napa State Hospitals: 1350 beds
Wait list: 530 ISTs, with 75 day average wait Madera DOC: 11/15/16
458 ISTs, with 56 day average wait DSH: 6/13/16
Cost: \$220,000/year (left/right pocket)
- California Psychiatric Transitions: Delhi
Large-group oriented, dedicated staff, dedicated facility
Not applicable in small counties (33 of 58 in California)
Review of the national literature on 10 competency training protocols
http://www.wsjpp.wa.gov/ReportFile/1121/Wsjpp_Standardizing-Protocols-for-Treatment-to-Restore-Competency-to-Stand-Trial-Interventions-and-Clinically-Appropriate-Time-Periods_Full-Report.pdf
Minimum average restoration time 64 days, overall average 153 days

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Existing “Restoration Of Competency” Programs

Jail-Based

- Liberty Healthcare
 - 2012 San Bernardino County, DSH-funded, Innovative Program award
 - 45% transferred to state hospitals after 90 days, 56-day average restoration time for others; average cost/patient \$70,000.
 - Minimum 20 clients with dedicated staff and facility
 - Now expanded to Riverside County
- UC Davis, Sacramento County
- Sonoma County, RFP

Features Of The Mendocino Method

Jail-based

- Cooperation of jail personnel
- Facility access (contact/non-contact)
- Credentialing of program personnel (fingerprinting, background checks, id badges)
- Scheduling (contact person, appropriate hours)

Individualized

- 3-Prong: counseling, instruction, medication
- Focused on defined areas of weakness
- Paced per instructor’s availability and student’s concentration

Mendocino Staff Functions & Qualifications

Lead Trainer (*Licensed Educational Psychologist*)

- Referral logistics (*Judge to PD to BH to Lead Trainer*)
- Document review (*arrest reports, competency evaluation reports*)
- Initial assessment and placement recommendation report
- Counseling as needed
- Progress reports as requested (*session by session; 90-day maximum to Court*)
- Final assessment and report
- Supervise and assist instructor as needed
- Access Program Consultant as needed

Instructor (*Private Tutor, Credentialed Public School Instructional Aide*)

- Administers curriculum
- Provides session-by-session progress reports to Lead Trainer

Consultant (*Clinical Psychologist*)

- Recruit, train, and supervise Lead Trainer and Instructor
- Review and sign-off on reports and testify when needed; counsel student when needed
- Strategize and advise regarding solutions to problems that arise (*e.g. refusal to discuss case*)

Contracted positions. Functions may also be performed in-house by one or more BH staff

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Mendocino Method
Pre- and Post-Training Assessment of Competency

Interview plus Structured Assessment Tool (*% who can pass?*)

- CST (*Competency Screening Test*)
- CAI (*Competency Assessment Instrument*)
- FIT (*Fitness Interview Test*)
- GCCT (*Georgia Court Competency Test*).
- MacSAC-CD (*MacArthur Structured Assessment of Competence-Criminal Defendants*)
- MacCAT-CA (*MacArthur Competency Assessment Tool-Criminal Adjudication*)
- CADCOMP (*Computer Assisted Determination of Competency to Proceed*)
- CAST-MR (*Competency Assessment for Standing Trial – Mental Retardation*)

”Competency Assessment to Stand Trial- MR”
(CAST or CAST-MR, IDS Publishing)

- Written at fourth-grade reading level
- Standardized, normed, and validated with intellectually disabled defendants– *same competency standard*
- Broad application, including defendants with cognitive, neurological and psychiatric impairments, language limitations, low educational attainment
- Used and accepted by Courts for over 20 years
- *“While there is limited peer reviewed research on the CAST-MR, the research that exists suggests that it has high validity.”* Simpson, 2014

CAST – MR Composition

50 Questions, 30-60 minute administration time

Section I: 25 multiple choice questions on basic legal terms, concepts and processes

Section II: 15 multiple choice questions assessing defendant’s ability to assist in their defense

Section III: 10 open-ended questions regarding the defendant’s specific case

Publisher’s Suggested Passing Score: 70% or higher overall
Mendocino Method’s Passing Score: 80% or higher on each section

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Assessment of Malingering

- *Structured Interview of Reported Symptoms - Second Edition (SIRS2)*
- *Inventory of Legal Knowledge (ILK)*
- *Test of Malingering Incompetence (TOMI)*
 - General Knowledge Test*
 - Legal Knowledge Test*

Screening for Dementia

- *Mini-COG (Alzheimer's Association); more to come....*

Mendocino Method Instructional Curriculum

-- free and adaptable; non-proprietary --

- Judge has ordered the defendant to take a “law class” so the defendant can adequately defend himself/herself against the charges; case can’t proceed.
- Participants referred to as “students” and “graduates”
- Story form: “Joe and Sue...”
- 35 single-spaced pages: 13 short chapters (76 legal concepts) + set of 10 case events questions (per arrest report)
- Students given “Student Study Guide” to study between sessions
- 5-item multiple choice chapter quizzes: 80%+ passing score
- 50-item multiple choice final comprehensive exam: 80%+ passing score
- Spanish-translation available
- DVD and script for visually-based learners

Mendocino Method: Curriculum Content

- Ch. 1 Laws, Crimes, Police, Reasonable Suspicion, Evidence, Arrest
- Ch. 2 Miranda Rights, Perjury, Witnesses
- Ch. 3 Rights to a Fair Trial, Speedy Trials, Defend Self or Have Attorney
- Ch. 4 Courtroom and Court Principals
- Ch. 5 Arraignment, Pleas, Bail
- Ch. 6 Confidentiality/Privilege, Discovery
- Ch. 7 Competency
- Ch. 8 Preparing for Trial
- Ch. 9 Plea Bargaining (*about 90% of cases resolved*)
- Ch. 10 Going to Trial, Choosing Judge or Jury Trial
- Ch. 11 Trials, Witnesses, Evidence, Cross-Examination, Objections
- Ch. 12 Alibis, Closing Arguments, Jury Instructions, Jury Deliberations
- Ch. 13 Acquittal, Conviction, Sentences, Probation, Right to Appeal

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Mendocino Method: Results

Regional Center (2009-2015; Lake, Mendocino & Humboldt Counties)

19 referrals (misdemeanor plus felony; mostly outpatient)
81% restored (100% participation)
75-day average restoration time (referral through report)
\$1900 average restoration cost* vs \$140,000 Porterville D.C.

Mental Health (April 2014-March 2016; Mendocino County)

25 referrals (misdemeanor): 17 participants, 6 refusals, 1 transfer
83% of participating students restored (2 unrestorable bc dementia)
42-day average restoration time (referral through report)
\$1150 average restoration cost for participants* vs \$220,000 S.H.
estimated savings of over \$2m and 5000 days of locked confinement

*exclusive of housing and medical costs (\$4830 Mendocino w/o involuntary medication)

25% Initial Refusers

A. Cell Door, leave card

B. Letter

C. Daily Notes

1. *To get out of a hole, the first step is to stop digging.*
2. *It's better to be happy than to be right.*
3. *In the war of you against the world, bet on the world.*
4. *You catch more flies with sugar than with vinegar.*
5. *Make love, not war.*
6. *You can get a mule further with a carrot than a stick*
7. *Don't believe everything you think.*

Mendocino Method: Results

VALIDITY

“Are program graduates competent?”

Zero returned for further evaluation or training/treatment

One contested to allow for LPS Conservatorship Evaluation

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JBCT Program Limitations

- FISTs suspected of malingering or organic impairment not admitted to JBCTs
- JBCTs do not issue opinions of non-restorability
- If refuse or no progress for 30-45 days, transfer to State Hospital
- If no significant progress in 90 days, transfer to State Hospital

Mendocino Method: Expansion

- 2/3 of current Mendocino County Jail IST inmates are FISTs
1/3 MISTs-- *overcharge for bargaining chips; 90% plea bargain*
- DSH has approved extending the Mendocino Method to FISTs in Mendocino County Jail
- DSH in final contract negotiations with Mendocino County Behavioral Health for direct reimbursement for FISTs:
 1. Jail housing
 2. Subcontracted training (*can be in-house*)
 3. Administration
 4. Psychiatric– involuntary medication

Involuntary (“Forced”) Medication

- Judge often simultaneously orders evaluation by a psychiatrist regarding whether or not involuntary anti-psychotic medication would substantially [*greater than 60%**] increase the likelihood that the defendant can become competent in the foreseeable future – *rare instance in which medications may be administered involuntarily, and then only until the case is resolved*
- Six-month maximum in jail setting
- Order required for admission to state hospital program or CPT

**per California Judges Benchguide 63 (sec. 63.37)*

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Designated Treatment Facility

PC1370 requires FISTs be ordered to a State Hospital “or other available public or private treatment facility, including a local county jail approved by the [State] community program director that will promote the defendant’s speedy restoration...”

Approval of a county jail placement for ROC requires passage of a resolution by the county Board of Supervisors designating the jail as a treatment facility for purposes of ROC (see handout for sample resolution)

Mendocino Method: Future

- Being adopted by California Forensic Medical Group: 27+ jails

- Inquiries from 8 counties and United ARC; contract with Trinity County

- Videotraining??

THE MENDOCINO METHOD
THE ROLE OF CALIFORNIA FORENSIC MEDICAL
GROUP (CFMG)

Background

CFMG has been contracting comprehensive medical and mental health services to the Mendocino County Jail since 1991

Services Include

- Twenty-four-hour nursing staff
- Psychiatric RN
- Mental health professionals including LCSW's and MFT's
- On-site medical director part-time
- Telepsychiatry four to six hours per week

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**RESTORATION OF COMPETENCY PROGRAM
MENDOCINO COUNTY/CFMG**

- Twenty hours a week of a registered nurse to provide consultation and liaison with the restoration of competency team
- Ongoing monitoring of inmates in the restoration of competency program
- Provision and administration of psychiatric medication

**TWENTY-HOUR PSYCH RN OPERATIONALLY
UNDER OUR PROGRAM MANAGER**

- Provision of forensic evaluations per PC 1370(1)(2)(B) - Capacity to Give Informed Consent

**CMGG
FORCED MEDICATION CHECKLIST
Restoration to Competency Program (RCO)**

DATE OF ENTRY		INMATE NO.		INMATE ID NO.	
<p>1. Has the inmate been evaluated for competency? <input type="checkbox"/> Yes <input type="checkbox"/> No</p> <p>2. Has the inmate been evaluated for competency? <input type="checkbox"/> Yes <input type="checkbox"/> No</p> <p>3. Has the inmate been evaluated for competency? <input type="checkbox"/> Yes <input type="checkbox"/> No</p> <p>4. Has the inmate been evaluated for competency? <input type="checkbox"/> Yes <input type="checkbox"/> No</p> <p>5. Has the inmate been evaluated for competency? <input type="checkbox"/> Yes <input type="checkbox"/> No</p> <p>6. Has the inmate been evaluated for competency? <input type="checkbox"/> Yes <input type="checkbox"/> No</p> <p>7. Has the inmate been evaluated for competency? <input type="checkbox"/> Yes <input type="checkbox"/> No</p> <p>8. Has the inmate been evaluated for competency? <input type="checkbox"/> Yes <input type="checkbox"/> No</p> <p>9. Has the inmate been evaluated for competency? <input type="checkbox"/> Yes <input type="checkbox"/> No</p> <p>10. Has the inmate been evaluated for competency? <input type="checkbox"/> Yes <input type="checkbox"/> No</p>					
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Inmates evaluated for involuntary medication

2015	2016	2017 to date
34	25	2

Inmates who received involuntary medication

2015	2016	2017 to date
2	2	none

Inmates compliant after receiving involuntary medication

2015	2016	2017 to date
100%	100%	100%

Overall, restoration of competency on-site in Mendocino County has been a huge success
