

Criteria for fitness to stand criminal trial

F. J. W. Calitz, P. H. J. J. van Rensburg,
H. Oosthuizen, T. Verschoor

Objective. To identify criteria whereby triability can be determined.

Design. Questionnaire survey. The final rating was decided on the basis of a structured psychiatric interview.

Setting. Oranje Hospital, Bloemfontein.

Participants. A total of 736 questionnaires was sent to 176 judges of the Supreme Court, 480 magistrates and 32 attorneys-general and state advocates in South Africa and Namibia, and 33 psychiatrists and 15 clinical psychologists working in forensic psychiatric units in South Africa. With the information from the completed questionnaires, rating criteria were compiled. The rating criteria were applied by means of a structured interview to 100 persons referred in terms of section 77(1) of the Criminal Procedure Act 51 of 1977. A multiprofessional psychiatric team was requested to evaluate the same 100 observandi independently.

Results. A total of 298 (40.5%) of the questionnaires were returned. From the data of the completed questionnaires, 19 legal items, 17 psychiatric items, 2 special laboratory tests and 2 psychosocial items were identified as the most important and clear diagnostic indications for the evaluation of triability. The similarity between the findings of the researchers and those of the multiprofessional psychiatric team was meaningful to 1% of significance. For the proper application of the criteria a cut-off point of 31 was determined. A score of 31 or higher therefore indicates that a patient is unfit to stand trial, while a score of less than 31 indicates triability.

Conclusions. The application of the proposed final rating criteria as a single method of rating is at the very least just as reliable as the multiprofessional team in evaluating fitness to stand trial. The proposed criteria, used as a single rating instrument, are cost-effective in terms of time and staff, avoid unnecessary hospitalisation and ensure that mentally ill accused will have a fair trial.

S Afr Med J 1996; **86**: 734-737.

Departments of Psychiatry and Criminal and Medical Law, University of the Orange Free State, Bloemfontein

F. J. W. Calitz, D.PHIL.

P. H. J. J. van Rensburg, M.D.

H. Oosthuizen, LL.D.

T. Verschoor, LL.D.

The law demands that, to receive a fair trial, an individual must possess sufficient mental capacity to comprehend the nature and object of the proceedings¹⁻⁵ and his own position in relation to those proceedings;¹ he must also be able to advise counsel rationally in the preparation and implementation of his own defence.⁶⁻¹⁰ If he is unable to do one or more of these, he is 'incompetent to stand trial' and usually transferred as a state patient.¹¹ It has always been a problem to determine the triability of accused persons, mainly because of costly evaluation methods, cumbersome procedures, unnecessary hospitalisation and inadequate vague criteria.¹²⁻¹⁵ While the final decision on competency is a legal one, the courts often call upon psychiatrists and, in some cases, psychologists for an advisory opinion.

In many jurisdictions, however, the court has consistently failed to inform the examining psychiatrist or psychologist what questions it wishes answered. Even if a specific request for an evaluation of competency to stand trial is made, it appears that the vast majority of psychiatrists and psychologists have no awareness of what legal test or criteria to apply. If they deal with the question at all, many seem to feel that the accused must be free from any symptoms of mental illness before he is triable.¹⁶

Aim of study

The objective of this study is: (i) to identify criteria whereby triability can be determined with existing systems; and (ii) to determine the suitability of the system.

Method of research

Questionnaire to legal and mental health professionals

A preliminary questionnaire comprising the following components was compiled, viz.: (i) legal items; (ii) psychiatric items; (iii) special laboratory tests; and (iv) psychosocial items.

The aim of this questionnaire was to obtain the opinions of practising legal and mental health professionals. Their response was to be used to determine the contents of a South African measuring instrument. A total of 736 questionnaires was sent to: (i) 176 judges of the Supreme Court; (ii) 480 magistrates; (iii) 32 attorneys-general and state advocates in South Africa and Namibia; (iv) 33 psychiatrists and 15 clinical psychologists attached to forensic psychiatric units in South Africa.

The judges, magistrates, attorneys-general and deputy attorneys-general were asked to complete Section A of the questionnaire. The psychiatrists were asked to complete sections A, B, C and D, while the psychologists were asked to complete sections A, B and D. The aim was to obtain criteria considered relevant to the establishment of triability from the experts dealing with fitness issues. The response groups were asked to evaluate each item on a 4-point scale (0 = none, 1 = mild, 2 = moderate, 3 = total) to indicate the extent of the specific item's influence on an accused person's triability.

Final fitness instrument

Altogether 298 (40.5%) of the questionnaires were returned. With all the information on hand the research team was able to identify 40 items that were included in the final instrument (Table I).

Application of the instrument

The final rating instrument was applied to 100 observandi by means of a structured interview. The observandi were accused persons awaiting trial and they were referred to Oranje Hospital for a 30-day observation period in terms of section 77(1) of the Criminal Procedure Act.

Validity and reliability of the instrument

The multiprofessional psychiatric team from the Forensic Psychiatry Department at Oranje Hospital evaluated the same 100 observandi independently. Their findings on triability were compared with the results of the application of the final rating criteria identified by the researchers.^{17,18} To ascertain whether there was a meaningful correspondence between the findings of the researchers and those of the multiprofessional psychiatric team, a chi-square test of equation was used.¹⁹ From the processed data (Table II) it became evident that the similarity between the findings of the researchers and those of the multiprofessional psychiatric team was meaningful to 1% of significance.^{17,18}

Table II. Findings of the multiprofessional psychiatric team and the final rating criteria

Final rating criteria	Multiprofessional psychiatric team		Total	χ^2	P
	Triable	Untriable			
Triable	80	6	86	52.2	< 0.001 (1%)
Untriable	1	13	14		
Total	81	19	100		

Cut-off point for the final rating criteria

For the proper application of the criteria a cut-off point that distinguished fit from unfit accused persons had to be calculated.¹⁷ The method of Darlington and Stauffer described by Roux²⁰ was used to calculate the cut-off point. For this purpose, the particulars of only those observandi (93/100) where there was total agreement between the findings of the multiprofessional team and the researchers were used. A cut-off point of 31 was determined. As mentioned earlier, there is a total of 40 items. The level of impairment for each item is scored as follows: (i) no impairment = 0; (ii) mild impairment = 1; (iii) moderate impairment = 2; (iv) severe impairment = 3.

The total score can thus range from 0 to 120. A score of 31 or higher therefore indicates that someone is unfit to stand trial, while a score of less than 31 indicates triability.

Table 1. Final fitness instrument

	Level of impairment			Total
	None	Mild	Moderate	
Section A: Legal items				
1. Does the accused understand the court procedure?	0	1	2	3
2. Does he understand the nature of court proceedings?	0	1	2	3
3. Does he realise his position as the accused in a criminal trial?	0	1	2	3
4. Does he understand the charge against him?	0	1	2	3
5. Does he understand the nature and seriousness of the charge against him?	0	1	2	3
6. Can he give sufficient instructions to his lawyer?	0	1	2	3
7. Does he understand the implications of pleading guilty or not guilty?	0	1	2	3
8. Can he testify?	0	1	2	3
9. Can he identify witnesses?	0	1	2	3
10. Can he collect evidence?	0	1	2	3
11. Can he rebut unfair and false evidence against him?	0	1	2	3
12. Can he describe what happened during the alleged crime?	0	1	2	3
13. Does he understand the importance of cross-examination?	0	1	2	3
14. Does he describe the facts relevant to his case?	0	1	2	3
15. Is he able to answer questions from the prosecutor?	0	1	2	3
16. Does he show irrational or bizarre behaviour during the trial?	0	1	2	3
17. Does he know the implications of conviction?	0	1	2	3
18. Does he have an idea of a possible sentence?	0	1	2	3
19. Is he able to decide whether he could defend himself without a lawyer?	0	1	2	3
Section B: Psychiatric items				
1. Appearance and general behaviour	0	1	2	3
2. Orientation	0	1	2	3
3. Consciousness	0	1	2	3
4. Memory	0	1	2	3
5. Amnesia with regard to the alleged offence	0	1	2	3
6. Concrete thinking	0	1	2	3
7. Intelligence	0	1	2	3
8. Insight and judgement	0	1	2	3
9. Emotion	0	1	2	3
10. Volition	0	1	2	3
11. Perception	0	1	2	3
12. Deaf-muteness	0	1	2	3
13. Head injury	0	1	2	3
14. Thought disorder	0	1	2	3
15. Attention and concentration	0	1	2	3
16. Antipsychotic medication	0	1	2	3
17. Epilepsy	0	1	2	3
Section C: Special examinations				
1. Computed tomography: brain	0	1	2	3
2. Neurosyphilis	0	1	2	3
Section D: Psychosocial items				
1. Level of education	0	1	2	3
2. Previous history of serious psychiatric or medical illness	0	1	2	3
Total:				
Remarks:				
Findings: Triable:				
Untriable:				

Conclusion

The conclusion of this study is that the application of the proposed final rating criteria as a single method of rating is, at the very least, just as reliable as the multiprofessional team in evaluating whether someone is fit to stand trial.

The proposed criteria, used as a single rating instrument for determining triability, have the following advantages, viz.: (i) they are cost-effective in terms of time, staff and finances; (ii) they avoid unnecessary hospitalisation; (iii) they could act as a screening method; (iv) they will prevent a mentally ill accused from inappropriately being declared a state patient; (v) they ensure that mentally ill accused will have a fair trial; and (vi) they could be used in training other disciplines to evaluate triability.

REFERENCES

1. Tomb DA. *Psychiatry*. 4th ed. London: Williams & Wilkins, 1992: 220-226.
2. Kruger A. *Mental Health Law in South Africa*. Durban: Butterworth, 1980: 162-170.
3. Macdonald JM. *Psychiatry and the Criminal*. Springfield, Ill.: Charles C Thomas, 1976: 88-95.
4. Mester R. The therapeutic component of evaluation of competence. *Med Law* 1988; 7: 25-32.
5. Bromberg W. Psychiatrists in court: The psychiatrists' view. *Am J Psychiatry* 1979; 125: 1343-1347.
6. Gutheil TE. Forensic psychiatry. In: Kaplan HL, Sadock BJ, eds. *Comprehensive Textbook of Psychiatry V*. Vol. 2. 5th ed. Baltimore: Williams & Wilkins, 1989: 2107-2131.
7. Power DJ. *Principles of Forensic Psychiatry*. London: B Edisall, 1979: 13.
8. Mikkelsen E. The Bridgewater 100: An analysis of admissions to a hospital for the criminally insane. *Psychiatr Q* 1980; 2(3): 190-200.
9. Roesch R, Golding SL. Who is competent to stand trial? *Trial* 1985; 21: 40-45.
10. Savasitsky JC, Karras D. Competency to stand trial among adolescents. *Adolescence* 1984; 19: 349-358.
11. Hiemstra VG. *Suid-Afrikaanse Strafreë*. 4th ed. Durban: Butterworth, 1987: 175-195.
12. Snyman JL. Aspekte rakende die verhoorbaarheidsvereiste in die Strafreëproses. *Tydskrif vir Regswetenskap* 1987; 12: 145-162.
13. Slovenko R. Forensic psychiatry. In: Kaplan HL, Sadock BJ, eds. *Comprehensive Textbook of Psychiatry IV*. Baltimore: Williams & Wilkins, 1985: 1971.
14. Verschoor T, Van Rensburg PHJJ. Kriteria vir verhoorbaarheid. *Suid-Afrikaanse Tydskrif vir Strafreë en Kriminologie* 1983; 7(1): 16-19.
15. Menzies RJ, Webster CD, Roesch R, Jensen FAS, Eaves D. The fitness interview test: A semi-structured instrument for assessing competency to stand trial with a proposal for its implementation. *Med Law* 1984; 3: 151-162.
16. Robey A. Criteria for competency to stand trial: A checklist for psychiatrists. *Am J Psychiatry* 1965; 122: 616-622.
17. Callitz FJW. Die identifisering van kriteria vir verhoorbaarheid. Unpublished doctoral dissertation, University of the Orange Free State, Bloemfontein, 1990: 445-463.
18. Oosthuizen H. 'n Regsvergelykende ondersoek na verhoorbaarheid. Unpublished doctoral dissertation, University of the Orange Free State, Bloemfontein, 1990: 363-401.
19. Fleiss JL. *Statistical Methods for Rates and Proportions*. London: John Wiley, 1973: 14-15.
20. Roux JP. *Die Psigopaat. 'n Dieptestudie van die Psigopatiese Oortreder*. Kaapstad: Academica, 1975.

Accepted 13 Mar 1996.