

A Clinical Application of the Juvenile Adjudicative Competence Interview (JACI)

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Abstract

In response to the increasing need for reliable juvenile forensic evaluations, the Child Study & Treatment Center (CSTC) Forensic Clinic adopted a semi-structured interview for conducting evaluations to develop opinions regarding juvenile-competence-related capacities. The Juvenile Adjudicative Competence Interview (JACI; Grisso, 2005) provides a thorough review of psycho-legal capacities, with opportunities to explore the influence of child and adolescent development on competence-related capacities. Its flexibility allows for alternative interview styles and other accommodations. We identify typical gaps in juveniles' knowledge of court-related proceedings and report a few "local legends" relevant to juvenile competence. The plea bargain vignette is used to demonstrate the assessment of developmental vulnerabilities within a single competence topic.

Keywords: juvenile justice, forensic evaluations, child development.

The past twenty years have seen a dramatic increase in the demand for forensic mental-health evaluations of the adjudicative competence capacities of juveniles (Grisso & Quinlan, 2005; Kruh, Sullivan, Ellis, Lexcen, & McClellan, 2006). As with adult competence evaluations, juvenile forensic evaluators are continually striving to provide a product that answers the court's questions in a meaningful way in language that can be comprehended across professional disciplines. Providing reliable and thorough opinions to the juvenile courts is complicated by the historical emphasis on rehabilitation in the juvenile justice system that allows judges to move beyond the simple consideration of whether a youth is competent or incompetent to proceed. By using a semi-structured interview written with these collective pressures in mind, the CSTC Forensic Clinic has

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refined the assessment process to maintain professional integrity while performing nearly 200 evaluations annually within a state-funded agency.

While CSTC is the state psychiatric inpatient facility for children and adolescents, the Forensic Clinic provides primarily outpatient forensic evaluation services to all counties in the state of Washington. The contents of Forensic Clinic reports conform to requirements of a statute that was written for adult/criminal court evaluations (Regional Code of Washington 10.77). RCW 10.77 is Washington's adaptation of the *Dusky* standard (*Dusky v. U.S.*, 1960), and defines "incompetency" as lacking "the capacity to understand the nature of the proceedings against him or to assist in his own defense as a result of mental disease or defect." Therefore, the Forensic Clinic's competence opinions are described in terms of the capacity to understand the proceedings and the capacity to assist in a defense.

The competence standard of RCW 10.77 was extended to Washington's juvenile courts by case law (*State v. E. C.*, 1996), which allows judges to consider the "best interests" of the child if they conflict with some aspects of the statute. This downward extension leaves the nature of competence undefined in juvenile court. Although research has demonstrated that young age is associated with increased likelihood of deficits on functional-assessment instruments standardized on adult populations (see, e.g., Grisso, et al., 2003), the influence of developmental variations on juvenile competence is not well understood. The extent of abilities necessary to proceed in juvenile court is unclear, compared to the model of competence for criminal court (Bonnie & Grisso, 2000).

Changes in cognition and psychosocial adjustment are seen throughout adolescence and into early adulthood (Steinberg, Cauffman, Woolard, Graham, & Banich, 2009a). However, the study of adolescent decision making within situational contexts is still in its infancy (Fischer, Stein & Heikkinen, 2009; Steinberg, Cauffman, Woolard, Graham & Banich, 2009b). The current boundaries of knowledge about the dynamic nature of development within the unsettled description of juvenile-court competence create an ambitious undertaking for evaluators working in the juvenile system.

In recent years, the CSTC Forensic Clinic has conducted between 180 and 200 evaluations annually for competence to stand trial. The clinic adopted the Juvenile Adjudicative Competence Interview (JACI; Grisso, 2005) as its forensic assessment method in 2005. The JACI is a semi-structured interview that was developed in the larger context of a study intended to assist clinicians in applying the concept of adjudicative competence to cases proceeding through the juvenile court system. It addresses common concepts found in functional-assessment instruments for adult defendants with adaptations appropriate for the juvenile-court setting. As a semi-structured interview, it does not produce scores or results that can be analyzed through traditional methods of test construction. Instead, the interviewer evaluates the quality of a youth's responses for indications of capacities relevant to the legal setting.

The competence-related developmental characteristics of youths are a particular focus of the JACI. Children and adolescents are vulnerable to the same threats to compe-

tence capacities as adults, such as intellectual disability or psychotic symptoms. In addition, they may demonstrate poor functioning as a result of continuing child and adolescent development, although immature development is not a clinical condition that constitutes a disease or defect. Deficits due to immaturity may resolve in time, but are not necessarily addressed by traditional methods of competence remediation for youths whose deficits arise from mental illness or intellectual disability. Identifying problems associated with development—alone or interacting with other deficits—requires consideration of what can and cannot be changed within statutory limits for attempted competence restoration.

JACI items provide multiple opportunities to assess maturing psychosocial characteristics such as autonomy, risk perception, time perspective, cognitive/ behavioral control, and abstract reasoning on competence-related capacities. Extensive experience administering the JACI has brought to light global areas of concern to address in the interview, such as the youth's grasp of the adversarial nature of the justice system, qualitative differences in verbal responses to open-ended versus concrete questions, and distortions to rational thought processes that can be caused by psychopathology or immaturity. An especially critical ability is the youth's aptitude to quickly learn and generalize information, a skill that is continually tested in consultation with the defense lawyer. In this article, we describe how the JACI has been integrated into our practice and suggest adaptations to enhance the descriptive information that can be garnered from the JACI to help juvenile evaluators explain to the court the foundations of their opinions.

Implementation

The JACI was designed with a flexible structure and can be altered to accommodate differences in regional practice. For example, many states protect evaluators from being forced to testify about knowledge of the charged offense that is gathered incidentally during competence evaluations. Washington statutes do not provide for these circumstances, and state prosecutors have attempted in the past to access such information. Therefore, JACI items related to charges were changed to concrete inquiries (such as, "What is the definition of 'assault'?") and to impersonal wording (such as, "When someone has this charge, what is he or she accused of doing?" or "When someone has this charge, what are the police saying he or she did?"). In order to evaluate an individual's ability to coherently tell a story with a beginning, middle, and end, we have youths tell us a story of their own choosing during the clinical portion of the interview. The youths' ability to understand and appreciate their charges is tied to the ability to tell a coherent story in order to form an opinion about ability to assist with the defense.

The Clinic's reports integrate the concepts of "understanding" and "appreciation" described in the JACI manual to organize the qualitative findings used to develop expert opinions. Generally speaking, "understanding" describes the youth's faculty to grasp the concrete facts of a topic, while "appreciation" describes the youth's comprehension of the implications of the concrete facts when applied to his circumstances (Grisso, 2005). For example, a section of the JACI poses hypothetical decision-making tasks for

youths. This allows an interviewer to assess the cognitive, emotional, and moral thinking aptitudes that may be influencing the youth's reasoning processes. Using the terms from the manual helps readers to recognize the association between the potentially obscure (to that layman) clinical information and the skills that promote competence. Over time, the repeated use of the terms has established a common vernacular to facilitate communication with the lawyers and judges who are the consumers of our reports.

Alternative Interview Styles

The JACI may be adapted with each use, based on a given youth's strengths and weaknesses. Conducting a mental-status examination and brief clinical interview before the JACI provides clues to the youth's psychological functioning and response set. Then, a conversational interview style can be adopted when the evaluator has a clear sense of what can be expected in the forensic interview. A more structured style is helpful when there are suspected deficits or uncertainties regarding whether symptoms of a known diagnosis (e.g., impulsivity associated with Attention-Deficit/Hyperactivity Disorder) could affect competence-related capacities.

Conversational Competence Interviewing. The conversational style of interviewing begins with an open-ended question asking what the youth already knows about going to court. This is the first probe of the JACI, and it is especially useful for estimating the extent of the youth's current knowledge of court-related information, his facility with legal vocabulary, and any limitations that might need addressing. As the youth responds, the evaluator can flip through the JACI, filling in the relevant associated items as they come up. Then, a quick review of any material not covered can be completed. Instruction can be given for areas of weakness, and learning capacity documented accordingly.

This approach is efficient with youths at either extreme of functional capacities. Sophisticated, intact, and cooperative adolescents can complete the interview in as little as 30 minutes. Very disabled or impaired youths also require less time because the primary focus is to demonstrate their obvious inability to communicate effectively, their lack of cognitive capacity to benefit from learning, or their distorted thought processes that impinge on reasoning.

Structured Approach. Youths often present with an apparent problem that likely motivated the referral. Using an investigative approach with the JACI establishes whether such concerns interfere with the youth's abilities to participate in the legal setting. The open-ended introduction of the JACI can be used to determine how well an individual generates, organizes, and produces coherent and relevant responses to ambiguous stimuli.

The quality of response to this indeterminate probe is used to form hypotheses and is contrasted with later verbalizations. If the youth's first description of courtroom proceedings is inadequate, he might simply be lacking information, but then demonstrate

an aptitude to learn and reason when provided with new data. A youth who is resistant to participate might give a brief open-ended response, but later provide solid, elaborated responses to more specific items. Questions posed in concrete terms may reveal greater knowledge in youths who respond poorly to the first prompt because of language disorders or cognitive limitations. The first item—as with any JACI item—can also be used to obtain speech samples to include in the report as examples of impulsive or pressured speech, or speech associated with underlying thought disturbances.

The progression of JACI develops a baseline of a youth's knowledge about his own case and simple aspects of going to trial. Questions have alternate wording options that can be selected to accommodate cognitive and developmental differences. Brief instruction can be offered in a conversational manner with any item, and asking the youth to explain the material in his own words provides examples of immediate recall. Returning to the item later documents the quality of recall abilities. The ideal indicators of learning are when a youth relevantly incorporates what he or she has just been taught when responding to another question.

Lengthier instruction should be conducted whenever appropriate in the interview. Even youths with adequate intellectual abilities may be naive to courtroom procedures and personnel, thus requiring some training. A graphic aid, such as a sketch on blank paper, may be helpful when teaching these concepts. Basic topics to cover include the roles of prosecutor, defense attorney, judge, pleas, plea bargain, and trial process. This can be done interactively, asking the youth to “fill in the blanks” or answer simple questions. Occasionally, a youth will interrupt to ask questions, or eagerly explain what he already knows about going to court.

Training provides additional opportunities for memory checks, learning abilities, and consolidation of information. Assessing and documenting these abilities is the primary function of incorporating instruction into a competence evaluation. The goal in an evaluation of functional capacities is not to inventory all of a person's knowledge, but to determine the individual's faculty to comprehend, learn, recall, and—especially—apply new information rationally, as is necessary during defense consultation. While a youth may have gaps in concrete knowledge about certain aspects of proceedings, these can be addressed by defense counsel once it is evident the youth is able to learn from direct instruction.

An open-ended query immediately after training is another chance to collect speech samples of recently learned material. The youth may require prompts to demonstrate the level of detail he recalls, or may show an inability to organize the information coherently. Indications of weaknesses in knowledge or learning can be recognized by noticing whether the youth relies on the visual aid (if it is still available), how often the aid is needed, or which topics cause the youth to reference the aid.

Following training, a number of strategies can be used to move the interview forward. Returning to specific JACI items is acceptable when the evaluator thinks there is sufficient information to support any developing opinions about the youth's knowledge base,

learning abilities, and reasoning skills. When there are lingering questions, the interview can be adapted yet again. For example, a youth who has provided a response after instruction can be given a brief refreshment break, with or without instructions to “think about what we’ve just discussed.” The break can be followed by another open-ended probe. Some youths will show significant deterioration after only a few minutes, while others will have consolidated their understanding by reflecting on the material. Either outcome provides clinically useful data for the report, and the remainder of JACI items can be completed with continuing interactive instruction as needed.

The JACI includes a closing page where questions that resulted in training (or any other type of problem) should be revisited if the youth has not already incorporated the new information in response to other items. This is ideal for cases where only a few items were problematic, or when a brief example of the learned recall is desired. When an interview has included several periods of brief instruction, lengthier teaching, and multiple open-ended questions, another strategy is to re-visit most or all items and record final responses using a pen with ink of a different color.

The options described for the structured-interview style generate observations about the youth that go beyond simple understanding, appreciation, and reasoning. Multiple inquiries can be used to demonstrate cumulative learning, or the inability to learn despite repeated instruction. Instances where a youth generalizes a concept from one item to another show flexible thinking and application of newly learned information. Switching strategies between open-ended and specific questions may uncover a preferred mode of communication. In addition, the youth’s tolerance for a stressful, redundant, and potentially tedious interaction should be documented.

The description of a youth’s functioning derived from these methods is relevant to determining capacities beyond concrete knowledge. In fact, the flexibility of the JACI is a strength because it can be used to elicit and document both obvious and subtle characteristics that might not be noticed with a rigidly structured instrument. Since the JACI is not scored, and the administration is not standardized, modifications are not vulnerable to being challenged on the witness stand as improper use of a forensic instrument. The adaptations in a given interview need only be documented, reported, and justified as a means of collecting qualitative information to show the court how opinions were established. Evaluators who are asked for additional competence opinions (e.g., the likelihood of successful remediation) will find that this approach provides explicit examples to demonstrate to the court whether or not a particular youth benefits from instruction.

Knowledge Gaps

The JACI allows for the additional inquiry and teaching as needed. Experience with a variety of juvenile respondents has uncovered a few idiosyncratic areas of concern—compared to adult abilities—that could have implications for competence.

Hearing versus Trial. Many youths have attended multiple hearings before their competence interview and need additional information to grasp that a trial is a specific type of hearing. Often, youths have entered a not guilty plea during a hearing and then have been immediately released or returned to detention. This can create confusion regarding pleas, trials, and punishments if the young person believes that pleading “not guilty” means an end to the case, for example, “innocent” or “going free.” Occasionally, a youth does not realize that he has not been adjudicated and that he is facing trial at some point in the future. Youths who have been held in pre-trial detention sometimes think they have already served a sentence for their offense if they do not recognize they have not yet been adjudicated. They may believe that they are simply being detained until they agree to plead guilty, or that they have been to trial many times and are being mistreated or punished repeatedly. Explaining that a trial is a type of hearing with specific procedures and outcomes can clarify these misconceptions. Some youths benefit quickly from being shown a picture of a small circle within a larger circle such as they may have seen at school. The third item of the JACI (regarding trial process) is an opportunity for the examiner to make this distinction in a way that eliminates confusion on subsequent items or documents persistent difficulties in this area.

Defense Lawyer’s Role. In assessing a youth’s appreciation of the role of defense counsel, the JACI checks for knowledge about whether a defense lawyer could or would hurt a youth’s case. Responses to this include misinformation about confidentiality, examples of lawyers mistakenly or inadvertently saying negative things, expectations that defense will align with the prosecutor against a youth who confesses, or beliefs that defense lawyers must tell everything they know (“be honest”) in court. After clearing up any misunderstandings, a good follow-up question is, “Would your lawyer do that?” This helps to sort out problems of distrust or clinical problems such as thought disturbances.

Evidence. The role that evidence plays in determining a person’s guilt is often obscure to youths, who may not appreciate the adversarial nature of the justice system. Teens and children have varying concepts of what constitutes evidence, or may have general notions of the meaning without an accurate definition. There are several opportunities to cover this. It can be addressed in the second JACI item (trial process) by discussing the types of proof that the prosecutor and defense will present to help the judge determine if they are guilty. In discussing the pleas of guilty and not guilty (the third item), the relevance of evidence can be introduced when asking if any person who has actually committed an offense can plead not guilty.

Eyewitness testimony as a form of evidence can be a difficult concept for youths, but many will need to consider its bearing on their own case. Often, they do not realize that testimony, whether their own or others’, must be an honest representation, and that it is taken more seriously than merely “tattling” in the schoolyard. Most youths have not considered whether they will testify, and do not appreciate that the prosecutor might ask pointed questions that they could be obliged to answer. Covering this concept lays the groundwork for subsequent items regarding decision making about taking the stand in self-defense.

Later in the JACI, youths are asked to consider how they would plead to an offense they had hypothetically committed. This is another chance to review whether they are able to apply knowledge about evidence. Whatever they respond, a follow-up can be posed in the alternative, such as, “But what if they had [a lot of/no] evidence against you? Then how would you plead?” Altering a response in consideration of evidence can be an indication of the ability to adopt a strategy based on case demands. Additional potential responses are addressed below in a discussion of developmental characteristics.

Developmental Characteristics.

Probing for social and emotional functioning that may reflect the vulnerabilities of adolescence and childhood is a necessary aspect of juvenile forensic evaluations. The characteristics suggested in the JACI manual are: time perspective, risk perception, and peer pressure. Here, we discuss peer pressure and additional topics of autonomy, moral development and the “myths” –or misinformation—that children share with one another. Time perspective (“future orientation”) and risk perception are addressed later in an overview of the plea bargain.

Acquiescence

Acquiescence is a response set of agreeing with another by engaging in socially desirable behaviors in the hopes of gaining favorable treatment. Very young, anxious, depressed, or developmentally delayed youth are particularly vulnerable to adopting this strategy in juvenile court. An obvious clue is when a youth repeatedly changes his answer in response to follow-up questions (as if a request for elaboration meant “guess again”), or when a youth immediately changes his answer without waiting for feedback. It may also indicate that the youth believes all adults are working for his benefit, even if he does not understand them. This could result in a lack of self-advocacy should the youth fail to appreciate the adversarial aspect of the system. Some of these youths respond well to coaching that helps them to identify the times in court when they have felt intimidated or confused. Planning alternate communication methods, such as writing notes to their lawyer or developing a way to signal their lawyer for help, is rehearsal for active participation in their defense. In cases of such youths, the judge can be alerted (through the evaluation report) not to rely on information obtained by questions that can be answered by a well-rehearsed and cooperative “Yes, Ma’am” or “No, Sir.”

Adult Influences

As dependents in our society, children and adolescents rely on adults for guidance, especially in unfamiliar situations. The types of adult influences observed in this clinic loosely fall into those that favor incompetence, those that favor competence, and those that further goals unrelated to the forensic evaluation.

When parents believe that a finding of incompetence is a means of resolving the youth's case, they may suggest that the youth underperform or exaggerate limitations. A youth may adopt a response set of "I don't know," or exhibit indifference to specific questions while demonstrating through other questions that he does, in fact, know the answer being sought. Very immature juveniles will answer directly if asked whether their parents have told them to appear unable to answer questions. An easy intervention by the examiner is to explain the process of competence remediation, preferably during notification at the beginning of the interview. Recognizing that remediation is a further delay and not a resolution to the proceedings often improves motivation and performance.

By contrast, there are families that view the juvenile justice system as their child's best opportunity to receive treatment for serious mental health, behavioral, or developmental problems and try to enhance performance through extensive rehearsal. This is sometimes effective, as when a youth with mild intellectual disabilities lives in an environment where the legal system is discussed frequently and openly by family and friends alike. Such youths may be well prepared to refuse to speak to police, but, by extension, may be at risk of refusing to cooperate fully with their lawyer around certain topics such as peer involvement. These youths need careful assessment to determine their true facility and accuracy in applying their knowledge to circumstances that may be unfamiliar to them.

Some families construe a finding of incompetence as a form of discrimination against their disabled offspring, even if impairments—especially problems with reasoning and decision making—are obvious after coaching. In a related circumstance, therapeutic foster care facilities that attempt to manage behavior through arrest often familiarize their residents with concrete information prior to the evaluation hoping that behaviorally disturbed or developmentally disabled youths will be able to proceed to trial. In cases where adults are promoting competence-related abilities, impairments usually surface during tasks that require inferential reasoning, such as describing how the quality or quantity of proof might determine a plea, or recognizing the risks inherent to rejecting a plea bargain.

Parents occasionally insist on being present during all conversations with their offspring, even if the youth's defense counsel attends the interview. In a very few instances in this clinic, family members of youths accused of unusually sophisticated offenses (e.g., producing and passing counterfeit \$20 bills) have persistently—and even disruptively—asserted that they have parental rights to full knowledge of the youth's disclosures during competence and mental-state interviews. Cases like this may require intervention by the defense counsel to allow the youth to participate authentically during the evaluation.

The Forensic Clinic's association with the children's state psychiatric hospital has led to referrals for purposes other than what is described in the court order. For example, parents have occasionally used the Clinic's evaluations to bolster their disagreements with school districts over the need for special services. More frequently, a lawyer or social services representative has mistakenly informed parents that forensic evaluations

are the “fast track” to inpatient treatment in an environment of scarce resources. On a limited number of occasions, an evaluation has been used by high-conflict divorcing families as fodder for custody disagreements. Relying on the local statutes regarding the purpose of our reports has been a method of setting boundaries in these situations.

Indicating to the court that adult influences are present can be conveyed in several ways through the evaluation report. Describing the process of correcting misunderstandings can shed light on the problem without laying blame on parents who are naturally inclined to protect their children. A firmer description or warning to the court may be necessary if the adult’s wishes are directed towards goals extraneous to the evaluation. Regardless of the adult’s motivation and influence, clinical judgment may justify the use of diagnoses such as relational problems or child abuse/neglect.

Peer Influences

Vulnerability to peer pressure is another type of acquiescence. The interview item regarding willingness to disclose a peer’s involvement is useful for exploring this; however, most youths immediately state they would tell their lawyers about another person’s participation in an offense. The item can be adapted by asking for reasons to tell their lawyer about the friend’s involvement, then asking for reasons not to tell, followed by asking what the individual believes he would do in that situation. The preferred response indicates that the youth recognizes he might reduce his responsibility and punishment by cooperating with his lawyer. The reasoning associated with the response to this item can be an indication of moral development. For example, developmentally immature youths may insist it “wouldn’t be fair” to be given all the punishment themselves, or they may say that their peer needs to “learn a lesson” as much as they themselves do. A more mature youth might indicate that they “don’t want to take all the punishment” for an assisted offense. However, it may take persistent probing to get the youths to verbalize their thinking and recognize the value for themselves.

In this clinic’s anecdotal experience, very few youths say they would not disclose a friend’s involvement. The youths who do so tend to be gang involved, or admit that they learned not to disclose as “the law of the street.” This response can be motivated by rehearsed or enforced loyalties. The evaluation report can indicate that this may be a weakness for a specific youth, and if it is relevant to the case, it can be pursued by defense counsel. If a youth expresses genuine concerns for his safety in detention or the community, the court should be alerted to this issue.

Developmental Disorders, Developmental Immaturity, and Environmental Deprivation

The vast majority of youths seen in this clinic are familiar with the types of sentences they can receive in juvenile court. Infrequently, an especially immature or naïve youth does not know the difference between school detention hall and juvenile detention. An inability to learn the distinction after instruction is especially telling of short-term recall problems.

Equally rare are instances when a youth will indicate a preference to be punished by the court system rather than being disciplined by parents. This is a red-flag response that should be addressed to determine its underlying source. Youths with asocial symptoms of Pervasive Developmental Disorders will express their satisfaction with living in a highly structured environment that favors their partiality for isolation. Those who express appreciation for regular meals, housing, a place to sleep, access to school, and “fair discipline” in detention may have a history of abuse and neglect. Follow up on this may be more relevant for the clinical opinion, but cannot be ignored since it might motivate a youth to relax his efforts to defend himself.

A clear indicator of risk in the area of immature moral development is a youth’s belief that the court operates in the same fashion as adult caregivers, causing him to believe that honesty is the best way to obtain leniency, that being honest is the most important consideration in his case, or that being honest is necessary in order to “learn a lesson.” This may extend to an assumption that being honest requires a specific plea, or an openness that is inappropriate to an adversarial setting. These attitudes show an underestimation of the negative experience of completing any type juvenile court sentence, and poor anticipation of what can be expected from the courts. One antidote to this is to explain that the prosecutor must prove guilt, and a plea of “not guilty” is not a declaration of innocence, nor is it evidence of dishonesty. It is merely a way of saying to the prosecutor “Based on the evidence, you can’t prove it.”

Many JACI items provide an opportunity to probe for this level of moral development. It can be broached whenever the topics of guilt, innocence, or punishment arise. Regardless of age, youths who are socially unsophisticated harbor “magical” thoughts about the court system. Common variants include a belief that the judge is all knowing and will see past the information presented in court to determine the quality of the youth’s character. This is not the same as believing that the judge will determine guilt by observing the youth’s behavior in the courtroom or by reviewing how they have behaved since their arrest, which indicates lack of knowledge about evidence and trial process.

Instead, some youths believe that the judge could review any type or extent of information (including evidence, bad behavior, treatment failures and documented drug abuse) and, in spite of overwhelmingly negative data, detect something indescribable within them that certainly and ultimately will result in a finding of not guilty. A youth with such beliefs, especially if he is resistant to corrective feedback, should be evaluated for formal thought disturbances associated with psychotic disorders and autism-spectrum disorders. However, there will be times when there are no associated symptoms of psychopathology and developmental immaturity appears to be the underlying cause.

As noted earlier, some children and adolescents assert that they must be punished if they have misbehaved so that a “lesson” can be learned. This demonstrates a deep trust—perhaps based on wishful thinking—that whatever happens in court will be fair. Their misunderstanding is compounded by their expectation that “fair” punishment will

fall within the realm of negative experiences that are familiar to them while they naturally cannot contemplate the possibility of punishments unknown to them.

There is another group of youths who insist on a similar, rather concrete moral paradigm for a different reason. As with adult defendants, youths have sometimes been coached by their lawyers that they must at all times present themselves as innocent. This can result in older youths and adults appearing remorseless when, in fact, they are simply managing their public impression according to their lawyer's instructions. Mature adolescents who have heard similar advice may adopt a defensive posture, declaring that they would accept any fair punishment if they were guilty, which of course, they are not. They hope to persuade others that they are so reliably honest that they would never enter a not guilty plea to an offense they had actually committed.

Discriminating between immaturity and this kind of impression management is done by placing the responses in context. Within the interview, there are multiple items that pull for recognition of the adversarial nature of the system. Youths who are developmentally immature will have a greater number of naïve responses compared to the number of responses that indicate genuine appreciation for the threat to their civil liberties. A limited number of childish attitudes compared to a multitude of mature responses suggest a defensive response strategy rather than moral immaturity.

Common Legends in Juvenile Justice.

There are misunderstandings among juveniles that seem to persist year after year. The most common are the beliefs that all adults are benevolent and that telling the truth will result in less punishment. In the extreme, these two ideas may converge into a fantasy that the prosecutor can be persuaded to drop the adversarial position and work to convince the judge that the youth is not guilty. Another legend is that all youths who are sent to "juvie" are sexually and physically assaulted by predators there. This seems to be a way that caregivers try to scare immature and developmentally delayed youths into good behavior.

There are two additional assumptions heard in this clinic that may be specific to this region of the country. The first is that prosecutors and defense lawyers are only paid for each case they win. If the youth is found guilty or pleads guilty, the prosecutor gets paid, and defense lawyers are paid only if the youth is found not guilty. Even youths whose families are paying for privately retained counsel may believe their lawyer will not be paid if they are convicted.

This misunderstanding can influence a youth's ability to rationally consider an offered plea agreement. Oppositional youths who feel personally affronted by the prosecutor's diligence occasionally express an unwillingness to consider an offered plea bargain out of their intention to cause the prosecutor to "work hard" for the imagined fee. Non-defensive youths can be asked directly whether they have heard this "rumor," and then given an explanation. Including information about how lawyers are paid in the training on courtroom personnel is a simple way to resolve these errors. However, youths who

are skeptical of all adults (including the interviewer) may have difficulty accepting this as accurate.

The second persistent belief among juveniles seen in this clinic is the conviction that police work is conducted using methods demonstrated on television crime shows. Youths with a history of gang involvement assert they need not tell their lawyers about peer participation in an assisted offense because investigation will result in complete and thorough understanding of what really happened, who was involved, and their respective proportions of responsibility for the events. Countering this can be accomplished by explaining that local state agencies do not have the financial resources to pursue investigations with the thoroughness of a television show. Often, simply making this statement is enough to dispel the belief, even if it does not change the person's behavior. The point can be made that given actual, real-world procedures, the police may well consider their work to be finished once a single perpetrator is identified, and they will then quickly move on to other pressing cases. This can be used to impress on an adolescent the importance of cooperating with his lawyer.

The Plea Bargain as a Method of Critical Appraisal

Working with a youth on understanding the plea bargain is an opportunity to probe for weaknesses, distortions, misapprehension, and sources of impairment. The plea bargain has both concrete and abstract elements. The concrete elements—an exchange or trade between parties with attendant advantages and disadvantages—are known to relatively few youths, even when defense counsel has addressed it. Teaching this information is an opportunity to test memory and learning surrounding multiple important legal concepts, while also exploring the child's ability to apply his factual understanding.

The reasoning required to accept or reject a plea bargain can be assessed through the use of hypothetical vignettes. The hypothetical plea bargain scenario touches on many developmental concepts, such as autonomy, risk perception, time perspective, abstract reasoning, and cognitive or behavioral control. The JACI incorporates two plea-bargain scenarios relevant to the youth's own case. The CSTC Forensic Clinic has adopted a third vignette similar to plea-bargain vignettes used in adult functional assessment instruments for evaluating the ability to weigh other types of advantages and disadvantages. In all, these items present the evaluator with substantial information.

The first JACI plea-bargain vignette suggests that the prosecutor in the youth's case has offered an agreement that, if accepted, would allow the youth to leave detention immediately with a juvenile record. Defense counsel suggests that the youth is likely to be found not guilty if he proceeds to trial, but would have to await trial for several months in detention. The youth is asked how he would plead in this circumstance.

Most youths state without hesitation that they would accept the guilty plea, explaining that they would want to be released as soon as possible, regardless of the disadvantages. There is very little reasoning behind this kind of response. It is a simple desire to avoid what is unpleasant or frightening. A few youths—who are likely to be socially

naïve or cognitively concrete—say they cannot respond because they have never been to detention. This may be indication of immaturity or simple oppositionality. Occasionally, a youth who has adamantly asserted his innocence throughout the interview will premise his response on the assertion that truly innocent people must defend their integrity, and this answer should be considered in the context of a defensive stance; it is not necessarily a problem. Sophisticated youths, especially those who have spent time in detention and did not find it particularly negative, will opt to remain in detention awaiting a trial date, but will immediately accept a plea bargain in the situation when a charge would probably result in conviction at trial. This is an acceptable and reasonable approach.

Learning, Memory and Reasoning

Clinical skills of observation are especially useful for assessing how the youth works with the plea bargain. Impulsive youths may interrupt the interviewer to ask questions or to offer an answer before questions can be asked. When a plea agreement has already been offered, a youth may report what he knows in ways that show his comprehension of the issue, or, conversely, his misunderstanding of what it means. In either case, asking the youth to consider the situation more thoughtfully can provide information on his ability to manage his conduct and redirect his attention, both of which have behavioral implications for the courtroom.

Teaching the concrete parts of the plea bargain can be used to assess immediate, short-term, and long-term memory for newly learned information. This is done by establishing a baseline of current knowledge, giving instruction, and asking for a rephrasing “in your own words.” Teaching should cover the type of plea entered, the advantage offered by the prosecutor, the disadvantages, and that the alternative is to plead not guilty. The item can be revisited as many times as is necessary for the evaluator to discern and document how much instruction is required and how effectively the youth learns.

Given that research demonstrates that youths recall advantages more than disadvantages when making decisions that involve chance (see, e.g., Boyer, 2007; Huizenga, Crone & Jansen, 2007; Platt & Huettel, 2008), it is important to determine if the youth can recall and describe the disadvantages of a plea bargain. The disadvantages depend on individual cases, but can include losing the right to appeal, having to complete the agreed-upon sentence, missing an opportunity to tell their side of the story (i.e., no trial), having a juvenile record, admitting to misdeeds or relinquishing the opportunity to confront witnesses. Noticing whether the youth remembers the weightier disadvantages and calculating the total number of disadvantages recalled can provide some insight into his ability to realistically incorporate both benefits and costs in decision-making.

Time Perspective or Future Orientation

Learning about the plea bargain can be augmented by a discussion of the implications of having a record for the associated charge. Juvenile records carried less weight in years past when they were automatically sealed or expunged. However, some states now consider juvenile felony records for “three strikes” sentencing (see, e.g., *People v. Nguyen, 2009*, recently upheld by the United States Supreme Court), and juveniles who plead guilty to sex offenses may be required to register, with few chances to be removed from the registry in the future. In addition, one of our recent juvenile cases has been impacted by the Supreme Court’s decision regarding deportation subsequent to a guilty plea (*Kentucky v. Padilla, 2008*).

Probing a youth’s thoughts about consequences that persist into adulthood can be an opportunity to assess the ability to consider the passage of time. Therefore, evaluators may wish to consider reviewing these disadvantages with youths if relevant. Even without specific knowledge about a youth’s expected sentence, an evaluator can approach the issue of future orientation through the clinical interview portion of the evaluation by asking simple questions that extend further and further in time. A starting point would be to gauge the youth’s plans for the rest of the day, moving to plans for the weekend, any approaching holidays, the coming summer, the following school year, and so on, until the youth can no longer envision possibilities on his own. This can be followed with suggestions of likely possibilities, such as trade school, college, working for a living, or other appropriate options. As with the larger JACI interview, the point is to observe the quality of responses within the process of extending aspirations in order to compare or contrast with their abilities to respond to open-ended versus concrete questions.

Risk Perception, Inferential Reasoning, and Abstraction

Once the basic plea-bargain information is addressed to the evaluator’s satisfaction (either showing the youth can or cannot learn some or all of it), the implications of rejecting a plea bargain can be used to assess abstract thinking. Simply asking the youth to identify the risks of rejecting the plea bargain serves as an open-ended and ambiguous stimulus. If the response is poor, more specific questions can be asked, such as “What would the worst thing that could happen if you rejected a plea bargain?” Follow-up questions can then proceed to the level of “leading” the youth to the answer by asking, “How do you plead if you reject the plea bargain?” “How would pleading not guilty be a bad thing?” “What would be the worst outcome if you were guilty?” and “How would that be worse than accepting a plea bargain?” Doing this allows the interviewer to see whether and at what point the youth is able to make the inferential connection between refusing to plead guilty and the possibility of a longer sentence if convicted at trial.

Naturally, this method of asking leading questions will be challenged by the defense if the case requires testimony. This can sometimes be averted by explaining within the evaluation report that the process of using leading questions is intentional, and then

summarizing the findings of the process. Observing the youth's cognitive abilities is the purpose; the content of the questions and answers is incidental.

Another JACI item offers a similar opportunity to evaluate flexible thinking. The item asking why it might be a problem if a youth did not cooperate with his lawyer can provoke a variety of responses. Youths tend to think the hypothetically uncooperative respondent might be punished by the judge for refusing to cooperate, so a response indicating punishment is not sufficient to determine whether the implications are understood. A good follow-up is "How would that happen?" to see whether the youth can describe the defense attorney arriving at trial unprepared and therefore unable to defend against the prosecutor's accusations. As with the plea bargain, the process of observing whether and how the youth arrives at recognizing the risk is the point of additional, more specific questions.

Once the type of questioning (e.g., ambiguous versus leading) needed to prompt the youth's abstract and inferential thinking is obvious, there is additional assessment to be done in the more subtle area of thought content versus verbal abilities. A youth may be able to think flexibly, but deficits in verbal expression abilities may constitute a threat to the capacity to assist and testify. Using leading questions to show that a youth is familiar with implications of his circumstances demonstrates what can be learned from the youth when the interviewer knows what questions to ask. If spontaneous expressions of detailed events are required for a successful defense, a verbally impaired youth might not have adequate capacity to defend himself through consultation or during aggressive cross examination.

In these ways, the plea-bargain questioning can be used to cover a number of aspects of competence-related capacities in juveniles. Basic learning and memory lay the groundwork for using learned material to engage in reasoning and inferential logic. Documenting the youth's abilities or deficits in this area is strong material for developing opinions since many youths have to consider accepting an offered agreement as their cases proceed.

Summary

The JACI has improved the quality of reports produced by this clinic and served to help evaluators organize their thinking into concepts and language that are useful for the courts and parties reading the resulting reports. By adapting the interview style and content for specific situations, interviewers can capture enhanced information about the youth's cognitive abilities and communication style. Items can be used to establish that a particular youth has very limited abilities to learn new information and communicate his thoughts effectively. Conversely, items can be extended to challenge the youth's abilities to think abstractly and reason with newly learned material. Although the interviewer is not obligated to provide all information about justice system procedures and events, (which in the worst case could be construed as "legal advice"), teaching relevant and factual material is an effective method of assessing relevant memory and learning skills. If social relationships are exerting influence on the youth, this can be communi-

cated to the court, especially when the persuasion diminishes the youth's respect for an adversarial process that requires him to defend his own interests.

Consistent with the expectation that an expert witness should make an opinion clearly understood in non-clinical terms (Bazelon, 1975), the semi-structured platform of the JACI has been a successful method for bringing better products to the courts. Clinicians who adopt the JACI are encouraged to experiment with the terminology of the instrument to develop a vernacular for communicating effectively with those who read their reports. Explaining how a youth's observed aptitudes or deficits influence competence-related capacities assists readers in understanding how expert opinions in the report were formed and makes the evaluator's reasoning transparent. Courts become familiar with the baseline of information that will be provided to them, and expect that additional efforts will be made to accommodate the individual differences of every juvenile evaluated. Anecdotal feedback from local consumers (i.e., juvenile court judges) suggests that this model of semi-structured interviewing increases the court's reliance on the integrity of opinions issued by this clinic. Although competence opinions cannot be based solely on the results of a forensic interview, the JACI's adaptable structure supports a thorough evaluation based on case-specific demands and provides a means of communicating clinical information in the multi-disciplinary courtroom setting.

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