

A Competency Conundrum

Attorneys who interact with mentally ill clients, especially those with serious mental illnesses, are likely to encounter someone with anosognosia. It is important to understand that individuals with this symptom do not recognize that they are ill.

By **Christine M. Sarteschi and Daniel Pollack** | May 27, 2021 at 10:15 AM



If, by chance, it wasn't on the Criminal Law course syllabus in law school, every practicing criminal defense attorney quickly becomes familiar with the U.S. Supreme Court case *Dusky v. United States*, 362 U.S. 402 (1960). The Court ruled that the test for determining whether a criminal defendant is competent to stand

trial is "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." Even though state statutes regarding adjudicative competence vary, they all follow the *Dusky* guidelines.

In 2007, a dozen psychiatrists authored the American Academy of Psychiatry and the Law 70-page document, "AAPL Practice Guideline for the Forensic Psychiatric Evaluation of Competence to Stand Trial." Its stated purpose: "This document provides practical guidance to psychiatrists who agree to perform forensic evaluations of adjudicative competence. Psychiatrists in active private sector, public sector, or academic practice developed this Practice Guideline after an in-depth review of relevant professional publications and case law and after comparing actual practices of clinicians in a broad range of geographic and work settings." It is not light reading.

Absent from this treatise is the term "anosognosia." From the Greek word meaning "without knowledge of disease," anosognosia is a neurologically based symptom involving failure to recognize the existence of a deficit or disorder. It is a feature of a number of disorders including Alzheimer's and Huntington's disease, among others. It is also a cardinal symptom of schizophrenia and schizoaffective disorder. Approximately 50% of people with schizophrenia and 40% of individuals with bipolar disorder suffer from anosognosia ([Treatment Advocacy Center, 2016](#)).

Attorneys who interact with mentally ill clients, especially those with serious mental illnesses, are likely to encounter someone with anosognosia. It is important to understand that individuals with this symptom do not recognize that they are ill.

They are not merely being difficult or troublesome. It is something that they are unable to recognize or control. Most scientists regard anosognosia as a neurological problem as opposed to being a psychological defense mechanism. Because in their minds people with anosognosia do not regard themselves as ill, they do not accept treatment, often refusing to take medication. This increases the likelihood of illness relapse, hospitalizations, becoming homeless or arrested, or engaging in self-harm or violence against others (Treatment Advocacy Center, 2016; [Labovich, 2021](#)).

This inability to recognize their illness often leads them to make decisions that are not in their legal best interest, such as sabotaging their defense, refusing to acknowledge they are mentally ill in court, nor allowing their attorneys to do so. Some outright fire their attorneys when they learn that the attorney may be planning an insanity defense. A couple of cases highlight these issues.

Consider the case of Diana Dial. Ms. Dial had a long history of mental illness. Following a pregnancy which ended in a miscarriage, she developed postpartum psychosis, and eventually chronic schizophrenia as well. She was repeatedly hospitalized because she stopped taking her medication. She lived with her husband and two children for many years but eventually left the family due to a belief that Nazis were endangering her family ([Swart & Mellor, 2017](#)). She wound up living in Texas, renting a room in the home of Jack Ferris.

Among many other bizarre beliefs, she came to believe that Mr. Ferris was poisoning her with liquid gold and giving her Alzheimer's disease. Ms. Dial purchased a gun and preemptively shot Mr. Ferris, believing she was protecting herself from a dangerous man. At trial, she vehemently denied that she was

mentally ill despite having a very long history of hospitalizations. Her attorney wanted to utilize the insanity defense but Ms. Dial kept threatening to fire her if she did so. She told her attorney that she was perfectly well and that anyone suggesting otherwise, was “crazy.” She was ultimately convicted and effectively sentenced to life in prison. Had Ms. Dial’s defense team been aware of the research on anosognosia in schizophrenia, there may have been a different outcome.

Theodore Kaczynski, also known as the “Unabomber,” was tried and convicted for killing three people and injuring 23 others across the United States ([Amador & Reshmi, 2000](#)). Though Mr. Kaczynski had a long history of severe mental illness, and was diagnosed with schizophrenia, he did not believe he was mentally ill. Upon learning the facts of the case, Dr. Xavier Amador, known for his extensive work in the area of anosognosia in schizophrenia, contacted Mr. Kaczynski’s defense team to inform them about his research. When Mr. Kaczynski learned that his defense team was considering an insanity plea, he fired his attorneys and ultimately pled guilty. Mr. Kaczynski did not want to be portrayed as mentally ill (Amador & Reshmi, 2000).

Gaps in the mental health system are leading many more mentally ill people to become involved in the criminal justice system. As a result, attorneys may increasingly interact with individuals with severe mental illness, some of whom are bound to be experiencing anosognosia. Just as the general concept of adjudicative competence is hard to measure, anosognosia does not have a precise, ruler-like, metric. Nonetheless, this brief introduction hopefully highlights the fact that individuals suffering with anosognosia are not willfully creating chaos or attempting to cause problems. Their lack of insight makes it exceedingly difficult to make decisions that are in their own best interest. Ensuring that attorneys are

informed of anosognosia when dealing with those with severe mental illnesses may assist in protecting defendants too ill to help themselves.

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