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Defense Attorneys' Concerns about the Competence of Adolescent Defendants

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ABSTRACT

Research indicates that a sizable proportion of adolescent defendants have difficulty understanding and participating in legal proceedings against them, and may be incompetent to stand trial. To examine attorneys' experience in defending adolescents with competence-related difficulties, 214 juvenile attorneys were surveyed. Findings indicated that attorneys have doubts about the competence of approximately 10% of adolescent defendants, and that they find these cases particularly challenging to defend. Most attorneys appear to recognize that developmental factors may contribute to adolescents' competence-related difficulties, and believe that the law should accept developmental immaturity as a basis for incompetence findings. In approximately half of the cases in which attorneys had doubts about competence, attorneys did not request a competence evaluation but instead made other efforts to address competence issues, such as by teaching adolescents about legal proceedings and further involving their parents. The implications of these findings are discussed.

It is a longstanding legal requirement, dating back to the 1700s, that adult criminal defendants cannot be tried unless they are competent to stand trial (Bonnie, 1992). In particular, the law requires that criminal defendants have adequate factual and rational understanding of legal proceedings, and a capacity to communicate with their attorneys (*Dusky v. United States*, 1960; *Drope v. Missouri*, 1975). The United States Supreme Court has also held that defendants must be able to adequately reason about legal decisions, such as how to plead (*Godinez v. Moran*, 1993).¹

Despite the importance placed on competence within the adult criminal justice system, competence laws were not historically applied to adolescents (Grisso, 2005a). Instead, because the early juvenile justice system was intended to be rehabilitative, competence was viewed as unnecessary. However, over the past several decades, the juvenile justice system has evolved to be much more adult-like in nature. Amid public concerns about youth violence, laws began changing in the 1990s so as to facilitate the transfer of adolescents to adult court, and to enable juvenile courts to deliver more severe penalties (Benekos & Merlo, 2008; Redding, Goldstein, & Heilbrun, 2005; Scott & Steinberg, 2008). With these changes, courts have increasingly held that adolescents cannot be adjudicated unless they are competent (Kruh & Grisso, 2008).

The growing relevance of competence to adolescent defendants has led to a surge of research. A number of studies have examined whether adolescents, particularly young adolescents, may be more likely to have inadequate legal capacities due to the fact that they are still developing and maturing. These studies reveal that young adolescents show high rates of competence-related legal deficits compared to older adolescents and adults (Burnett, Noblin, & Prosser, 2004; Grisso et al., 2003; Peterson-Badali & Abramovitch, 1992; Redlich, Silverman, & Steiner, 2003; Viljoen & Roesch, 2005). For instance, the MacArthur Juvenile Adjudicative Competence study reported that approximately one-third of adolescents aged 11-13 and one-fifth of adolescents aged 14-15 had impairments in their legal understanding and/or their ability to reason about legal decisions (Grisso et al., 2003). Other studies have examined the characteristics of juvenile defendants referred for competence evaluations and restoration (e.g., Kruh, Sullivan, Ellis, Lexcen, & McClellan, 2006; McGaha, Otto, McClaren, & Petrila, 2001), approaches for assessing adolescents' competence (e.g., Christy, Douglas, Otto, & Petrila, 2004; Ryba, Cooper & Zapf, 2003), and strategies to improve adolescents' legal capacities (e.g., Cooper, 1997; Viljoen & Grisso, 2007).

These research efforts are notable steps in advancing knowledge regarding competence to stand trial in adolescent populations, particularly with respect to issues faced by mental health clinicians once a juvenile defendant has been referred for a competence evaluation. However, there is a dearth of knowledge regarding the issues faced by attorneys who defend juveniles (Woolard & Reppucci, 2000). The role attorneys play in cases involving potential incompetence is critical. In particular, attorneys carry significant responsibility in first detecting when a youth may be incompetent, seeking a competence evaluation where appropriate, and zealously defending youth who may, as a result of competence-related impairments, have a compromised ability to assist in their defense.

At this point, it is unclear how frequently attorneys have doubts about their juvenile clients' competence, the characteristics of youth for whom these concerns arise, and the

actions attorneys take in such cases, such as whether they request a competence evaluation. Several studies have examined attorneys' roles and experiences in defending *adult* criminal defendants who may be incompetent to stand trial. However, even in the adult literature, there is very limited knowledge regarding attorneys' roles in such cases; this topic has been referred to as an "empirical void" (Steadman & Hartstone, 1983, p. 54) and as a "major blind spot" in the literature (Poythress, Bonnie, Hoge, Monahan, & Oberlander, 1994, p. 438).

In one of the few studies in this area, Hoge, Bonnie, Poythress, and Monahan (1992) investigated attorneys' perceptions of client competence in a sample of 122 adult felony defendants. Results indicated that concerns about competence were common; in particular, attorneys had concerns about the competence of 15% of defendants. In approximately half of the cases in which attorneys had doubts about competence, attorneys did not request a competence evaluation but instead made other efforts to address competence issues, such as further involving the defendant's family members in proceedings. To extend this research, Poythress and colleagues (1994) conducted a series of larger studies that included adult criminal defendants charged with misdemeanors as well as felonies, and adult criminal defendants who did and did not proceed to trial. These studies again noted that competence-related concerns were common, particularly among defendants charged with felonies. Specifically, attorneys doubted the competence of 8-15 % of defendants charged with felonies, and 3-8 % of defendants charged with misdemeanors. Similar to the findings of Hoge and colleagues (1992), attorneys often did not seek competence evaluations but instead responded to potential incompetence through informal means.

To date, there is a lack of similar studies focused on adolescent defendants. However, there is reason to believe that the issues encountered by attorneys who defend juveniles may differ somewhat from those who defend adults. For instance, attorneys may have concerns about juvenile clients' competence even more frequently than they do with adults, given that competence-related legal deficits are especially common in this age group. In addition, it is possible that attorneys may be even less likely to raise the issue of competence for adolescents. For instance, they might believe that competence is less relevant within the juvenile justice system given its more rehabilitative focus, or they may be reluctant to raise the issue due to the lack of clarity in legal standards regarding juvenile competence. Social science research can help answer these questions and provide data to guide law and policy.

As an initial step in examining attorneys' experiences in representing adolescents with competence-related difficulties, Tobey, Grisso, and Schwartz (2000) interviewed ten juvenile attorneys. Each attorney was asked to think about one juvenile that they had defended during the prior year who appeared to have competence-related difficulties. Although attorneys described these clients as having broad limitations, attorneys expressed particular concerns about these youths' ability to actively participate in their proceedings and to understand case-relevant information. Attorneys requested competence evaluations for only two of these youths (or 20%), suggesting that juvenile attorneys may request competence evaluations even less frequently than do adult attorneys (see Hoge et al., 1992; Poythress et al., 1994).

THE PRESENT STUDY

To help inform law and policy regarding juvenile competence, the present study aimed to extend the initial work by Tobey and colleagues (2000) to a larger sample of attorneys with experience defending adolescent offenders ($N = 214$). This study examined how often juvenile defense attorneys have concerns about the competence of the adolescents that they defend (Research Question 1); the characteristics of adolescents for whom attorneys have doubts regarding competence (Research Question 2); and the actions that attorneys take when defending these adolescents, such as whether they request competence evaluations (Research Question 3). It was hypothesized that juvenile defense attorneys would frequently have doubts about the competence of their adolescent clients, particularly in cases involving young adolescents. Instead of requesting a competence evaluation, it was expected that attorneys would often attempt to handle the issue through informal means, for instance, by attempting to enhance adolescents' legal capacities through teaching and further involving adolescents' parents.

This study also investigated several additional research questions that have not yet been addressed. In particular, it examined the challenges that attorneys encounter when defending juveniles who may be incompetent to stand trial (Research Question 4). Although there is reason to hypothesize that youths who are potentially incompetent may be particularly challenging to defend, "the degree to which attorneys need juveniles' assistance when they prepare a defense" remains unclear (Grisso, Miller, & Sales, 1987, p. 7). In addition, this study examined attorneys' views regarding the relevance of developmental factors to adolescents' competence (Research Question 5). Legal standards for competence have focused on mental illness and cognitive impairments as potential causes of incompetence, and it is only recently that the importance of developmental issues has been highlighted (Scott & Grisso, 2005). Given that it is somewhat unclear whether courts will accept developmental immaturity as a basis for finding of incompetence, it was anticipated that attorneys may express some reluctance to formally raise the issue of competence in such cases. By examining these research questions, the present study hoped to inform law and policy regarding juvenile competence.

METHOD

Participants

The sample included 214 attorneys, all of whom had experience defending juvenile clients. Slightly over half of respondents were female and most were non-Hispanic Caucasian (see Table 1). This is comparable to the characteristics of other samples of juvenile attorneys (Viljoen & Wingrove, 2007). On average, the respondents reported that they had practiced law for over 15 years and worked with juvenile clients for over ten years (Table 1). While the majority of respondents *currently* defended juvenile clients ($n = 156$), some respondents did not currently defend juvenile clients but had in the past ($n = 58$). For these latter attorneys, an average of 6.32 years had passed since working with juvenile clients ($SD = 6.74$). Most of the respondents were currently employed as public defenders (37.9%, $n = 81$) or private attorneys (39.3%, $n = 84$), although some were currently employed as guardian ad litem attorneys (8.4%, $n=18$) or held other positions. In total, 71.0% ($n=152$) of

respondents were members of the National Association of Counsel for Children and Youth (NACC) and 28.9% ($n = 62$) were members of the National Juvenile Defender Center (NJDC).

Procedure

All study procedures were consistent with governing ethical guidelines and approved by the university ethics board. Rather than surveying attorneys at specific offices, an online survey of members of NACC and NJDC was conducted. This enabled a large and diverse sample that included attorneys from many different offices and jurisdictions. The invitation specified that attorneys were eligible to participate in this survey only if they defended juvenile offenders currently or had done so at some point in their career. In order to estimate how common competence concerns were among juvenile attorneys, the survey was not restricted to attorneys who had experienced concerns regarding the competence of juvenile offenders.

Table 1. Sample characteristics

	%	<i>n</i>	<i>M</i>	<i>SD</i>
Age ⁵			47.23	10.19
Gender				
Male	38.3%	82		
Female	61.7%	132		
Race/ethnicity				
Non-Hispanic	88.8%	190		
Caucasian				
Hispanic	4.2%	9		
African American	2.8%	6		
Other	4.2%	9		
No. of years of practicing law			16.67	9.33
No. of years working with juveniles			11.89	8.12
Average No. of juvenile clients represented per year			116.61	185.91

⁵This was an optional question. In total 175 of the respondents reported their age.

The specific methods used to invite prospective respondents from the two groups differed somewhat because of policies around contacting members directly for the purposes of research. Members of the NACC were contacted directly by the research team via email and invited to participate in an online survey. They then received an e-mail reminder at both two and four weeks following the initial invitation thanking them for their participation if they had responded, and requesting that they consider participating if they had not responded. Members of NJDC were invited to participate in the study through a posting to the organizational listserve facilitated by NJDC staff. Due to organizational policy restrictions for NJDC, reminders could not be posted. Respondents who completed the survey were offered a chance to win a book on juvenile competence (i.e., *Clinical Evaluations of Juveniles , Competence to Stand Trial: A Guide for Legal Professionals*, by Thomas Grisso). The response rate was 30.0% for NACC,2 but

was lower for NJDC (9.9%)/ which is not surprising as NJDC did not permit reminders. These figures are comparable to those for surveys of attorneys that employed similar methodology and addressed lawyer's opinions on issues such as involuntary treatment and mental health expert testimony (e.g., Blau & McGinley, 1995; Luchins, Cooper, Hanrahan, & Heyrman, 2006; Mossman & Kapp, 1997; Redding, Floyd, & Hawk, 2001; Viljoen & Wingrove, 2007).

Survey

To develop the attorney survey, a detailed review of other attorney surveys regarding competence was conducted, particularly the work of Hoge and colleagues (1992) and Poythress and colleagues (1994), which examined similar issues as the present study, but with respect to adult defendants. The research on juvenile competence (e.g., Grisso, 2005a, 2005b) was also reviewed in order to ensure that issues specific to juvenile competence were included in the survey (e.g., questions regarding developmental immaturity). In addition, a draft of the survey was sent to three expert reviewers and revised according to their feedback. These reviewers included one juvenile attorney and two forensic clinicians who regularly conduct juvenile competence evaluations.

The final version of the survey took approximately 15-20 minutes to complete and had three major sections (survey is available from authors upon request). In the first section, respondents were asked to think back to a typical case in which they had concerns about a juvenile client's competence. Given that attorneys may not always request competence evaluations in all cases in which they have concerns (Hoge et al., 1992; Poythress et al., 1994), attorneys were explicitly instructed that it was not necessary that the issue of competence was formally raised in the case. Attorneys were then asked a series of questions to describe that particular juvenile, including his or her demographic characteristics (e.g., age, gender), the types of legal deficit he or she had (e.g., difficulties understanding nature of offense), the presence of any psychological difficulties (e.g., anxiety, limited intellectual abilities), and the perceived causes of these legal deficits (e.g., mental illness, developmental immaturity). Attorneys were also asked what actions they took as a result of concerns about the youth's competence (e.g., whether they sought a competency evaluation). These detailed questions about a specific case were asked in order to parallel the methodology used in other attorney studies (e.g., Poythress et al., 1994; Tobey et al., 2000), and to gain an understanding of the typical case in which attorneys have concerns regarding juveniles' competence. This method of examining prototypical cases has also been used in studies of juveniles who are transferred to adult court (e.g., Salekin, Rogers, & Ustad, 2001) and adolescents with psychopathic features (e.g., Salekin, Rogers, & Machin, 2001; see also Rosch, 1973, 1978).

Whereas the first section focused on a typical case, the second section of the survey required respondents to answer more general questions (no longer thinking of a typical client), including how often they have concerns about competence, challenges in defending juveniles who may be incompetent, the number of times (if any) that they had requested juvenile competence evaluations, and reasons for and possible barriers to requesting competence evaluations. Attorneys were also asked questions regarding developmental immaturity, such as how frequently they have concerns that a juvenile

may be incompetent due to developmental immaturity, how they respond to these scenarios (e.g., whether they raise the issue of competence), and their beliefs about whether the law should recognize developmental immaturity as a basis for findings of incompetence. These more general questions complemented the first section by documenting attorneys' general beliefs and experiences in working with juveniles who are potentially incompetent. Finally, in the last section, attorneys were asked for background information, such as their age, gender, position, and years of experience.

RESULTS

Research Question 1: How often do juvenile defense attorneys have concerns about the competence of the adolescents they defend?

The large majority of attorneys (86.9%, $n = 186$) reported that, at some point during their career, they had had concerns about whether a juvenile client could be incompetent to stand trial. On average, attorneys in the sample reported that they doubted the competence of 12.32 clients per year ($SD = 19.43$) out of an average caseload of 120.22 juvenile clients per year ($SD = 200.92$). Thus, on average, attorneys had concerns about the competence of roughly 9.7% of their annual caseloads.⁴ Notably, individual attorneys differed considerably in terms of how often they had doubts about competence, ranging from having doubts in none of their cases to having doubts in all of their cases.

Research Question 2: What are the characteristics of the typical adolescent for whom attorneys have doubts regarding their competence?

The attorneys who reported they had concerns about a juvenile client's competence at some point in their career ($n = 186$) were asked questions regarding the characteristics of a "typical" case in which they had such concerns. On average, the typical youth with doubted competence (DC) was described as being 13.36 years old ($SD = 1.92$), male (92.5%, $n = 172$), and either Caucasian (39.2%, $n = 73$) or African American (37.1 %, $n = 69$). These juveniles were typically charged with a felony offense (81.2%, $n = 151$), specifically for a violent crime (68.3%, $n = 127$), and were processed in juvenile court (94.6%, $n = 176$). On average, attorneys reported spending 5.83 hours ($SD = 10.80$) meeting in person or by telephone with the typical DC juvenile over the course of the case; however, this ranged considerably, from only 3 minutes to 60 hours.

Attorneys reported that the typical DC juvenile had a range of limitations in legal capacities, the most common of which included difficulties in understanding the legal process, poor appreciation of the seriousness of charges, inadequate participation in legal decision-making, and failure to consider the long-term consequences of legal decisions (see Table 2). Attorneys also described the typical DC juvenile as having a range of cognitive and psychological difficulties, particularly limited communication skills (both comprehension and expression) and difficulties with attention and memory (see Table 3). Features of developmental immaturity, such as having difficulties

understanding the consequences of decisions and being easily influenced by others, were also commonly endorsed. In addition, most attorneys (>75%) described the typical DC youth as being immature in comparison to adults and/or a typical adolescent their age. The most common perceived cause of incompetence in the typical DC youth was developmental immaturity (Table 4). However, immaturity was typically in conjunction with mental illness or mental retardation and there were relatively few cases involving developmental immaturity alone. Youths whose legal deficits were perceived as being due to immaturity alone were significantly younger than those whose legal deficits were suspected to be caused by mental illness or mental retardation, $t(172) = 3.90, P < .001$.

Table 2. Identified concerns about the legal capacities in the “typical” case

	True/possibly true	
	%	N
Didn't understand the legal process, such as what happens in a trial or hearing	91.9	171
Didn't appreciate seriousness of charge(s)	90.9	169
Didn't adequately participate in making legal decisions about his or her case— wanted others to make decisions for him/her	86.0	160
Didn't consider the long-term consequences of legal decisions	85.5	159
Didn't appreciate the possible consequences of pleading guilty, such as possible disposition or sentence he or she could receive	84.4	157
Wasn't able to follow and understand events in the hearing	82.8	154
Didn't understand the role of legal professionals, such as the judge, prosecutor, and defense attorney	78.0	145
Was passive in their interactions with attorney— often simply went along with what attorney said	77.4	144
Didn't understand the nature of the offense he/she was charged with	73.1	136
Didn't appreciate that the role of the juvenile defense lawyer is to assist and advocate for him or her	65.6	122
Didn't understand what it means to plead guilty or not guilty	64.5	120
Wasn't motivated to defend oneself	62.4	116
Didn't communicate factual information relevant to their defense to their attorney, such as whether or not they committed the crime	61.8	115
Didn't adequately consider or heed attorney's advice	60.2	112
Wasn't able to testify in a coherent manner	55.9	104
Didn't adequately trust their attorney	46.8	87
Wanted to take too many risks in making legal decisions	27.4	51
Wasn't able to adequately control their behavior in court (e.g., outbursts in court)	27.4	51

These are ordered by how frequent these concerns are, with the most frequent concern listed first. For these analyses, the categories “true” and “possibly true” were collapsed in order to capture all suspected deficits.

Research Question 3: What actions do attorneys take when they have concerns about the competence of adolescent defendants, and what factors influence whether they request competence evaluations?

The most common actions that attorneys took in the typical DC case, in response to the youths' competence-related difficulties, included spending additional time meeting

with or speaking to the individual, trying to teach the juvenile about legal proceedings, and consulting with or further involving the juvenile's parents or guardians (see Table 5). Only 53.2% of attorneys ($n = 99$) indicated that they sought a competence evaluation in the typical case. Attorneys were more likely to raise the issue of competence in cases in which adolescents were young, $t(181) = 2.38$, $P = .018$, were charged with serious offenses (i.e., felonies versus misdemeanors), $\chi^2(1, N = 186) = 5.18$, $P = .023$, and had greater legal deficits (measured by summing the legal impairments listed in Table 2), $t(184) = 4.86$, $P < .001$. In contrast, attorneys were less likely to raise the issue when they suspected the youths' legal deficits might be due to developmental immaturity alone rather than a mental disorder or mental retardation, $\chi^2(1, N = 177) = 4.71$, $p = .030$. Gender and ethnicity (non-Hispanic Caucasian versus other) were not significant predictors of decisions.

Table 3. Identified mental health, cognitive, and developmental concerns in the “typical” case

	True/possibly true	
	%	N
Mental health		
Seemed depressed	71.0%	132
Came across as withdrawn	66.1%	123
Seemed anxious	63.4%	118
Seemed angry or irritable	44.1%	82
Seemed hyperactive	41.4%	77
Appeared to abuse drugs or alcohol	29.0%	54
Seemed to experience delusions	28.5%	53
Seemed to experience hallucinations	14.5%	27
Cognitive skills		
Had trouble comprehending what other people told him/her	89.2%	166
Had trouble expressing him/herself	84.4%	157
Appeared to have trouble paying attention	82.3%	153
Had trouble remembering information	80.1%	149
Seemed to have low intelligence	74.2%	138
Had trouble controlling his/her behavior	54.8%	102
May have been mentally retarded	51.6%	96
Developmental issues/maturity		
Didn't seem to understand the consequences of their decisions	95.2%	177
Seemed immature in comparison to typical adults	88.7%	165
Appeared easily influenced by others	81.7%	152
Seemed immature in comparison to typical adolescents of their age	79.0%	147
Appeared to make risky decisions	68.3%	127
Seemed to have difficulty controlling emotions	58.6%	109

For each category (i.e., mental disorders, cognitive impairments, developmental immaturity), these are ordered by how frequent these concerns are, with the most frequent concern listed first. For these analyses, the categories “true” and “possibly true” were collapsed in order to capture all suspected deficits.

In addition to asking attorneys what action they took in the typical case, the survey asked the full sample of respondents whether they had ever requested a competence evaluation for a juvenile defendant in their career. Most attorneys responded in the affirmative (72.9%, $n = 156$). When asked whether they had ever been deterred from requesting a juvenile competence evaluation in cases in which they had concerns about an adolescent's competence, a sizable proportion of attorneys reported that they had

chosen not to seek a competence evaluation in case(s) involving very minor offenses (34.6%, $n = 74$), and/or when the juvenile (26.2%, $n = 56$) or their parents/guardians (18.2%, $n = 39$) did not want the attorney to request a competence evaluation. Other common reasons for failing to seek a competence evaluation included concerns that the evaluation would delay the proceedings (24.3%, $n = 52$), a belief that the youth would be found competent despite the evaluation (22.0%, $n = 47$), and views that legal standards are not sufficiently clear to know when a juvenile competence evaluation should be requested (19.6%, $n = 42$). In addition, 15.9% of attorneys ($n = 34$) reported concerns that the competence evaluation might lead to harmful consequences for the juvenile, such as stigma, and 12.6% ($n=27$) reported that there is court resistance or opposition to raising the issue of juvenile competence, thus causing them to be reluctant to request an evaluation.

Table 4. Perceived cause of legal deficits in the “typical” case

	%	N
Mental disorder	38.2%	71
Mental retardation or cognitive impairments	60.2%	112
Immaturity (either alone or in combination with other factors)	76.3%	142
Immaturity alone	19.9%	37
Immaturity combined with mental disorder/mental retardation	54.1%	101

Although these findings illustrate that a number of factors may deter attorneys from raising the issue of competence, many respondents also acknowledged that, at some point in their career, they had requested a juvenile competence evaluation for reasons other than concerns about competence. In particular, 51.4% ($n = 110$) reported that they had requested a competence evaluation to help find out whether it might be a good idea to raise the issue of criminal responsibility, and over half of attorneys indicated that they had used these evaluations to either obtain information about general mental health issues other than competence (45.3%, $n = 97$) or to help a juvenile obtain needed treatment services (42.1 %, $n = 90$). Some attorneys also reported that they had requested a juvenile competence evaluation in order to help slow down legal proceedings so that there was more time to develop a solid defense (9.3%, $n = 20$).

Research Question 4: What challenges do attorneys encounter in defending juveniles who may be incompetent to stand trial?

The vast majority of respondents ($n = 197$, 92.1 %) agreed that, in general, it is definitely, or at least possibly, challenging to defend juvenile clients who have difficulties related to competence. In addition, attorneys felt that, in general, it requires more time to defend juveniles who have difficulties related to competence, with 81.3%

($n = 174$) responding "yes" to this question, and 14.5% ($n = 31$) responding "possibly" (only nine attorneys reported "no").

Table 5. Responses to concerns about competence in the “typical” case

Actions taken	%	<i>n</i>
Spent additional time meeting with or speaking to the individual	89.8%	167
Tried to teach juvenile about legal proceedings	81.7%	152
Consulted with or further involved the juvenile’s parents or guardians	62.4%	116
Consulted with a mental health professional about the case	61.3%	114
Encouraged the juvenile to participate more	54.3%	101
Sought a competence evaluation	53.2%	99
Took a more active role in making decisions about the juvenile’s case for him or her	48.9%	91
Consulted another attorney about the case	45.2%	84
Sought some other type of mental health evaluation	43.0%	80
Encouraged the juvenile’s parents or guardians to take a more active role in making decisions about the juvenile’s case	22.6%	42
Asked the juvenile’s parents or guardians to try and teach the defendant about their legal proceedings	13.4%	25
Transferred or referred the defendant to an attorney with more experience in these issues	0.5%	1

These responses are ordered by frequency, with the most frequent responses listed first.

Respondents who acknowledged difficulties with these cases were asked to describe reasons why these cases were harder to defend. Open-ended responses, which were given by 106 attorneys, were independently coded by two raters. Interrater agreement was high (85.6%), and any discrepancies were resolved by consensus. Many attorneys (15.9%, *n* = 34) reported experiencing difficulty preparing a strong defense, especially when it came to gathering the relevant information (e.g., "The client is less able to assist. It's harder to get info about him personally as well as about the alleged offenses and making strategic decisions"). Also, 10.3% (*n* = 22) indicated feeling uncertain about whether they were adequately communicating with and/or educating their clients (e.g., "It's harder to communicate with the juvenile, I'm not sure of their level of understanding, and their behaviors often make it difficult to keep them focused"), and 5.6% (*n* = 12) expressed conflict about their own role in the process in terms of feeling pressured to take on extra authority or direct the representation (e.g., "How do you keep your ethical role as advisor and not in *locos parentis*? The impulse is to step in and guide the client because they are struggling, rather than offer advice and let the client drive the case"). Attorneys also emphasized that youths' limited legal capacities made these cases challenging for them. Specifically, a number of attorneys expressed concerns that these juveniles did not adequately understand the legal process (22.4%, *n* = 48), had limited decision making abilities (12.6%, *n* = 27), and had difficulties understanding the consequences of their own behavior or legal proceedings (10.3%, *n* = 22). In addition, attorneys reported concerns about parents' limited capacity to help and unwillingness to support their children (7.0%, *n* = 15). When asked what might assist them in defending juveniles who might be incompetent, the most common responses were clearer legal standards for juvenile competence, better access to mental health professionals, and more training in this area (see Table 6).

Table 6. What would help attorneys defend juveniles who might be incompetent to stand trial?

	%	<i>n</i>
Clearer legal standards for competence	62.6%	134
Better access to mental health professionals with expertise in this area	62.6%	134
More training in this area	52.3%	112
More time to spend with juveniles	50.5%	108
Better access to mental health evaluations	50.5%	108
Lower caseloads	41.1%	88
Better guidance about when to request a competence evaluation	36.0%	77
Better access to attorneys with expertise in this area	18.7%	40

Research Question 5: What are attorneys' views and experiences regarding incompetence that may stem from developmental factors/immaturity?

Almost all attorneys (86.9%, $n = 186$) reported that they believe that juvenile defendants are more likely to have competence-related difficulties than adult defendants. Also, most attorneys believed that adolescents aged 13 and younger (92.5%, $n = 197$) and those aged 14-15 (73.8%, $n = 158$) are more likely to have competence-related difficulties than adolescents aged 16-17.

Almost all attorneys (95.8%, $n = 205$) indicated that, at some point, they had had concerns that a juvenile may be incompetent to stand trial due to immaturity or developmental issues, and over half of attorneys (56.1%, $n = 120$) reported that they had raised the issue of competence when they suspected a juvenile could be incompetent to stand trial due to developmental immaturity. When asked whether they believed the law *should* allow juvenile defendants to be found incompetent due to developmental immaturity, the majority of attorneys were in favor, with 59.8% ($n = 128$) answering "yes," 24.8% ($n = 53$) responding "probably yes," and less than 10% reporting "probably not" (5.1%, $n = 11$) or "no" (4.2%, $n = 9$). To follow up, respondents were asked to explain their position. Open-ended responses, which were given by 76 attorneys (35.5%), were independently coded by two raters. Interrater agreement was high (98.4%), and any discrepancies were resolved by consensus. For those who agreed, attorneys' explanations commonly cited the view that juveniles, as a group, tend to have competency-related impairments ($n = 23$) and that immaturity functions similarly to other causes of competency-related difficulties and therefore distinctions between causes are not appropriate ($n = 17$).

DISCUSSION

Over the past couple of decades, the legal requirement of competence to stand trial has been increasingly applied to adolescents (Kruh & Grisso, 2008). There is, however, an absence of knowledge regarding attorneys' experiences in defending adolescents who may be incompetent to stand trial. As such, this study surveyed 214 juvenile defense attorneys to examine how frequently attorneys have concerns about competence and

how they respond to potential incompetence. Most attorneys (87%) reported that they had concerns about the competence of a juvenile defendant at some point in their career, and attorneys were almost unanimous that these cases were particularly challenging and time consuming to defend.

While the frequency of competence-related concerns ranged considerably across attorneys, on average attorneys in the sample reported that they doubted the competence of approximately 10% of juvenile defendants on their caseload. Adult-based studies have reported that attorneys have competence-related concerns in 8-15% of cases (Hoge et al., 1992; Poythress et al., 1994). Therefore, attorneys appear to have concerns about adolescents' competence at a comparable frequency as they do about adults' competence. Given that research has indicated that adolescents are significantly more likely than adults to have competence-related difficulties (Grisso et al., 2003), it is somewhat surprising that competence-related concerns were not more common among the juvenile attorneys surveyed. On the other hand, in making judgments about competence, attorneys may automatically make relativistic comparisons (e.g., adolescents to adolescents) and reference adolescent rather than adult norms. Also, although research generally suggests that competence-related difficulties are more common in adolescents than adults, Sanborn (2009) argues that these findings have been greatly exaggerated by social scientists and that most adolescents are, in fact, competent to stand trial. If this is the case, it might also explain why attorneys do not have more frequent concerns about adolescents' competence.

The results suggest that juvenile defense attorneys request competence evaluations in approximately half of the cases in which they have concerns about juveniles' competence. This is similar to figures reported in adult-based studies (Hoge et al., 1992; Poythress et al., 1994). In contrast, a small exploratory study, conducted a decade ago, reported that attorneys requested juvenile competence evaluations in only 20% of cases in which they had competence-related concerns (Tobey et al., 2000). As such, it may be that juvenile competence evaluations are becoming increasingly commonplace (see Kruh & Grisso, 2008).

On one hand, it is potentially concerning that attorneys do not request competence evaluations more frequently than they do, as a failure to raise the issue of competence where sufficient doubt exists violates due process rights and may result in convictions being overturned. However, that being said, attorneys are not legally required to raise the issue of competence in all instances in which they have concerns about competence but rather, only when they have a "bona fide" (e.g., Michigan, *In re Dotson*, 2007; Melton et al., 2007) or "reasonable" (e.g., Kentucky, *Humphrey v. Commonwealth*, 2004) doubt. Therefore, it is possible that many attorneys did not request competence evaluations in the typical case because they did not have sufficient doubts to warrant this. Furthermore, if attorneys were to request competence evaluations for all youths about whom they have some competence-related concerns, the legal system might become seriously overburdened (see Scott & Grisso, 2005).

Many attorneys reported that, even when they have concerns about competence, they are sometimes deterred from requesting competence evaluations for various reasons, particularly when youths are charged with minor offenses. A sizable proportion of attorneys reported that they sometimes do not request evaluations due to concerns that it could delay the proceedings, or because the youth or his or her parents are opposed to an evaluation. This deferral to the wishes of the youth and his/

her parents raises some concerns; youth who are potentially incompetent to stand trial may not be competent to decide whether to waive a competence evaluation, and parents may be inappropriate as proxy decision-makers (Woolard, Cleary, Harvell, & Chen, 2008).

Like their adult counterparts (Hoge et al., 1992; Poythress et al., 1994), juvenile defense attorneys appear to respond to potential incompetence frequently through means other than requesting a competence evaluation. One commonly reported strategy was to spend additional time meeting with clients in an attempt to teach clients about legal proceedings. Another strategy was to further involve adolescents' parents or guardians. However, research indicates that some parents have inadequate legal capacities themselves (Woolard et al., 2008), and that they may advise their child to waive his or her rights, contrary to what attorneys would advise (Grisso & Ring, 1979). Therefore, it is unclear whether these types of strategy are always effective.

While some attorneys may be reluctant to request a competence evaluation even when an evaluation might be an appropriate course of action, the results also indicate that competence evaluations are sometimes requested for potentially inappropriate reasons. In particular, similar to studies with criminal attorneys (Roesch & Golding, 1980; see also Barnum & Grisso, 1994), juvenile attorneys reported that they used competence evaluations to investigate whether the issue of criminal responsibility should be raised, to obtain information about broader mental health issues, and to help a juvenile get treatment services not related to competence. Requesting competence evaluations solely for these reasons, in the absence of legitimate concerns about competence, may confuse and muddy the purpose of competence evaluations, ultimately undermining competence laws (Barnum & Grisso, 1994).

Based on the results, many attorneys appeared attuned to the relevance of adolescents' developmental immaturity to adjudicative competence. Consistent with research findings (Grisso et al., 2003), the large majority of respondents believed that adolescents, particularly young adolescents, are more likely than adults to have impaired competence. Also, attorneys perceived immaturity (often in combination with mental illness and mental retardation) to be the most common cause of legal impairments in the typical case involving doubted competence. Over half of attorneys (56.1 %) reported that they had requested a competence evaluation in a case in which competence-related difficulties appeared to stem from developmental factors (either alone or in combination with other factors). However, as expected, attorneys were significantly less likely to formally raise the issue of competence when a youth's legal deficits were perceived to be due to developmental immaturity alone rather than mental retardation or mental illness.

While most attorneys indicated that they believe that the law should recognize developmental immaturity as a basis for findings of incompetence, it is somewhat unclear what stance courts will take on this issue, as historically legal standards have focused on mental illness and mental retardation as possible sources of incompetence (Scott & Grisso, 2005). Thus far, several jurisdictions have explicitly accepted immaturity as a basis for incompetence findings (Arizona, *In re Hyrum H.*, 2006; California, *Timothy J. v. Superior Court*, 2007; Iowa, *Ill re A.B.*, 2006; Minnesota, *Welfare of D.D.N.*, 1998), whereas other jurisdictions appear to have rejected it as a basis for incompetence (Texas, V. T. c.A., Family Code § 55.31-32) or have not yet formally decided on this issue (Scott & Grisso, 2005).

In interpreting the findings from this study, it is important to consider potential limitations of this research. One limitation pertains to the sample. The NACC and NJDC members who responded to this survey may differ from a general sample of attorneys. For instance, they may be more committed to juvenile advocacy issues. While a higher response rate would have been desirable, the response rate (20%) is considered moderate and is consistent with other attorney surveys (Blau & McGinley, 1995; Luchins et al., 2006; Mossman & Kapp, 1997; Redding et al., 2001; Viljoen & Wingrove, 2007). In addition, the sample size of 214 is fairly large in comparison with those of other attorney surveys (Hoge et al., 1992; Tobey et al., 2000). A second limitation is that this study aimed to examine only attorneys' *perceptions* of competence-related difficulties. The extent to which attorneys are able to accurately identify competence-related difficulties is unclear. They may, for instance, sometimes overestimate juveniles' legal capacities or overlook competence-related difficulties (Cowden & McKee, 1995). Therefore, future research should examine the degree to which attorneys' ratings of competence correspond to clinician ratings and/or competence assessment tests.

These limitations notwithstanding, the findings emphasize that attorneys are frequently faced with the task of defending youths whom they believe may be incompetent to stand trial, and that these cases are particularly time consuming and challenging to defend. To assist them, many attorneys expressed that there is a need for clearer legal standards. Currently, there is considerable ambiguity and variability in competence standards for juvenile court, such as with respect to the role of developmental immaturity (Scott & Grisso, 2005). This lack of clarity likely creates considerable challenge for attorneys. In addition, many attorneys reported a desire for further training in this area and opportunities to consult with mental health professionals. Although some notable efforts have already been made in this regard (Grisso, 2005b; National Juvenile Defender Center, 2010), there is a need for further research and training to support attorneys who are faced with the difficult task of defending adolescents who may be incompetent to stand trial.

NOTES

1. The term *adjudicative competence* has also sometimes been used as an umbrella term to capture competence issues that arise at other legal junctures, such as waiving attorney representation, accepting a plea bargain, and standing trial (Bonnie, 1992; Melton, Petrila, Poythress, & Slobogin, 2007).
2. In total 1429 NACC members were invited to participate and 374 responded. Of these, 219 indicated that they had never defended a juvenile client and were therefore ineligible to participate, and three declined to participate.
3. According to a representative from the NJDC, the listserve is subscribed by approximately 700 members, most of whom are defense attorneys (S. Bergen, personal communication, February 23, 2010). In total, 71 responses were received from listserve subscribers. Of these, eight had never defended a juvenile and were thus ineligible to participate, and one declined to participate.
4. This was calculated by dividing the total cases in which attorneys had concerns in a typical year by the total cases in which attorneys had defended juvenile clients in a typical year.

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