LECTURE

The Summary Mental Examination in Criminal Proceedings

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This article discusses the inception (in 1955) and history of the inclusion of the summary mental examination in criminal proceedings. It then reviews the procedures for diagnosing easily diagnosed cases such as frank psychosis or obvious mental normality. An overview is then provided of the manner in which the reliability of the summary examination can be maintained by deeming those cases where diagnosis can be made without the use of suggestive questions as "easily diagnosed cases" and by avoiding positively diagnosing obvious mental normality. The importance of ensuring that test proceedings in summary examinations do not interfere with formal forensic psychiatric examinations that may be conducted later is then reviewed. These proceedings, through the summary examination, provide material for an expert to state an opinion in court as to the criminal responsibility of the accused suspect. (Keio J Med 60 (1) : 22–26, March 2011)

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In general, people mistakenly assume that there are no major differences between the diagnostic techniques required for a psychiatric examination and the techniques used in normal clinical settings. As a result, there are virtually no reference materials that meet the reliability requirements for such evaluations. On the other hand, it has been difficult to make such materials public because doing so could provide particular groups (for example, criminal organizations) with knowledge they could use to feign illness in order to avoid criminal charges. That is why the author, despite having more than 50 years of experience, hesitated to publish these materials in an article.

The diagnostic techniques of clinical psychiatry, like some types of traditional performing arts, are best communicated through direct transmission. However, given that opportunities for direct transmission are extremely limited, the next most effective method of communication would be to provide detailed written descriptions of the techniques used. Unless preserved in some form, necessary knowledge and experience cannot be shared. With this in mind, the author made the decision to summarize and put down in writing his experience to date.

On May 1, 1950, the Mental Health Act went into effect in Japan. According to Article 25 of that Act, "A prosecutor in executing their duty will give notice to the prefectural governor of mentally ill persons or of suspects or defendants suspected of being mentally ill." From 1952, narcotic addiction and amphetamine abuse became prevalent, and rapidly increasing numbers of subjects addicted to these substances were sent to prosecutors. To quickly process these chronic addiction cases in accordance with Article 25 of the Mental Health Act, the Tokyo District Public Prosecutor's Office, in consultation with the Tokyo Metropolitan Bureau of the Public Health Medical Department, established the Summary Mental Examination (*kan-i kantei*) Section, where an assigned forensic mental health examining physician from the Medical Department would be allowed to conduct an examination to determine whether prosecutor notification under Article 25 of the law was necessary. This procedure went into effect on January 11, 1955, and the author was assigned to be one of these examiners.

Soon after the establishment of the Summary Mental

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Examination Section, a gradual decline in cases of chronic addiction was seen, and, at the request of prosecutors, processing of subjects was expanded beyond subjects with chronic addictions. Thus, accused persons suspected of having a general mental disability also became subject to examination. The examinations were conducted by physicians who contracted with the Tokyo District Public Prosecutors Office. The practice of entrusting this work to persons affiliated with the Department of Neuropsychiatry of Keio University has continued to the present day. Similar procedures are in place in Scandinavian countries.[1]

There is some argument about the contents of the summary mental examination.[2] In 2004 the Japanese Society of Psychiatry and Neurology presented a Model Form of the summary mental examination. However, there is no argument about the methodology of the examination.

The author performed more than 2,000 summary examinations during the years 1955 to 2010 at the Tokyo District Public Prosecutor's Office. Based on the author's 55 years of experience, the methodology of the summary examination is presented; it differs completely from the clinical psychiatric interview involving a psychotherapeutic element.

The stage of the forensic psychiatric examination being conducted in criminal proceedings is presented as follows:

Stage 1. In order to confirm the existence of criminal responsibility for suspects with a suspected mental disorder, the prosecutor charges a psychiatric expert with performing a forensic psychiatric pretrial examination:

(1) based on approval for the examination from the district court, or
(2) based on consent to undergo the examination from suspects themselves.

Item (2) is called "the summary mental examination" and is the subject of this article.

Stage 2. In order to confirm the existence of criminal responsibility for the accused because of their suspected mental disorder, the judge orders a forensic psychiatric examination and charges a psychiatric expert with performing the forensic psychiatric examination.

In Scandinavian countries, the judge may order a summary mental examination, including both stages presented above (because of one of the escape mechanisms from the tyranny of the McNaughton Rules, on an accused who is of "frank psychosis" or of "obvious mental normality".[1]

A "formal forensic psychiatric examination" means the pretrial examination of stage 1 item (1) and the examination of stage 2.

General Remarks on the Methodology

A summary examination is defined as follows:

(1) No approval has been given for the examination from the District Court [Code of Criminal Procedure, Article 225].
(2) The existence of facts constituting a crime is based solely on the judgment of the prosecutor.
(3) The time available for examining the suspect is limited, i.e., 1 to 2 hours.
(4) Materials are limited to the records of the investigation as at the time of the examination only, and to the appearance of the suspect and the content of statements made by the suspect.

The following is the recommended procedure for a summary examination based on the author's experience. During the summary examination, the expert should be fully aware of the following, as shown in the *Source of Errors in Forensic Mental Examination*[3]:

(1) obtaining superficial anamnesis,
(2) poor skill in diagnosis,
(3) lack of knowledge in making a differential diagnosis,
(4) adherence to an earlier diagnosis,
(5) confusing interpretation of findings,
(6) ill-advised deductions and conclusions (i.e., diagnosis at a glance),
(7) succumbing to prejudice (emotional or principled bias, or overconfidence in the examination or negligence due to expertise).

The summary examination is expected to be useful for diagnosing frank psychosis or obvious mental normality,[1] and the matters that the prosecutor wants the expert to clarify are as follows: Is it possible to indict the suspect? If it is not possible to prosecute, then is it necessary to give notice under Article 25 of the Mental Health and Welfare Act or to file a petition under Article 33 of the Medical Treatment and Supervision Act?

The prosecutor will use the summary examination as the basis for making such decisions, and the expert will perform a diagnosis to determine whether the suspect is in a condition of frank psychosis at the present time, and whether or not the suspect was in such a condition when the crime was committed. In other words, the point of the summary examination is not to positively diagnosis the subject's "obvious mental normality." As Hoche described, "One minute is often adequate for confirming a psychosis. However, even several weeks of close observation may be inadequate to prove that someone is not suffering from psychosis."[4]

Conducting the Summary Examination

Matters to be attended to with regard the examination interview are as follows:

(1) Do not refer to any disease name or symptom of mental disorders (terminology) as used by experts. If the suspect brings up some names, do not initiate a discussion about them and ignore them at this point.
(2) Never use a suggestive question.
(3) Do not persist in following a single topic. The pur-

pose of this examination is to avoid letting the suspect conjecture or predict what is of interest to the examiner (i.e., obtaining a finding of psychosis from the suspect).

These three items not only ensure that the reliability of the summary examination is maintained, but also ensure there will be no obstacle to a formal forensic psychiatric examination conducted at a later date. The following items are examined in the summary examination.

Describe the suspect's appearance

Describe, for example, the suspect's facial expression, attitude, movement, and manner of speech. The suspect is in a psychological state burdened by the stress of being in prison. In addition, the suspect is in the position of being brought before someone who appears to them to be a physician on the side of the prosecutor. This situation should elicit some psychological effect on the part of the suspect, and this effect should be expressed outwardly.

During the interval from the point when the suspect, accompanied by the escorting police officer, appears in the examining room until the examination is complete and the suspect leaves, the behaviors shown at each moment are recorded as they occur. These records will be written up when an expert opinion is generated.

The interview

Stage 1

The technique for the interview is based on Kretschmer[5] and Jaspers.[6] Kretschmer concretely presents the categories non-suggestive and suggestive questions in the chapter on the mental examination. In the chapter on the judgment of the examination results, Jaspers states that we have always to consider whether the statements of the patient are real and reliable. He allows, on the one hand, the use of the suggestive question with the warning that it is a dangerous instrument; on the other hand, he requires the heavy work of eliminating the morass of useless, needless, indifferent things in the history of the patient.

This history should include several items, beginning with the following: Have the suspect discuss topics that he would be expected to know about, and that, moreover, are also known to the examiner or are self-evident. To determine if the suspect has made erroneous or false statements,[5,6] he should be asked to describe his awareness of his present state.

Show the suspect the consent form for the examination, and say:

- Do you understand that you were referred for this examination by the prosecutor?
- Did you write the name on this paper yourself? How is it pronounced?
- Did the prosecutor tell you why he wanted you to be examined?
- Did you understand the rationale for the prosecutor's decision to have you examined?
- When the inspector told you that you had to be examined, what thoughts went through your mind?
- When were you told about this examination? About how many days ago?
- What month and what day of the month is it today?
- In jail, how do you keep track of the date?
- At what police station are you being held?
- On the way here from the police station, did you see any buildings or places that you recognized? Do you know the name of this building? How many times have you been here since you were arrested?
- Have you ever been here before you were arrested this time?
- Has anyone come to visit you at the police station? What did you talk about?
- How many people are with you in your jail cell? Do you talk among yourselves?
- Is there anyone there you dislike? Do you find it inconvenient?
- What do you think about when you are in jail? Tell me about how you spend a typical day in jail.

Stage 2

In the second part of the interview, subjects should talk about their life history and the way they live. Not only the content but also the manner in which they talk about the following themes should be noted:

(1) The course of their life, e.g., constancy, job changes, divorce, and the so-called "bending point" of their life development,[5]
(2) Productive life, parasitical living, homeless lifestyle, and long-range plans for life,[7,8]
(3) Holding back dishonorable history, palliation,[4] and ambiguous or inconsistent reasoning.[9]

Stage 3

Have suspects talk about their history of consulting psychiatrists. If there is no history of consulting psychiatrists, then gently bring up the explanation given by the suspects themselves as to why the prosecutor sought the examination, or point out areas where there was agitation or something unnatural[9] in the suspect's manner of speaking in Stages 1 or 2. Then have the suspect give further explanation regarding the following points:

(1) History of consulting psychiatrists, occasion of the first consultation, a description of what the first experience was like.
(2) If the suspect has been given a diagnosis, or has described their psychotic condition with psychiatric terminology, do not directly open a discussion with the suspect using that terminology.
(3) Have the suspect talk about the circumstances sur-

rounding incidences mentioned in (1) as follows:
- Did you go to the hospital alone? Did you go with someone else?
- Were you taken there even though you did not want to go? Who accompanied you?
- What was your condition when you first came under the care of a doctor? What is your condition these days?

(4) Have the suspect talk using the medical terminology mentioned in (2) as follows:
- Regarding the term _____ that you mentioned earlier, if you were speaking to an elementary school-aged child, how would you describe the way that this condition makes you feel?
- Regarding the experience of psychomotor excitement or psychomotor inhibition: How did you spend your time over the course of a day when you were experiencing this or feeling this way? What did you do as a countermeasure? What did you think about? What about work? What about daily life? What about your life going forward?

In a case of frank psychosis, something psychosis-like will have already been revealed in the visual inspection of appearance and in the incoherence of the story up through Stage 2. In Stage 3, a sense of the diagnosis should become evident. Even if an examiner cannot reach the point of being able to reject a previous diagnosis, grounds for doubting a previous diagnosis should be evident (see *The Source of Errors in Psychiatric Examinations*, sections 1 and 4). A designated mental health physician with experience in following the examination procedures under Article 27 of the Mental Health and Welfare Act should be capable of understanding this situation.

Stage 4

Have subjects talk about matters relating to their psychological state at the time when the crime was committed. The issue of the crime is always raised from the standpoint of clarifying motivations that may cast doubt on the mental health of the criminal, and is not to be taken as proof of illness.[10] For example, present the suspects with a record of the facts of the crime that have been clarified in the investigation phase, and have them read the record. When the subject has finished reading, ask the following:
- Did you read it? It only refers to the person as the suspect.
- Do you know who the suspect is?
- Did the events take place as they are described here?

There are four types of replies to the third question: affirmative, negative, partially negative, and pleas of non-recollection.[7] In the case of negative and partially negative replies, say the following to the suspect: "Okay, why don't I write down here what you want to say, and then we'll have the prosecutor read it." Then get the suspect to agree by recording their statements under their scrutiny. The purpose of presenting a record of the facts of the crime to the suspect and having them talk about the incident is as follows: to check whether the suspects had any serious impairment in consciousness at the time of the crime or whether they had criminal intent, and to have the suspect talk about whether the genesis of criminal intent stemmed from psychosis.

In the event that the subject responded in the negative to the third question, follow with these questions:
- What was it like when you were arrested?
- Did the police show you an arrest warrant?
- What did it say?
- What did the lawyer say about this?

If the suspect states a falsehood, it should be noted as "incoherence" or unreasonable "fixing of the story."

Sometimes the examiner can be summoned as a witness to explain their written statement of the examination. The court expects the examiner to state an opinion with regard to the normative standard of criminal responsibility. Therefore, the examiner will state to the court "whether or not the suspect was capable of making another choice, whether the suspect should or could not have taken some other course of action" at the time of the crime.[7] The examiner should obtain necessary material pertaining to the expectations of the court. Therefore, the examiner should ask the following:
- If you think back on it now, why do you suppose you did such a thing?
- Can you think of anything that you could have done beforehand that would have made it possible to get out of the situation without it coming to this?
- Was there another way of handling it?

Stage 5

This stage entails a physical examination. Check for extraordinary findings on the body surface and for any easily recognizable neurologic findings. These include external scars, surgical scars, self-inflicted wounds, finger-cutting, injection sites along the cubital vein, tattoos (criminogenic signs). In addition, have the subject read numbers of around five digits in length and then perform a successive subtraction problem [100 – 13 = __]. Next, have the subject talk about the history of any extraordinary findings on the body surface that were previously noted.

Diagnosis

Extract any meaningful or valuable observations from the materials obtained in the foregoing examination and make a diagnosis. This work relies entirely on the examiner's judgment. Items 2, 3, and 5 from the *Source of Errors in Forensic Mental Examinations* are supposed to implicitly affect the examiners judgment. In court, when I have been accused of misdiagnosis, the only basis for

my defense is that I did not use suggestive questions.[5,6]

There are four types of diagnostic results:

1. Frank psychosis.
2. No clear psychosis (including other severe mental deviations).
3. Psychosis in remission.
4. Suspected psychosis.

Items 3 and 4 represent diagnoses falling between diagnoses 1 and 2. The diagnosis of "no clear psychosis" results from a process of elimination by being unable to make a diagnosis of 1, 3, or 4. It is not a case of having positively diagnosed "obvious mental normality."[4] It is important to note that epilepsy and related conditions, as well as pathological drunkenness, cannot be diagnosed in a summary examination. In addition, there are instances in which it is extremely difficult to diagnose malingering or a subject pretending to be mentally normal.

Judging Criminal Responsibility

The basic rule for judging criminal responsibility is clearly set forth in an article of the German criminal code. Based on the structure of the article, judgment of criminal responsibility is to be made in two stages:

- Stage 1: Mental standard (reference framework for medicine).
- Stage 2: Normative standard (reference framework for jurisprudence).

As a rule, however, the normative standard is outside the field of empirical science.[7] Taking the normative condition into account, the examiner must make a judgment regarding criminal responsibility using the following as a background:

(1) The "prototype" for the lack of criminal responsibility, i.e., was the act done in an acute state of psychosis and with psychotic motivation.[11]
(2) Convention.
(3) The structural social concept of disease.[7]

Handling the Results of the Summary Examination

The results gained by the procedure described above are as follows:

(1) Frank psychosis: lack of criminal responsibility or diminished criminal responsibility.
(2) No clear psychosis: criminally responsible.
(3) Psychosis but in remission: criminally responsible or diminished criminal responsibility.
(4) Suspected psychosis: cannot judge.

These lead to the following outcomes:

(1) Lack of criminal responsibility: no prosecution.

Notification under Article 25 of the Mental Health Act and filing of a petition under Article 33 of the Medical Treatment and Supervision Act are required.

(2) Criminally responsible: Prosecution. No notification or filing of a petition.
(3) Diminished criminal responsibility: Prosecution. If no prosecution, then it is necessary to make notification and to file a petition.

It is thought to be excessive to seek a judgment of the suspect's risk prognosis that is more rigorous than the judgment regarding a standard of danger of injury to self or others proposed by the Mental Health Act (the standard set forth by the Health Minister based on the provision of Article 28 (2) of the Act on Mental Health and Welfare for the Mentally Disabled) in the summary examination.

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