

**COMPETENCE TO STAND TRIAL:  
SUCCESSFUL CASES (INCLUDING REMANDS)**

Updated July 20, 2009

**I. UNITED STATES SUPREME COURT**

***Cooper v. Oklahoma,*  
517 U.S. 348 (1996)**

Oklahoma's statute requiring criminal defendants to prove incompetency by clear and convincing evidence imposes a significant risk that defendants who have already demonstrated that they are more-likely-than-not incompetent will be erroneously found competent and thus violates due process.

***Drope v. Missouri,*  
420 U.S. 162 (1975)**

The trial court violated Drope's due process rights when it failed to suspend his trial for a competency hearing in the face of accumulating evidence of incompetency, including an attack on his wife and a suicide attempt. A nunc pro tunc, or retrospective, determination of competence, which is difficult under the best of circumstances, would not be adequate in this case inasmuch as Drope was absent during a critical stage of his trial and thus was not observed by the court or counsel.

***Westbrook v. Arizona,*  
384 U.S. 150 (1966) (per curiam)**

Although defendant received a hearing on the issue of his competence to stand trial, he was entitled to a hearing or inquiry into the issue of his competence to waive his constitutional right to assistance of counsel and to proceed to conduct his own defense. Remand to Arizona Supreme Court to determine if the trial court fulfilled its "protecting duty" to the defendant.

**Note:** But see *Godinez v. Moran*, 509 U.S. 389 (1993), which rejected the contention that there is a higher standard for competency to waive counsel than for competency to stand trial, and interpreted *Westbrook* as holding that the trial court failed to determine if defendant's waiver of counsel was knowing and voluntary. And see *Indiana v. Edwards*, 128 S.Ct. 2379 (2008), holding that the Constitution does not forbid States from insisting upon representation by counsel for those competent enough to stand trial but who suffer from severe mental illness to the point where they are not competent to conduct trial proceedings by themselves.

***Pate v. Robinson,***  
**383 U.S. 375 (1966)**

The trial court's failure to grant a competency hearing deprived Robinson of his right to a fair trial, where there was uncontradicted testimony of his history of irrational behavior, defense experts testified that he was insane and the only evidence supporting his competency was Robinson's demeanor at trial and the stipulated testimony of a state expert who did not make a determination as to Robinson's sanity. A retrospective determination of competency would be too difficult because (1) the jury would not be able to observe the subject of its inquiry, (2) the testimony of experts would have to be based solely on information in the printed record and (3) six years had passed since the trial.

***Dusky v. United States,***  
**362 U.S. 402 (1960)**

The information on the record was insufficient to support a finding of competency. The District Court erred in limiting its inquiry to whether the defendant was oriented to time and place and had some recollection of events. The proper "test must be 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." A retrospective hearing would have been difficult because of the "doubts and ambiguities regarding the legal significance of the psychiatric testimony."

## **II. U.S. COURTS OF APPEALS**

***Hummel v. Rosemeyer,***  
**564 F.3d 290 (3<sup>rd</sup> Cir. 2009)**

Trial counsel rendered ineffective assistance by stipulating to competency of murder defendant who had suffered brain damage from suicide attempt, based solely on reports of two psychologists that were ambivalent as to competence, where the attorney had not yet met the defendant and was aware that defendant's parents believed him to be incompetent. The state court decision rejecting the claim unreasonably applied Supreme Court precedent by requiring a showing that but for trial counsel's deficient performance in failing to seek a competency hearing for the defendant, the defendant would have been found incompetent. Relief was appropriate because there was a reasonable probability the defendant would have been found incompetent had trial counsel sought a competency hearing given a psychiatrist's post-trial conclusion that the defendant had severe cognitive impairments including short-term memory loss, lack of attention, and inability to process information.

***United States v. Ruston,*  
565 F.3d 892 (5<sup>th</sup> Cir. 2009)**

At hearing for district court to determine whether it could safely release a defendant with history of delusional ideations, who had been diagnosed as suffering from paranoid schizophrenia or delusional disorder, and who had been acquitted of criminal misconduct by reason of insanity, district court abused its discretion when it did not *sua sponte* hold competency hearing upon observing the defendant's erratic behavior, including his continued complaints of conspiracy by federal judges and law enforcement officers and his failure, during his pro se cross-examination of government witnesses, generally to ask questions relevant and pertinent to key issue at the proceeding.

***United States v. Ferguson,*  
560 F.3d 1060 (9<sup>th</sup> Cir. 2009)**

In case involving child pornography where the defendant invoked his right to represent himself, remand was necessary to determine whether the district court would have exercised its discretion to deny the self-representation request had it had the benefit of *Indiana v. Edwards*. Although there were indications that the defendant was malingering, there were also instances of bizarre behavior by the defendant. “Defendant's actions suggest that he might have been ‘unable to carry out the basic tasks needed to present his own defense without the help of counsel.’ [Citation omitted.] Furthermore, Defendant's complete failure to defend himself seriously jeopardized the fairness of the trial and sentencing hearing and, at the very least, seriously jeopardized the appearance of fairness.”

***McMurtrey v. Ryan,*  
539 F.3d 1112 (9<sup>th</sup> Cir. 2008)**

Affirming grant of habeas relief to capital petitioner on claim of denial of procedural right to due process where trial judge failed to conduct competency hearing despite: (1) “significant body of evidence” showing petitioner received “wide variety of anti-psychotic and anti-anxiety medications over course of pretrial incarceration”; (2) judge observed petitioner “become repeatedly physically ill during trial,” “increasingly volatile,” and knew defense counsel believed petitioner was on “verge of nervous breakdown”; (3) trial medical records showed petitioner being treated for “extreme agitation”; and (4) “jail incident reports” described petitioner’s “erratic and volatile behavior.” The “retrospective competency hearing held thirteen years after trial was insufficient to cure this due process violation.”

***U.S. v. Schlueter,*  
276 Fed.Appx. 81, 2008 WL 1945377 (2<sup>nd</sup> Cir. 2008) (unpublished)**

Affirming finding that defendant charged with threatening to murder or harm federal law enforcement officers was incompetent to stand trial. The incompetency ruling was made following a hearing where an expert testified that defendant could understand proceedings against him but was incapable of assisting in his defense due to his bipolar schizoaffective disorder, manic symptoms, pressured speech, tangentiality, irritability, and anger. Defendant was removed from the competency hearing after he attempted to question witnesses, interacted with defense counsel during cross-examination and “snapped at” judge when judge told defendant counsel need not ask the witness defendant’s questions. Following removal, defense counsel stated defendant wanted to testify but counsel’s professional opinion was that his testimony would “undermine” the defense. Over state’s objection, judge closed hearing without defendant’s testimony, and found defendant incompetent to stand trial. Appellate court affirmed based on record and state expert’s testimony that “fully support” the ruling that defendant’s mental illness “significantly impaired” his ability to assist in his defense. Assuming without deciding that defendant’s right to testify at competency hearing was “tantamount to right to testify at trial,” court need not decide whether counsel’s actions were deficient because defendant cannot establish prejudice under *Strickland v. Washington*, 466 U.S. 668 (1984). Even if defendant testified, “no reasonable probability” court would have found defendant competent to stand trial because record supporting the incompetency finding was “overwhelming.”

***U.S. v. Ghane,*  
490 F.3d 1036 (8<sup>th</sup> Cir. 2007)**

Affirming the district court’s finding of incompetence of defendant who had been found restored to competence earlier after voluntarily accepting antipsychotic medications but before trial began, defendant’s letters regarding his belief that his counsel were working against him were discovered, as were letters he wrote the court. Following another competency hearing where defendant testified that he was competent, the district court again found him incompetent. The circuit court affirmed the lower court’s ruling stating that despite defendant’s factual understanding of the charges, his understanding was not rational because it was premised on the delusion of a government conspiracy against him.

***Nara v. Frank,*  
488 F.3d 187 (3<sup>rd</sup> Cir. 2007)**

There was no plain error in the district court’s conclusion that petitioner was incompetent at the time he pleaded guilty to murdering his wife and mother-in-law. There was also not plain error in attaching a presumption of correctness to the lower state court’s finding that petitioner was incompetent at the time of the plea even though the state appellate

court vacated the grant of relief on procedural grounds. The government failed to rebut a mental health expert's finding, based on a review of petitioner's medical records and his statements at the plea colloquy, that petitioner was "psychotic" and "out of touch with reality" when he pleaded guilty.

***U.S. v. Rodham,***  
**2007 WL 2031705 (4<sup>th</sup> Cir. Jul. 11, 2007)(unpublished)**

Although defendant understood nature of proceedings against him, circuit court affirmed district court's finding of incompetence to stand trial based on defendant's testimony and testimony of defendant's primary evaluator that defendant's "paranoia and delusional beliefs caused by bipolar type schizoaffective disorder are so pervasive and consuming as to make him incompetent to assist in his own defense."

***U.S. v. Gaines,***  
**214 Fed.Appx. 849, 2007 WL 241293 (10<sup>th</sup> Cir. Jan. 30, 2007)(unpublished)**

In § 2255 proceeding, remand for resolution of petitioner's claim that he was not competent at time of his guilty plea to charge of sexual abuse. The district court had found petitioner competent prior to the plea based on a report from psychologist Dr. Thomas Patenuade. A year later, and after petitioner's direct appeal had been decided, the Bureau of Prisons ("BOP") sent a letter to the district court "casting doubt on the credibility of Dr. Patenuade's work in another case." Because petitioner "had no reason to challenge" Patenuade's examination before he received the BOP's letter, he established cause for failing to raise the competence issue at trial or on appeal, and "prejudice occurs when an incompetent defendant pleads guilty." Remand for a hearing to resolve the issue.

***Spitznas v. Boone,***  
**464 F.3d 1213 (10<sup>th</sup> Cir. 2006)**

In case tried pre-*Cooper v. Oklahoma*, 517 U.S. 348 (1996), remand for consideration of petitioner's Fed.Civ.P Rule 60(b) motion that claimed the state trial court used wrong standard of proof in determining whether he regained competency to participate in proceedings resulting in his guilty plea.

***United States v. Collins,***  
**430 F.3d 1230 (10<sup>th</sup> Cir. 2005)**

Defendant was constructively denied his right to counsel where appointed counsel at the competency hearing refused to advocate against the government's contention that defendant was competent. Counsel had moved to withdraw due to a breakdown in communication with defendant. Although new counsel was subsequently appointed, the

trial court's finding that defendant was competent was not revisited despite original counsel's admission that he possessed information that had not been provided to the mental health expert who had evaluated defendant and the government had conceded such information might be relevant to the competency determination. Because a retrospective competency assessment is not feasible in this case, and because the record showed that arguments could have been made by counsel at the competency hearing, a new trial is the proper remedy.

***Burt v. Uchtman,***  
**422 F.3d 557 (7<sup>th</sup> Cir. 2005)**

Illinois Supreme Court unreasonably applied clearly established federal law when it found that petitioner was not denied due process when the trial court allowed petitioner to plead guilty without conducting a renewed inquiry regarding petitioner's competence. "If ever there was a case in which a trial court should have sua sponte ordered a renewed competency hearing, this is that case. Dr. Pearson's report made the trial court fully aware that Burt was a man of significantly below average intelligence with a history of psychological problems. The court knew that Burt was taking large doses of powerful psychotropic medications and that Dr. Pearson's report barely mentioned those drugs. The court also knew that at one point during the trial Burt was having such difficulty remaining alert that his attorneys felt compelled to request a continuance. Lastly, Burt's sudden unexplained decision to plead guilty against the advice of counsel when he faced certain eligibility for the death penalty should have caused the court to consider whether he was competent to make that decision." In addition, trial counsel were ineffective in failing to request a renewed competency determination. "[I]n light of the overwhelming evidence of Burt's psychological problems and heavy medication, counsel's failure to request a new competency hearing was deficient performance." **Note:** Burt was originally sentenced to death but his sentence was later commuted.

***United States v. Howard,***  
**381 F.3d 873 (9<sup>th</sup> Cir. 2004)**

Where it was undisputed that at the time of his guilty plea petitioner was taking powerful narcotic drugs that could have dulled his mental faculties, and petitioner had alleged specific, credible facts in support of his claim that trial counsel was ineffective in allowing him while incompetent to acquiesce in a plea agreement he had seen for the first time just before he agreed to plead guilty, petitioner was entitled to an evidentiary hearing on the claim.

***Lounsbury v. Thompson,***  
**374 F.3d 785 (9th Cir. 2004)**

Petitioner's substantive incompetency claim was properly exhausted even though his petition for review to the Oregon Supreme Court raised a procedural argument that the lower court applied an incorrect burden of proof. "Lounsbury worded his petition for review as a procedural challenge, but the clear implication of his claim was that by following a constitutionally defective procedure, the state court erred in finding him competent. Where the substantive and procedural claims are as intertwined as they are here, we hold that Lounsbury made a fair presentation to the state courts of his claim that he was not competent to stand trial." The case is remanded to the district court for merits consideration of the substantive incompetency claim.

***United States v. Jones,***  
**336 F.3d 245 (3rd Cir. 2003)**

In case involving unlawful weapons possession and witness tampering charges, the case is remanded to determine whether defendant was competent at the time of sentencing. At the initial sentencing hearing defendant became upset, struck his counsel, and requested to withdraw his plea. The court appointed substitute counsel and denied the motion to withdraw the plea. At a subsequent hearing on pro se pleadings the Government informed the court that defendant was being administered psychiatric medications and requested a competency hearing prior to sentencing. The court requested an evaluation of defendant which was referenced during sentencing, but there was never a competency hearing. In remanding for further proceedings, the appeals court references several indicators of incompetency, including defendant's violent courtroom behavior and noncompliance with medication.

***Brown v. Sternes,***  
**304 F.3d 677 (7th Cir. 2002)**

Trial counsel was ineffective for failing to investigate non-capital defendant's mental illness and in permitting the court appointed experts to evaluate defendant with inadequate data. Prejudice is shown, in part, because the medical records counsel neglected to obtain showed defendant suffered from chronic schizophrenia and raised a "bona fide doubt" regarding his competence.

***Matheny v. Anderson,***  
**253 F.3d 1025 (7th Cir. 2001)**

Indiana death row inmate was entitled to an evidentiary hearing on (1) whether he was competent to stand trial, (2) whether trial counsel was ineffective for failing to pursue an initial request for a competency hearing, and (3) whether the state court was obligated to

hold a competency hearing sua sponte; since the failure to develop the facts in state court was not attributable to petitioner, the court evaluated the request for an evidentiary hearing under pre-AEDPA standards.

***Appel v. Horn,***  
**250 F.3d 203 (3rd Cir. 2001)**

Capital defendant was constructively denied counsel where appointed counsel failed to take any steps to investigate their client's competency prior to the competency hearing ordered by the trial court at which time defendant's waiver of counsel was accepted.

***Johnson v. Norton,***  
**249 F.3d 20 (1st Cir. 2001)**

In a non-capital case, the court analyzed a *Pate* claim under AEDPA standards; the trial judge should have held a competency hearing sua sponte where petitioner was hit on the head shortly before trial and became unconscious a few hours after trial began, raising a question of his competency during jury selection.

***McGregor v. Gibson,***  
**248 F.3d 946 (10th Cir. 2001) (en banc)**

In capital § 2254 proceeding, the court addressed the question "when may a defendant found competent to stand trial under an unconstitutional 'clear and convincing evidence' burden of proof and then convicted succeed in habeas on a procedural competency claim?"; since Petitioner's competency at trial was assessed under the standard found unconstitutional in *Cooper v. Oklahoma*, 517 U.S. 348 (1996), the court reviews the trial as if no competency hearing was held at all; a procedural competency claim such as that raised by petitioner is held to a lower burden of proof than a substantive competency claim; the court holds that in order to succeed on a procedural competency claim after a trial in which a petitioner was found competent under an unconstitutional burden of proof, the petitioner must establish that a reasonable judge should have had a bona fide doubt as to his competence at the time of trial; a petitioner establishes a bona fide doubt by showing a reasonable judge should have doubted whether the petitioner met the *Dusky* standard; the claim is assessed under a totality of the circumstances approach; in this case, the trial court should have had such a doubt; the court also concluded that a retrospective competency determination could not be made and therefore ordered habeas relief to be granted as to the capital conviction.

***Odle v. Woodford,***  
**238 F.3d 1084 (9th Cir. 2001)**

In capital § 2254 proceeding, court held that state trial court should have conducted a competency hearing because the information before the judge about petitioner's extensive mental impairments, including the fact that he was missing a piece of his brain the size of a grapefruit, raised a bona fide doubt about petitioner's competency; the court also found the record sufficient for the state court to conduct a retrospective competency determination; case remanded to district court with directions to grant the writ unless the state trial court conducts a hearing within 60 days to determine petitioner's competency at the time of trial.

***United States v. Giron-Reyes,***  
**234 F.3d 78 (1st Cir. 2000)**

In non-capital case, court found district court's failure to hold competency hearing violated due process as well as the competency procedure set out in 18 U.S.C. sec. 4241; district court initially found appellant incompetent and ordered him hospitalized; the hospital later certified his competency; with no motion for a second competency hearing, appellant pled guilty; the court held that section 4241 required a second competency hearing when there had been an initial finding of incompetence, even when appellant had not requested the hearing; the court vacated the conviction and remanded for a determination of appellant's competency to plead guilty; if retrospective determination cannot be made, district court should assess appellant's present competency and if it finds him competent, allow him to replead.

***Torres v. Prunty,***  
**223 F.3d 1103 (9th Cir. 2000)**

In non-capital § 2254 proceeding, the state appealed the district court's finding of a *Pate* violation; the court analyzed the claim under AEDPA standards, finding the state courts' rejection of the claim was an "unreasonable determination of the facts" under § 2254(d)(2). The information before the trial court raised a bona fide doubt about petitioner's competency; writ granted.

***Barnett v. Hargett,***  
**174 F.3d 1128 (10th Cir. 1999)**

Pro se federal habeas petitioner's claim that his appellate counsel was ineffective for not raising on rehearing a claim that the record was insufficient to support a finding that a competency hearing had occurred prior to sentencing, was construed by the federal courts as a claim that the state had violated petitioner's right to procedural due process by not conducting a competency hearing in accordance with the proper, post-*Cooper v.*

*Oklahoma*, legal standard. Federal courts would not afford presumption of correctness to state-court determinations of competency where the state court applied the wrong, pre-*Cooper*, legal standard. The court treated petitioner's *Cooper* claim as analogous to a case where no competency hearing had occurred at all. Thus, petitioner was entitled to relief because his history of psychiatric problems, including being found incompetent to stand trial twice in this case, raised a bona fide doubt about his competency.

***United States v. Klat*,  
156 F.3d 1258 (D.C. Cir. 1998)**

Once the district court had found reasonable cause to believe defendant was incompetent to stand trial, it could not allow defendant to waive her right to counsel and proceed pro se at a hearing to determine her competency. Relying on *Pate*, court held that a defendant whose competency was reasonably in question could not have knowingly and voluntarily waived right to counsel. Remedy was remand for hearing to determine whether competency hearing "could have come out differently" if defendant had been represented by counsel. If so, reversal was required because error would have contaminated the entire criminal proceeding.

***Trotter v. Bunnell*,  
1998 WL 668384 (9th Cir. 1998)(unreported opinion)**

Federal habeas corpus petitioner was arguably entitled to evidentiary hearing on claim that he was incompetent at time of guilty plea. Petitioner presented report of mental health expert indicating he had low IQ and an inability to apply information, and that his use of language could lead someone to erroneous impression that petitioner has greater understanding than he actually possessed. District court was correct that the latter finding by petitioner's expert defeated petitioner's procedural due process claim because it indicated the trial court would not have had grounds for doubting petitioner's competency at time of the plea. But district court erred in concluding that the expert's evidence was not relevant to petitioner's substantive due process claim that petitioner was in fact incompetent to enter plea.

***United States v. Heywood*,  
155 F.3d 674 (3rd Cir. 1998)**

Defendant's procedural due process rights were violated when district court failed to conduct a hearing on defendant's competency after receiving report that defendant, who had been found incompetent, had been rendered competent through "substantial doses of antipsychotic medication" that had to be continued. Due process requires a "record-based judicial determination of competence in every case in which there is reason to doubt the defendant's competence to stand trial." Remanded for hearing to determine whether a (disfavored) retrospective competency determination was possible. If no such

determination was possible, or a retrospective determination indicated defendant was not competent, defendant would be entitled to a new trial.

***United States v. Loyola-Dominguez,***  
**125 F.3d 1315 (9th Cir. 1997)**

Defendant's due process rights violated by failure of district court to grant a competency hearing following defendant's attempted suicide in a jail cell on the eve of trial. The timing of the suicide attempt, and defendant's desire to "get out of here" as his sole objective, raised a bona fide doubt as to defendant's competence that required a hearing.

***United States v. Williams,***  
**113 F.3d 1155 (10th Cir. 1997)**

Williams' courtroom behavior and other evidence created a bona fide doubt about Williams' competency to stand trial and should have moved the trial court to order a competency hearing. Williams often interrupted the proceedings, speaking rapidly and "hysterically," urged one of her several attorneys (having fired or caused many to withdraw) to behave improperly (such as to ask cross-examination questions while the prosecutor was still conducting direct examination), testified nonresponsively, cried in front of the jury and informed the court on the second day of trial that she had not taken the medication she required for depression. The trial court's error was not cured when he ordered a post-verdict psychological evaluation at the urging of Williams' fourth attorney. The evaluator's finding that she was competent to participate in sentencing does not inspire confidence that she was actually competent during her trial. The Circuit Court vacates the conviction and directs the District Court to conduct a hearing into Williams' competency to stand trial.

***Sena v. New Mexico State Prison,***  
**109 F.3d 652 (10th Cir. 1997)**

Applying pre-AEDPA standards, the Circuit Court concludes that the District Court improperly afforded the state court's competency finding a presumption of correctness. The state court's initial judgment that Sena was incompetent gave rise to a rebuttable presumption of continued incompetence. That presumption was not overcome when the state court later ruled Sena competent without a hearing, relying solely on a hospital report claiming he had improved but also warning that he required continued treatment. The District Court also erred in holding that Sena's claim was procedurally barred when he failed to appeal the trial court's competency determination to the state's highest court. Procedural bars apply to competency claims that implicate procedural due process, as when an defendant complains that he did not receive a competency hearing to which he is entitled. Such bars do not apply to the type of substantive due process claim raised by Sena, who complains that he was allowed to enter a guilty plea while incompetent in fact.

Remanded for a competency hearing by the District Court.

***Webb v. Evans,***  
**1997 WL 207514 (10th Cir. 1997) (unpublished)**

Webb's failure to raise on direct appeal the claim that he was incompetent at the time he entered his guilty plea does not bar him from raising the issue in federal habeas since he is claiming a violation of substantive due process. Because the state court's docket does not clearly indicate what proceedings took place, the federal district court's first order of business on remand will be to determine if the state court ever made a formal finding of incompetency, as claimed by the state, giving rise to a presumption of continued incompetency. If so, then Webb's guilty plea should not have been accepted without a full-blown competency hearing.

***Williamson v. Ward,***  
**110 F.3d 1508 (10th Cir. 1997)**

The evidence of which Williamson's counsel was aware triggered a duty to investigate Williamson's competency to stand trial and to move for a competency hearing. Counsel knew that Williamson had a long history of mental problems (including diagnoses of severe bipolar disorder and paranoid and borderline personality disorders), that Williamson was being medicated, and perhaps overmedicated, for mental disorders, that Williamson behaved bizarrely in jail and in the courtroom (such as by tipping over counsel table), that Williamson had been found incompetent in connection with an earlier criminal charge, and that he was awarded disability benefits on the basis of his mental condition. Had counsel conducted an investigation he would have uncovered a wealth of additional information casting doubt on Williamson's competence. For instance, he would have learned that the psychiatrist who opined that Williamson was competent was himself severely mentally disordered. There is a reasonable probability that but for counsel's ineffectiveness, Williamson would have been found incompetent.

***Miles v. Stainer,***  
**108 F.3d 1109 (8th Cir. 1997)**

Miles was found incompetent to stand trial shortly after his arrest. The trial court eventually ruled him competent after a year-and-a-half of conflicting psychiatric findings. After entering a not guilty plea, Miles was again examined by three psychiatrists who eventually found him competent after initial doubt, but who warned that Miles' competency fluctuated since he did not consistently take his antipsychotic medication. Before allowing Miles to change his plea to guilty, the trial court held a second hearing. This hearing was not adequate because the trial court failed to inquire whether Miles was still taking his medication (in fact, he had stopped taking it some two weeks before). The Circuit Court instructs the District Court to grant the writ unless the state trial court

conducts a retrospective competency hearing within 60 days.

***Reynolds v. Norris,***  
**86 F.3d 796 (8th Cir. 1996)**

Although defendant had been found competent during two pretrial hearings, the trial court should have conducted a third hearing, knowing that: (1) expert opinion had been closely divided at the second hearing, (2) defendant's trial testimony was meandering and irrational, (3) defendant had not been taking his medication, (4) defense expert testified that defendant was significantly impaired and (5) expert who testified at trial that defendant was competent had not examined defendant in some time. It was premature of the federal district court, however, to grant the writ of habeas corpus without first conducting a nunc pro tunc hearing.

***United States v. Mason,***  
**52 F.3d 1286 (4th Cir. 1995)**

The District Court should have granted a retrospective competency hearing after the defendant attempted to commit suicide following his conviction on federal drug charges. It was an error under federal law to require Mason to show more than "reasonable cause" for a competency hearing.

***United States v. Soldevila-Lopez,***  
**17 F.3d 480 (1st Cir. 1994)**

District Court abused its discretion by denying motion for continuance of competency hearing to allow defendant to prepare response to new and unexpected diagnosis of malingering. Remanded for a full competency hearing.

***Blazak v. Ricketts,***  
**1 F.3d 891 (9th Cir. 1993), cert. denied, 114 S.Ct. 1866 (1994)**

Due process was violated when the trial court failed to conduct a competency hearing where the defendant was found incompetent on three separate occasions in unrelated matters and engaged in bizarre conduct in pretrial hearings. (The grant of relief by the District Court was allowed to stand because two members of the panel disagreed on the merits and the third declined to reach the merits.)

***Spitzweiser-Wittgenstein v. Newton,***  
**978 F.2d 1195 (10th Cir. 1992)**

The District Court erred in giving the state court finding of competency a presumption of correctness because the state court failed to adequately develop the facts. The trial court

failed to address the defendant's pro se motion to withdraw her plea, to which was attached an expert's affidavit reinstating his earlier opinion that the defendant was incompetent.

***James v. Singletary,***  
**957 F.2d 1562 (11th Cir. 1992), cert. denied, 114 S.Ct. 262 (1993)**

Defendant who presented clear and convincing evidence creating a real, substantial and legitimate doubt as to his competence at the time of his trial was entitled to an evidentiary hearing. No state court had ever made a determination of competency, and defendant presented the conclusion of an expert that defendant would have been found lacking in several areas of competency. A defendant alleging a substantive due process violation (incompetence in fact), rather than a procedural due process violation (failure of the state court to hold a required competency hearing) is not barred by his failure to raise his claim at trial or on direct appeal.

***Nicks v. United States,***  
**955 F.2d 161 (2nd Cir. 1992)**

Determination that the trial court improperly denied a competency hearing must be based solely on the evidence available to the trial court at the time of the denial. Remand for clarification whether the District Court's grant of relief relied on evidence not available to the trial court.

***United States v. Hoskie,***  
**950 F.2d 1388 (9th Cir. 1991)**

Government did not meet burden of demonstrating competence by a preponderance of the evidence where defendant had verbal IQ of approximately 62, where defense expert testified that defendant was incompetent, where government's expert focused too narrowly on competency in basic skills of daily life, and where the court itself expressed frequent doubts about defendant's competence and appeared motivated to find competency out of a fear that the defendant would be a danger to the community if released.

***United States v. Day,***  
**949 F.2d 973 (8th Cir. 1991)**

District Court erred in holding that defendant could not preclude the use of prior guilty pleas as sentence enhancers unless he could prove that he was incompetent when he made the pleas; defendant need only show that the courts that accepted the pleas were aware of evidence warranting competency hearings but failed to conduct them.

***Lafferty v. Cook,***  
**949 F.2d 1546 (10th Cir. 1991), cert. denied, 112 S.Ct. 1942 (1992)**

State trial court erred in finding defendant competent to stand trial; although defendant had a factual understanding of the proceedings against him, there was substantial testimony that he lacked a rational understanding of the proceedings because of his paranoid delusional system. The passage of six years made a retrospective hearing impractical.

***Griffin v. Lockhart,***  
**935 F.2d 926 (8th Cir. 1991)**

The state trial court did not conduct a full, fair and adequate hearing as to defendant's competency when there were no witnesses, questioning of the defendant was limited and the only evidence was a one-paragraph letter from a state mental health facility stating that further evaluation was needed. The passage of three years made a meaningful retrospective hearing impossible.

***Hull v. Freeman,***  
**932 F.2d 159 (3rd Cir. 1991)**

State trial counsel exhibited deficient performance at a competency hearing when he failed to bring to the factfinder's attention the fact that two colleagues of the state's expert disagreed with his conclusion that the defendant was fit to stand trial. Remand for clarification of the District Court's findings as to prejudice.

***Cowley v. Stricklin,***  
**929 F.2d 640 (11th Cir. 1991)**

Where trial court was aware of defendant's extensive history of psychiatric commitments and where the state's expert made only a cursory examination before declaring defendant competent, it was a due process violation for the trial court to refuse to appoint a defense mental health expert to assist in establishing defendant's incompetence and insanity at the time of the offense.

***Tiller v. Esposito,***  
**911 F.2d 575 (11th Cir. 1990)**

Trial court violated due process when it accepted defendant's guilty plea without conducting a competency hearing, where trial court was aware of the history of mental illness of defendant and his family, uncontroverted psychiatric reports indicated that defendant suffered from severe paranoid schizophrenia and was incompetent, defendant inquired whether he would receive psychiatric treatment if he pled guilty, and judge wrote

letter to Department of Corrections expressing concern regarding defendant's competency. Remand for a determination whether a meaningful nunc pro tunc hearing could be held.

***Card v. Dugger,***  
**911 F.2d 1494 (11th Cir. 1990)**

Petitioner claimed that both his procedural due process right to a competency hearing and his substantive due process right not to be tried while incompetent in fact were violated. In ruling on these claims, the district court alluded only to the facts regarding defendant's competency that were available to the state trial court. While this is appropriate for a procedural due process claim, disposition of the substantive due process claim requires examination of all the evidence regarding competence, whether it was available to the state trial court or not. In order to ensure that the district did in fact consider this additional evidence, the reviewing court remanded to allow the district court to set forth its reasons for failing to hold an evidentiary hearing.

***Bouchillon v. Collins,***  
**907 F.2d 589 (5th Cir. 1990)**

It was not clearly erroneous for the District Court to conclude that petitioner met his burden of proving his incompetence in fact by a preponderance of the evidence, where petitioner was diagnosed with Post-Traumatic Stress Disorder, his periods of diminished capacity would not necessarily be obvious to the layman, and psychiatrist testified in habeas proceedings that petitioner was probably incompetent at the time of his guilty plea.

***United States v. Hems,***  
**901 F.2d 293 (2nd Cir. 1990)**

Trial court properly found defendant incompetent (over defendant's objection), based on expert testimony that while defendant had an intellectual understanding of the proceedings, his mental illness prevented him from rationally acting on that understanding and based on defendant's courtroom behavior, including frequent outbursts and the blowing of kisses at the prosecuting attorney.

***United States v. Auen,***  
**846 F.2d 872 (2nd Cir. 1988)**

District Court erred in not making findings as to defendant's competency to stand trial, where defendant exhibited bizarre behavior and beliefs, including claim that compliance with tax laws was voluntary and claim that his detention was an outlaw act. On remand, District Court is to determine if a meaningful nunc pro tunc competency hearing is

possible and to hold such a hearing, if possible.

***Estock v. Lane,***  
**842 F.2d 184 (7th Cir. 1988) (per curiam)**

The state habeas court's finding of competency, although ordinarily entitled to a presumption of correctness, was not fairly supported by the record, where petitioner's pleadings created a bona fide doubt as to competency and where the state habeas court (1) failed to conduct a hearing, (2) was not the same judge that accepted petitioner's plea and thus had no opportunity to observe petitioner, and (3) falsely assumed that petitioner's trial attorney was aware of all evidence relevant to competency. At a retrospective hearing, the federal district court properly concluded that petitioner had not been competent at his plea hearing, in that petitioner had been diagnosed as "paranoid personality, borderline on psychotic," petitioner's answers during his plea colloquy did not indicate understanding, and petitioner had attempted suicide six days prior to his guilty plea.

***Agan v. Dugger,***  
**835 F.2d 1337 (11th Cir. 1987)**

State trial court violated petitioner's due process rights in failing to hold a competency hearing, where a bona fide doubt as to competency was raised by the facts presented to the trial court, including petitioner's long history of mental illness and commitments and his bizarre and self-defeating testimony before the grand jury and during the sentencing hearing. Remand for retrospective competency hearing.

***United States v. Renfroe,***  
**825 F.2d 763 (3rd Cir. 1987)**

District Court erred in not granting hearing on question of defendant's competency to stand trial and to be sentenced when, during the course of the sentencing hearing, evidence was presented that defendant suffered a 16-year addiction to cocaine that, in the opinion of experts, interfered with his ability to cooperate with his attorney and defendant's attorney testified that defendant forbade him from using drug abuse as a defense during trial. Remanded for District Court to determine if a meaningful nunc pro tunc hearing was still possible. (For disposition on remand, see *United States v. Renfroe*, 745 F.Supp. 203 (D.Del. 1990)).

***United States v. Hutson,***  
**821 F.2d 1015 (5th Cir. 1987)**

Second competency hearing should have been held after treating psychiatrist reported that defendant, who was earlier adjudged incompetent and committed for evaluation, was

competent to stand trial, but failure to do so only required remand for determination as to whether meaningful retrospective competency hearing could be held, rather than reversal; defendant's substantive rights were affected only if she was actually incompetent at time of trial. A retrospective determination is meaningful if the quantity and quality of available evidence is such that a competency hearing can be labeled as more than mere speculation.

***Bundy v. Dugger,***  
**816 F.2d 564 (11th Cir.), cert. denied, 484 U.S. 870 (1987)**

District Court's finding that petitioner was not entitled to a competency hearing was clearly erroneous where the District Court (1) relied on a finding of competency in a separate state proceeding without reviewing the record of that proceeding for adequacy, (2) placed undue emphasis on trial counsel's failure to request a competency hearing, (3) erred in finding that petitioner had waived his claim by failing to present it earlier, and (4) ignored strong indicia of incompetence, including petitioner's rejection of a plea agreement, the uncontroverted testimony of a mental health expert that petitioner lacked a rational understanding of the proceedings, and petitioner's decision to perform a mock wedding ceremony in lieu of presenting mitigating evidence. Remanded for a competency hearing by the District Court. (For disposition on remand, see 675 F.Supp. 622 (M.D. Fla. 1987)).

***United States v. Cole,***  
**813 F.2d 43 (3rd Cir. 1987)**

It was error for the District Court not to inquire into defendant's competency when it learned during the course of a plea colloquy that defendant had taken illegal drugs the night before. The District Court's failure to develop the record made a retrospective hearing impossible.

***Sturgis v. Goldsmith,***  
**796 F.2d 1103 (9th Cir. 1986)**

Petitioner had a constitutional right to be present at his competency hearing, a critical stage of his trial. Remanded to federal district court for harmless error analysis.

***Felde v. Blackburn,***  
**795 F.2d 400 (5th Cir. 1986)**

After the jury rejected his insanity defense, petitioner instructed his attorney to seek the death penalty. The state habeas court and the federal district court rejected petitioner's claim that his attorney was ineffective for carrying out his wishes. The circuit court recast the issue as one of whether petitioner was competent to instruct his attorney in this

manner, effectively waiving his right to counsel. Remanded to district court for determination whether the trial court's finding that petitioner was competent to stand trial was adequately supported by the record and whether petitioner was still competent at the time he waived counsel.

***United States ex rel. SEC v. Billingsley,*  
766 F.2d 1015 (7th Cir. 1985)**

District Court improperly placed the burden on the defendant to prove his incompetence. Since lay and expert testimony on defendant's competence was closely divided, there is a reasonable possibility that defendant would have been found unfit under a proper allocation of the burden of proof. Remanded for the District Court to determine if a meaningful retrospective hearing is possible and, if so, to hold such a hearing.

**Note:** the Court appears to base its holding on the view, later rejected by the U.S. Supreme Court in *Medina v. California*, 505 U.S. 437 (1992), that it is unconstitutional to place the burden of proof on the defendant.

***Silverstein v. Henderson,*  
706 F.2d 361 (2nd Cir. 1983)**

In view of undisputed facts that petitioner had IQ of 74 and mental age of seven-year-old, had long institutional history and that two court-appointed psychiatrists found petitioner incompetent, failure to order competency hearing sua sponte violated right to fair trial, even though third psychiatrist found petitioner competent based on a brief evaluation. When a trial court neglects its duty to conduct a hearing on competence, the defendant's failure to object or take appeal on the issue will not bar collateral attack. A retrospective hearing would be inadequate given the passage of almost six years.

***Speedy v. Wyrick,*  
702 F.2d 723 (8th Cir. 1983)**

The federal district court erred in rejecting, without a hearing, petitioner's claim that he was incompetent during trial. Before trial, two experts opined that petitioner was competent, but a third expert gave trial testimony indicating he had some doubt about defendant's competency. Nonetheless the trial court failed to conduct a competency hearing. The rejection of petitioner's claim by state courts was not entitled to a presumption of correctness, inasmuch as the state courts did not conduct a complete review of the record on direct appeal and did not supplement the record with relevant evidence in post-conviction proceedings. Remanded to the district court for an evidentiary hearing.

***United States ex rel. Bilyew v. Franzen,***  
**686 F.2d 1238 (7th Cir. 1982), cert. denied, 479 U.S. 873 (1986)**

State statute placing the burden on the defendant to prove incompetence is unconstitutional. The misallocation of the burden was not harmless error since competency was a close question: two experts found defendant unfit to stand trial, one found defendant fit but would present "difficulties for defense lawyer," and another found him fit. Remand for determination whether a retrospective hearing would be meaningful.

**Note:** In *Medina v. California*, 505 U.S. 437 (1992), the U.S. Supreme Court held that it is not unconstitutional to place the burden of proof on the defendant in a competency proceeding.

***Acosta v. Turner,***  
**666 F.2d 949 (5th Cir. 1980)**

State trial court violated petitioner's due process rights in failing to make a competency determination, where petitioner had history of serious mental illness, where there is no evidence that petitioner received necessary treatment during the four months between his hospital discharge and trial, where trial court entertained doubts about competency, and where psychiatrists appointed after trial found petitioner incompetent to be sentenced. In the alternative, where trial court agreed that he would vacate the guilty plea if a specified expert made a finding that petitioner was incompetent, petitioner was entitled to have this bargain enforced. Remanded for a determination of whether the specified expert ever made a finding. If petitioner is not entitled to relief based on his bargain with the court, then District Court is to determine whether a retrospective competency hearing is possible.

***Pride v. Estelle,***  
**649 F.2d 324 (5th Cir. 1981)**

Petitioner was entitled to a federal hearing on his claim that he was incompetent during his trial, where (1) one expert testified at his competency hearing that he was mentally retarded, paranoid schizophrenic and incompetent, (2) a second expert's finding of competency was based on a brief examination done for another purpose some three years prior to trial, (3) petitioner was transferred from prison to a mental hospital following his trial, and (4) petitioner's claim was rejected without a hearing or a written opinion by the state courts. Remanded to district court.

***Pate v. Smith,***  
**637 F.2d 1068 (6th Cir. 1981)**

Petitioner was entitled to a competency hearing once the state trial court entertained doubts about his competency. In resolving his doubts by consulting a report that was not part of the record and by reflecting on his own experience with petitioner in previous proceedings, the trial judge deprived petitioner of the opportunity to introduce evidence, conduct cross-examination, and create a record. Remanded to state court for a determination whether a retrospective hearing would be feasible.

***Lokos v. Capps,***  
**625 F.2d 1258 (5th Cir. 1980)**

Petitioner's procedural due process rights were violated when the state trial court failed to inquire into his competency, where the only evidence of competency was the testimony of peace officers and a medical doctor who considered petitioner sane and where the trial court improperly refused to consider (as hearsay) the substantial evidence of incompetency contained in the records of one of petitioner's hospitalizations. Petitioner's substantive due process rights were violated when the federal habeas court ruled that petitioner was in fact competent at the time of his trial, where the expert with the greatest knowledge of petitioner was confident he had been incompetent, a second expert opined that petitioner was in a state of severe psychosis during his trial, and a third expert stated that he lacked sufficient evidence to make a determination.

***Osborne v. Thompson,***  
**610 F.2d 461 (6th Cir. 1979)**

State trial court should have granted a competency hearing or allowed defendant to withdraw his guilty pleas, where an expert found defendant to be only marginally competent prior to the plea colloquy and where the trial court found defendant to be incompetent to be sentenced a few months later.

***Van Poyck v. Wainwright,***  
**595 F.2d 1083 (5th Cir. 1979)**

District Court erred in holding that petitioner had failed to exhaust his substantive due process claim that he was convicted while incompetent in fact. Petitioner presented sufficient facts to raise a real, legitimate and substantial issue as to his mental capacity, inasmuch as during the period of his guilty pleas he tried to hang himself and set fire to his mattress and psychiatric tests showed him to be incompetent. (Petitioner's procedural due process claim that he was improperly denied a competency hearing was rejected because the trial court was not aware of these facts.) Remanded for a competency hearing.

***Zapata v. Estelle,***  
**588 F.2d 1017 (5th Cir. 1979)**

Remand for evidentiary hearing on petitioner's substantive incompetency claim where petitioner's personal physician testified at trial that petitioner suffered from severe emotional problems and a mental health expert who examined petitioner a few days after trial found her to be legally insane.

***Martin v. Estelle,***  
**583 F.2d 1373 (5th Cir. 1978)**

District Court's finding, following a retrospective hearing, that it could not make a determination of petitioner's competency at the time of his trial could not be relied upon inasmuch as the District Court failed to make an initial determination as to whether a retrospective hearing would be meaningful and improperly placed the burden of proof on the state. The test of meaningfulness is whether the evidence is adequate to arrive at an assessment that could be labeled as more than mere speculation; contemporaneous expert and lay testimony, as well as the transcript of the proceeding itself, can provide sound material for a reconstruction of mental state. Remanded for a finding as to meaningfulness and, if warranted, a competency hearing at which the burden of proof is put upon the petitioner.

***United States v. Ives,***  
**574 F.2d 1002 (9th Cir. 1978)**

Petitioner's due process rights were violated when trial court refused to consider evidence proffered by the defense (the testimony of two psychiatrists and a U.S. Marshall) indicating a change in petitioner's competence, where previously there had been four alternating determinations of competency and incompetency within the space of a year, petitioner's first trial had ended in a mistrial upon a finding of incompetency, and five months had elapsed since he was last found competent by government experts. A retrospective hearing would not be possible because of the passage of six years, because the judges in both previous trials were dead, and because there were no psychiatric reports on petitioner's competence at the time of his second trial.

***Suggs v. LaVallee,***  
**570 F.2d 1092 (2nd Cir. 1977)**

Affirming finding by district court that petitioner had been incompetent at the time of his guilty plea, which was based on a finding of incompetence immediately after the plea, evidence of bizarre behavior by petitioner around the time of the plea, and the exhaustive investigation by an expert who testified that petitioner was probably psychotic. The district court was justified in rejecting the finding of a state post-conviction court because

several facts were not adequately developed at the state hearing.

***United States v. Hollis,*  
569 F.2d 199 (3rd Cir. 1977)**

The federal habeas court's error in placing the burden on petitioner to prove he had been incompetent at the time of his trial was not harmless in that the evidence as to competency was closely divided. The fundamental nature of the right not to be tried while incompetent makes it inappropriate to place the burden on the petitioner, even in post-conviction proceedings. Remanded for a competency hearing at which the burden will be properly allocated.

**Note:** it is unlikely that this holding survived the U.S. Supreme Court's decision in *Medina v. California*, 505 U.S. 437 (1992) that it is not unconstitutional to place the burden of proof on the defendant in a competency proceeding.

***United States v. Nicholson,*  
550 F.2d 502 (8th Cir.) (per curiam), cert. denied, 434 U.S. 998 (1977)**

District Court must grant an 18 U.S.C. § 4244 motion for a psychiatric examination unless the motion is frivolous or made in bad faith. Defense counsel satisfied that standard by citing his own observations of defendant's difficulties in discussing the facts of the case, the history of mental disturbance in defendant's family, and the head injury that defendant had sustained some six years before. Remanded for competency hearing.

***Martin v. Estelle,*  
546 F.2d 177 (5th Cir. 1977)**

Petitioner was not given a full and fair competency hearing (before a jury), where the prosecutor continually introduced highly inflammatory material relevant only to guilt and warned that petitioner would go free if found incompetent and where the distinction between incompetence and insanity at the time of the offense was not observed during the competency hearing.

***United States v. Masthers,*  
539 F.2d 721 (D.C. Cir. 1976)**

District court erred in failing to hold a hearing on federal defendant's motion to withdraw his guilty plea, where the prosecutor agreed with defense counsel that defendant may not have given his confession knowingly and intelligently and where the presentence report stressed defendant's extremely low intelligence and lack of any concept of time. Remanded for a hearing.

***Bruce v. Estelle,***  
**536 F.2d 1051 (5th Cir. 1976)**

It was clearly erroneous for the federal district court, at a nunc pro tunc hearing, to credit the testimony of a psychiatrist (Dr. Grigson) who diagnosed petitioner as a sociopath and a malingerer, where the diagnosis made by the other psychiatrist at the hearing -- chronic schizophrenia so severe as to have rendered petitioner incompetent -- was supported by the great weight of the evidence, including petitioner's medical discharge from the Marines and his commitments to psychiatric facilities for treatment of schizophrenia.

***Saddler v. United States,***  
**531 F.2d 83 (2nd Cir. 1976) (per curiam)**

When evidence of defendant's extensive history of mental illness, including a hospitalization following a suicide attempt, became known to the trial court prior to sentencing, it was error for the trial court not to have ordered an evaluation of defendant's competency to be sentenced and a retrospective evaluation of his competence to have pled guilty.

### **III. U.S. DISTRICT COURTS**

***United States v. Richardson,***  
**2009 WL 1490552 (M.D. Fla. May 27, 2009)**

Defendant found presently incompetent to stand trial following expert testimony that he suffers from a psychotic disorder and exhibits bizarre behavior. Although an earlier expert opined that defendant was competent to stand trial, that expert warned that defendant's mental functioning could deteriorate with continued incarceration.

***United States v. Abernathy,***  
**2009 WL 982794 (E.D. Mich. April 13, 2009)**

District court did not err in conducting a competency hearing where it harbored reasonable cause to believe that the defendant was suffering from a mental disease or defect rendering him mentally incompetent to the extent that he is unable to understand the nature and consequences of the proceedings against him or to assist properly in his defense. Nor was there a breakdown in adversary process as alleged by defendant. Counsel was appointed to represent defendant at the proceeding. Competency counsel sought a second evaluation of defendant which resulted in a more comprehensive evaluation with a conclusion that defendant was incompetent. The attorney cross-examined one expert and reasonably declined to cross-examine prior counsel in light of defendant's refusal to waive the attorney-client privilege. "Finally, in presenting the report and testimony of Dr. Fleming, defense counsel discharged her 'professional duty'

as an officer of the court to raise the issue of competency, if counsel has a good faith doubt as to the defendant's competence.”

***United States v. Ventura,***  
**607 F.Supp.2d 229 (D. Me. April 9, 2009)**

In prosecution for possession of a short-barrel shotgun with obliterated serial number and possession of firearm by a felon, government failed to demonstrate that defendant was competent to stand trial. Defendant's hearing testimony indicated he was not able to assist properly in his defense, and his insistence that his lawyer present evidence about tangential matters confirmed examining doctor's opinion that he had residual paranoid delusional system, and that his difficulties with his attorney were based on deficits in rational thinking and tendency toward paranoid distortions of reality.

***United States v. Abernathy,***  
**2009 WL 877678 (E.D. Mich. March 30, 2009)**

Defendant charged with armed bank robbery was incompetent to stand trial due to his inability to assist counsel with his defense. Three of defendant's former attorneys testified concerning his lack of cooperation, two experts testified concerning defendant's delusions of a conspiracy against him, and psychological testing showed severe to very extreme impairments in defendant's rational understanding of the proceedings.

***United States v. Christensen,***  
**2009 WL 226165 (D. Idaho Jan. 30, 2009)**

Following a hearing, the defendant was found to be presently incompetent to stand trial. The court expert concluded that the defendant's performance on the competency exam was most similar to an individual who is mentally retarded and incompetent to stand trial. “[A]lthough the defendant seems to have a very basic understanding of the nature and object of the proceedings against her, she clearly lacks the ability to consult with her defense attorney in any meaningful way or with a reasonable degree of rational understanding.” Restorative treatment is ordered.

***United States v. Rivera-Diaz,***  
**2009 WL 57082 (D. Ariz. Jan. 8, 2009)**

Following competency hearing, schizophrenic defendant is found to be incompetent to stand trial despite opinion of government expert that defendant was malingering and was now competent to stand trial. The government expert's competence conclusion was based on defendant's alleged deliberate choice to mangle “as well as his ability to answer some basic questions about the nature of his arrest and the nature of these legal proceedings.” (Because of defendant's behavior during the competency hearing

indicating defendant may again be psychotic, the prosecutor did not assert in argument that defendant was presently competent but rather only that he had become competent during a period when he was in treatment.) Defense counsel's contention that defendant had consistently been unable to communicate with counsel is one factor in persuading the court that the government failed to prove by a preponderance of the evidence that defendant is competent to stand trial.

***United States v. Jones,***  
**2008 WL 5204063 (E.D. Tenn. Dec. 11, 2008) (unreported)**

Following competency hearing, case permanently removed from trial calendar where defendant's cognitive and communication deficits render him unable to meaningfully participate in his own defense. (Defendant suffered from profound bilateral hearing loss, as well as average to low-average intellectual functioning.)

***United States v. Ghane,***  
**2008 WL 4877760 (W.D. Mo. Nov. 12, 2008) (unreported)**

According more weight to the opinion of the mental health expert from the Federal Medical Center than to the defense expert, the district court finds defendant presently incompetent to stand trial and that there is not a substantial probability that, in the foreseeable future, defendant will attain the capacity to permit the proceedings to go forward. Although defendant understood the proceedings against him, his delusional beliefs prevented him from being able to consult with his attorney with a reasonable degree of rational understanding. Notably, defendant was a highly educated and intelligent individual who underwent multiple forensic evaluations that taught him how information he provided was being used to support a finding of incompetence, a finding he objected to. This caused him to consciously avoid providing information in later evaluations that he perceived could be interpreted as paranoid or delusional. Collateral documents, however, revealed that he maintained delusional beliefs about his attorney and that he was incorporating them into his delusional system.

***United States v. Kasim,***  
**2008 WL 4822291 (N.D. Ind. Nov. 3, 2008) (unreported)**

Finding defendant's poor judgment and lack of cooperation with defense counsel to be the result of the progressive debilitating disease of dementia and concluding that defendant "lacks the necessary ability to consult with his counsel and the rational understanding of the proceedings here."

***United States v. Vejvoda, Jr.,*  
2008 WL 4534056 (N.D.N.Y. Oct. 3, 2008)**

Defendant found incompetent to stand trial based on: (1) testimony by evaluating psychologist that defendant not competent to stand trial despite “a basic understanding of the charges against him” because he was unable “due to his mental disorders to assist properly in his defense”; and (2) defendant’s behavior in court. The incompetency ruling was premised “primarily” on defendant’s “inability to assist properly in his defense” and “maintain rational behavior....” Defendant had history of “very violent behavior,” and diagnoses of bipolar disorder, personality disorder, and substance abuse.

***Lewis v. Zon,*  
573 F.Supp.2d 804 (S.D.N.Y 2008)**

In second degree robbery case, petitioner, who was “afflicted with severe psychiatric problems nearly his entire life,” had not been given a reasonable opportunity to demonstrate the fact of his incompetence where the state court determined his competence on evidence procured by the court after the competency hearing was completed, which petitioner had no opportunity to contest in violation of petitioner’s Due Process rights. “[I]t was an unreasonable application of clearly established Supreme Court precedent to conclude that [petitioner] was given a reasonable opportunity to demonstrate the fact of his incompetence without having a chance to respond to material, indeed outcome determinative evidence solicited after the conclusion of a competency hearing.” Because no “meaningful retrospective hearing” on petitioner’s competency at the time of trial was now possible, district court ordered writ to issue, and defendant discharged unless the State decides to retry him within 90 days.

***United States v. Diehl Armstrong,*  
2008 WL 2963056 (W.D. Pa. July 29, 2008) (unreported)**

Finding defendant incompetent to stand trial after crediting defense counsel’s representations that when he attempts to discuss the case with defendant she becomes belligerent and abusive, irrational in her demands and incapable of understanding either the illogic of her own positions or the importance of heeding her counsel's advice, and also crediting a mental health expert’s opinion that defendant’s problems and irrationality are not based on a personality conflict with counsel or particular character traits but rather on psychosis. That defendant functions well in a structured environment was not necessarily incompatible with a finding that she is psychotic in her attorney’s presence.

***United States v. Hickman,***  
**2008 WL 941970 (E.D. Tex. Apr. 7, 2008)**

Defendant who sought to withdraw guilty plea to possession of firearm in furtherance of drug trafficking crime is found to be presently incompetent and is committed to the custody of the Attorney General for treatment not to exceed four months, to determine whether substantial probability exists in foreseeable future that defendant will become competent.

***United States v. Crawford,***  
**2008 WL 858902 (S.D.Ga., Mar. 31, 2008)**

Over the objections of defendant who had written multiple “confession” letters to the judge, court found defendant incompetent based on “largely un rebutted psychological evidence” that he suffered from schizophrenia, polysubstance abuse, and borderline personality disorder that severely impaired a rational understanding of the proceedings and would likely interfere with his ability to assist in his own defense.

***United States v. Gonzales-Arenas,***  
**2008 WL 511768 (D. Colo. Feb. 22, 2008)**

Given forensic evaluation offering “very limited opinion” that defendant was “probably competent,” “based on the smallest preponderance of the evidence” because defendant refused to participate or cooperate with competency evaluation, the possibility that defendant suffered “acute emotional and mental symptoms” of delusional disorder, and the government’s apparent retraction of its position that defendant was competent after observing defendant’s behavior at hearing, defendant found incompetent.

***United States v. Dotson,***  
**2008 WL 161470 (S.D. Ill. Jan. 17, 2008)**

Where competency is questioned in the context of a supervised release revocation hearing, it is appropriate to follow the procedures set forth in 18 U.S.C. § 4241, which governs determinations of a defendant's competency to stand trial. Court found defendant incompetent and ordered commitment hospitalization and treatment for reasonable period of time.

***United States v. Ashley,***  
**2007 WL 4570895 (W.D. La. Nov. 30, 2007)**

In case involving charges of aiding and assisting in preparation and presentation of false tax returns, defendant found incompetent following findings by parties’ stipulated expert that defendant suffered from longstanding chronic, paranoid schizophrenia, and

defendant's prosecutory delusions interfered with her ability to assist in her defense and consult rationally with her attorney.

***United States v. Gastelum,***  
**2007 WL 3143341 (D. Utah Oct. 25, 2007)**

Defendant found incompetent because of an inability to consult with counsel with a reasonable degree of rational understanding. A psychological examination had been ordered after defense counsel complained that there could not be a rational conversation about the defense because of defendant's "illogical beliefs," and inability to understand concepts of circumstantial evidence and the effect of minimum mandatory sentence. The defense expert who observed defendant interact with counsel, testified that defendant's actions "evidenced psychotic-like paranoia," "were irrational," "extreme[ly] suspicious and hostil[e]," and resulted from defendant's numerous, severe cognitive impairments likely caused by multiple head injuries suffered by defendant. Defense expert's assessment found to be "more reliable" than the government's assessment because the government did not reconcile conflicting findings on psychological testing, and did not conduct any neuropsychological testing.

***United States v. Thompson,***  
**2007 WL 2480066 (M.D. Fla. Aug. 28, 2007)(unreported)**

In case involving charges of drug trafficking and possession of a firearm where there was conflicting expert opinions about whether defendant suffered from schizophrenia and/or mental retardation, defendant found incompetent to stand trial. Although finding that the preponderance of the evidence supported the government's position that defendant was malingering with respect to his psychotic presentation, the district court found that defendant "likely has an IQ below 60, which is categorized as mild to moderate mental retardation." Further, "[a]ll the health care professionals . . . agree that a person with an IQ this low is not competent to stand trial." Given defendant's intellectual limitations, "treatment" to restore competence was not an option. But because of the possibility that defendant was dangerous if released, he was remanded to the custody of the Attorney General for placement at a suitable facility to determine whether he was presently suffering from a mental disease or defect as a result of which his release would create a substantial risk of bodily injury to another person or serious damage to property of another and whether suitable arrangements for state custody and care of the defendant was available.

***United States v. Azure,***  
**488 F.Supp.2d 885 (N.D. 2007)**

Government failed to establish by clear and convincing evidence that defendant who was found incompetent to stand trial on charges of aggravated sexual abuse and abusive

sexual contact was suffering from mental disease or defect as result of which his release would create substantial risk of bodily injury to another person, as required for him to be committed to custody of Attorney General. Defendant, who was 83 years old, suffered from dementia and was deteriorating mentally and physically. Among other things, no psychological evaluation, forensic evaluation, or assessment recommended confinement in a federal prison facility.

***United States v. Mercado-Retana,*  
492 F.Supp.2d 648 (W.D. Tex. 2006)**

Defendant's motion to withdraw guilty plea to indictment for illegal re-entry into United States granted based on finding he lacked mental competence to enter the plea. (It was only after the plea was entered that defense counsel learned that defendant had previously been determined to be incompetent in a separate case because of a diagnosis of psychosis. Defense counsel then requested a mental health evaluation which ultimately resulted in a finding of present incompetence.)

***United States v. Moruzin,*  
2006 WL 3000182 (D.N.J. Oct. 19, 2006)(unreported)**

In case involving charges of bank robbery and attempted jury tampering, defendant found incompetent to stand trial. A competence evaluation had been ordered after the then-pro se defendant's behavior "became more implausible, self-defeating, and sometimes bizarre." The district court ultimately found defendant suffered "lengthy history of mental disorders, accompanied by heavy and prolonged drug and alcohol abuse," "an extremely chaotic childhood" including the death of his father when defendant was seven, the death of his mother from a drug overdose when he was 18, repeated confinement for juvenile offenses, reported sexually abuse, and was diagnosed as suffering from bipolar disorder, major depressive disorder, panic disorder, "severe mood swings" ranging from "rage, mania, and delusional behavior...."

***United States v. Mason,*  
2006 WL 3327650 (E.D. Tex. Oct. 12, 2006)(unreported)**

Defendant found incompetent to stand trial based on uncontested finding by psychologist that defendant suffers from "delusional beliefs and delusional disorder which negatively influences his ability to assist in his defense."

***United States v. Binnick,*  
2006 WL 2806267 (D.Neb. Sept. 28, 2006)(unreported)**

Government "failed to meet its burden of proof" as to defendant's competence to stand trial. At competency hearing, government relied on the written evaluation by a

psychiatrist who concluded defendant was competent. Defense counsel countered with a report from a psychologist who concluded defendant was not competent. “[W]ith neither expert present to have his methods, observations, or conclusions tested by cross examination,” the district court found itself left with little evidence to reach a conclusion. Because the burden was on the government to establish competence, a finding of incompetence was required.

***United States v. Yeh,*  
2006 WL 2827051(S.D. Tex. Sept. 27, 2006)(unreported)**

In case involving charges of wire-fraud and filing false claims to illegally procure disaster relief funds, defendant found incompetent to stand trial. At the competency hearing, a court-appointed expert testified defendant suffered from organic brain disorder as a result of recurrent brain tumors, and was unlikely to “ever” regain competency. The government called two lawyers and a student who had taken a computer class defendant taught. These witnesses testified defendant was an “intelligent and well-informed” person who understood civil litigation and complex real estate transactions, and was a competent instructor on computer science. Despite this “troublesome evidence,” the court found defendant presently incompetent, noting that the expert maintained his opinion despite actions by defendant similar to those described by the government’s witnesses.

***United States v. Rodman,*  
446 F.Supp.2d 487 (D. S.C. 2006)**

Following psychiatric evaluation at FMC in Butner and competency hearing, defendant found incompetent to stand trial for threatening to take the life of the President. Although defendant is “certainly an intelligent man with an accurate understanding of the nature and consequences of” the proceedings, his “paranoia and delusional beliefs caused by bipolar type schizoaffective disorder are so pervasive and consuming as to make him incompetent to assist in his own defense.”

***United States v. Dodds,*  
2006 WL 7787020 (D. Ariz. March 26, 2006)(unreported)**

Defendant found incompetent to stand trial despite “conflicting opinions from qualified medical professionals.” Two doctors at the FCC Butner facility opined defendant was malingering; a local psychologist concluded defendant was incompetent and suffering from dementia resulting from a head injury suffered five years earlier. The court found by a preponderance of the evidence that the defendant’s “consistently low scores on a wide range of mental competency tests....reflects a genuine mental impairment.”

***United States v. Sandoval,*  
365 F.Supp.2d 319 (E.D. N.Y. 2005)**

Defendant who had previously been determined to be competent was found incompetent after second hearing that was initiated based on defendant's actions, his "rigid adherence to his erroneous views," his "incomprehensible" in-court statements, and defense counsel's acknowledgment that he was unable "to have meaningful discussions" with defendant about his defense. "Neither the conclusions of the forensic evaluators nor the documents produced by the government are sufficient to counter the observations of the court and the judgment of defense counsel."

***United States v. Hasan,*  
344 F.Supp.2d 386 (S.D. N.Y. 2004)**

Defendant charged with attempting to defraud a financial institution was incompetent to stand trial where a preponderance of the evidence demonstrated that defendant did not have a rational understanding of proceedings against him. Defendant's underlying criminal conduct – presenting a bank officer with what was purported to be a United States Treasury instrument in an amount slightly in excess of \$199,000,000 which he planned to deposit to set up the account – along with a nonsensical letter to the court suggested that defendant really believed his statement that he was not the defendant in the action and the United States did not exist.

***Heath v. Dovey,*  
2004 WL 5038977 (C.D. Cal. 2004) (unreported)**

"In light of the pretrial, trial, and post-trial medical opinions, petitioner did not receive a full, fair, and adequate hearing of her New Trial motion. The court's refusal to allow post-trial medical testimony regarding petitioner's competency at trial resulted in a violation of petitioner's constitutional right to an adequate competency hearing." Two months prior to trial it was reported that petitioner suffered a psychotic episode. During trial, cross-examination of petitioner was suspended after defense counsel questioned her ability to proceed. Concerns about her competence were raised when she resumed her testimony, at which time she'd discontinued use of an anti-anxiety drug, but petitioner made the decision to continue. Two months after her trial, but prior to sentencing, the trial court declared a doubt about petitioner's present competence and suspended proceedings. Following evaluations, petitioner was found to be incompetent. Although she was ultimately found to be restored to competency, expert evaluations indicated that she had not been competent during the trial. The trial court, however, precluded testimony about that issue and looked only to present competence. It then denied petitioner's new trial motion based on alleged incompetency at the time of trial without a hearing. "[T]he trial court's finding that petitioner was trial competent was an unreasonable determination of the facts," ignoring expert opinions and basing its ruling

on its impressions of petitioner at trial. The state appellate court's rejection of the claim "was based on an unreasonable determination of the facts, and resulted in an unreasonable application of Supreme Court precedent." Remedy is retrospective competency determination.

***United States v. Avery,*  
328 F.Supp.2d 1269 (M.D. Ala. 2004)**

Defendant convicted of distributing cocaine and subsequently released from prison was not sufficiently mentally competent to allow procedure to modify terms of supervised release to go forward, where defendant suffered pervasive paranoid delusions, claimed to hear voices and see images, and believed that he had been incarcerated due to government conspiracy.

***United States v. Reddy,*  
2003 WL 22339464 (S.D. N.Y. Oct. 14, 2003) (unreported)**

Defendant suffering from lung cancer was not physically competent to stand trial, in prosecution for mail and wire fraud; even if defendant was in remission, cancer had metastasized, risk of recurrence of active disease was high, trial was estimated to last about three months, one doctor testified that three-month trial would likely take a serious toll on defendant's health, trial would interfere with defendant's regularly-scheduled chemotherapy, and defendant also suffered from serious secondary effects of the cancer and treatment, including chronic diarrhea, fatigue, depression, and sleep apnea.

***United States v. Salley,*  
246 F.Supp.2d 970 (N.D. Ill. 2003)**

Defendant charged with, inter alia, armed bank robbery and attempting to kill city police officer and FBI agent, found to be incompetent to stand trial. Although defendant had sufficient understanding of proceedings against him, he fell short of requirement that he be able to consult with his lawyer with reasonable degree of rational understanding, given evidence of paranoia and delusion, refusal to communicate with attorneys, and grandiose ideations.

***United States v. Vasquez,*  
2002 WL 31769703 (S.D. N.Y. Dec. 10, 2002) (unreported)**

Defendant charged with threatening members of federal judiciary was not competent to stand trial. Defendant maintained an uncooperative and paranoid posture with counsel due to a mental disease or defect. Whether he suffered from paranoid delusion disorder or merely from paranoid personality disorder was immaterial for purposes of the competency determination.

***United States v. Frazier,***  
**255 F.Supp.2d 27 (D. Conn. 2001)**

In case involving drug-related charges, defendant found incompetent to stand trial. Expert who conducted psychiatric evaluation of defendant found that defendant presented a cognitive ability just above mild mental retardation and exhibited symptoms consistent with psychotic illness, making it unlikely he would be able to consult with his lawyer with a reasonable degree of rational understanding of the proceedings against him.

***Johnson v. Norton,***  
**151 F.Supp.2d 130 (D. Mass. 2000), *aff'd* 249 F.3d 20 (1<sup>st</sup> Cir. 2001)**

Trial judge should have held a competency hearing *sua sponte* where petitioner was hit on the head shortly before trial and became unconscious a few hours after trial began, raising a question of his competency during jury selection. Fact that defendant appeared to regain competency during trial did not overcome due process violation. Nor did the fact that the trial judge had an opportunity to compare defendant's demeanor before and after the head injury cure the due process violation. Trial court's decision not to require a timely hearing to determine if defendant was legally competent to stand trial was an objectively unreasonable application of United States Supreme Court precedent.

***United States v. Mooney,***  
**123 F.Supp.2d 442 (N.D. Ill. 2000)**

In a non-capital case, the court found the defendant incompetent; the defendant's personality disorder, which was a systemic, enduring and severe condition, qualified as "a mental disease or defect rendering him mentally incompetent" under 18 U.S.C. sec. 4241(a).

***United States v. Duhon,***  
**104 F.Supp.2d 663 (W.D. La. 2000)**

Rejecting hospital's certification of competency regarding mentally retarded defendant charged with sexual exploitation of children. Expert testimony from court-appointed forensic psychologist and attorney that defendant lacked cognitive understanding of proceedings against him, even if defendant had learned facts about proceedings by rote, compelled finding that defendant lacked ability to assist in his own defense. The hospital's certification of defendant as competent to stand trial following a period of commitment was unreliable under *Daubert* because the certification was based on defendant's performance in "competency restoration group" classes which addressed only factual understanding of court proceedings and omitted factors of defendant's capacity to consult with lawyer and capacity to assist in defense.

***Government of Virgin Islands v. Gumbs,*  
2000 WL 689335 (Terr. V.I. April 30, 2000)**

Finding mentally retarded defendant with IQ of 52 incompetent to stand trial and rejecting government's argument that defendant engages in activities that are indicative of a person who is competent to stand trial, i.e., attending public social functions, buying drinks at these functions, and riding the public bus unsupervised. "Defendant Gumbs does not have the level of mental acumen to allow him to rationally understand the factual nature of the proceedings against him. Importantly, he cannot understand the Court's procedure nor the roles of the persons involved in the proceedings. Crucially, Defendant cannot read or write, and the best optimism is that Defendant is a functional illiterate; therefore, his attorney will encounter much difficulty in communicating with him during the trial. Undoubtedly, the Defendant would be hampered in his efforts to assist his counsel during the trial, because he would be unable to effectively communicate with counsel or consult with counsel with a reasonable degree of rational understanding. Accordingly, the Court concludes that Defendant is unable to consult with his attorney in a reasonable and rational way, because of the level of his mental retardation."

***United States v. Sanchez,*  
38 F.Supp.2d 355 (D. N.J. 1999)**

Court held that same standard for determining competency during trial (*Dusky*) must be applied in case of defendant whose competency came into doubt after the conviction but before sentencing.

***United States v. Rudisill,*  
43 F.Supp.2d 1 (D.D.C. 1999)**

While in pretrial detention defendant received a beating from other inmates. The resulting brain damage left him with severe cognitive impairments, dementia, speech and motor impairments, and "absolutely no recollection of the facts underlying the charges against him." Relying on its own observations of defendant and his testimony at a competency hearing, the court rejected the testimony of a government psychiatrist that defendant was malingering his amnesia symptoms. The court found defendant incompetent to stand trial and, based on expert testimony that he would never fully recover, refused to commit him to the custody of the attorney general, and instead returned defendant to his mother's custody and care.

***Johnson v. Keane,*  
974 F.Supp. 225 (S.D.N.Y. 1997)**

The state trial court erred in failing to order a second competency hearing where the experts who declared Johnson competent at the first hearing also warned that he had a

history of mental illness and could deteriorate at any time, where defense counsel notified the court several times that Johnson had in fact deteriorated, where the court refused to hear evidence that counsel was prepared to present, where the court dismissed a psychiatrist's finding that Johnson was delusional by remarking that "[w]e are all delusional," where the court ignored Johnson's irrational behavior, such as his insistence on wearing to court the clothes that his victims had described to police, and where the court conceded that Johnson should receive psychiatric treatment while incarcerated.

***Nicks v. United States,***  
**874 F.Supp. 591 (S.D.N.Y. 1995)**

Trial court denied petitioner's due process rights in failing to conduct a hearing into petitioner's competency to enter a guilty plea, where, prior to sentencing, petitioner's probation officer requested a psychiatric evaluation, mental health experts who examined him for purposes of sentencing found him to be paranoid schizophrenic, mentally retarded and delusional, and trial counsel expressed his misgivings about petitioner's competence to the trial judge in private and made a motion for withdrawal of the plea on the record. Conviction vacated.

***United States v. Veatch,***  
**842 F.Supp. 480 (W.D. Okl. 1993)**

The government failed to prove by a preponderance of the evidence that defendant is fit to stand trial or waive his right to counsel, where appointed counsel stated, over defendant's objections, that he did not believe defendant is competent, where defense expert gave credible testimony that defendant's unconditional belief in conspiracy theory rendered him incapable of participating in the proceedings in a rational manner, and where the testimony of the government expert that defendant's actions are calculated was inconsistent and less credible.

***Lagway v. Dallman,***  
**806 F.Supp. 1322 (N.D. Ohio 1992)**

Competency hearing before state trial court did not comport with due process, where trial court relied on his own impressions based on a lengthy colloquy, discounted the uncontroverted testimony of a mental health expert that petitioner was incompetent, and failed to request additional evidence or argument from counsel. Furthermore, even if the hearing had comported with due process, the trial court's finding of competency is not entitled to a presumption of correctness in that the court placed undue emphasis on petitioner's factual understanding of the functions of judge, jury and prosecution and did not give adequate consideration to petitioner's ability to consult with counsel and to participate in the proceedings in a rational manner.

***United States v. Perez Diaz,***  
**797 F.Supp. 81 (D. Puerto Rico 1992)**

Government failed to prove defendant's competence by a preponderance of the evidence, where there was uncontroverted expert testimony that defendant is incompetent, defendant exhibited nervous tremors throughout the competency hearing, and defendant's self-inflicted wounds were visible to the court.

***United States v. Renfro,***  
**745 F.Supp. 203 (D. Del. 1990)**

In retrospective competency hearing where evidence for and against a finding of competency was equally balanced, government failed to meet the burden of proving competence by a preponderance of the evidence. Government and defense experts agreed that defendant was using cocaine during trial, but disagreed as to his level of impairment. Trial counsel testified that defendant was able to focus on his case for only a few minutes at a time and that he exhibited bizarre behavior.

***United States v. Nichols,***  
**661 F.Supp. 507 (W.D. Mich. 1987)**

Defendant established reasonable cause to believe that he may not be able to understand the proceedings against him and assist in his defense, where trial counsel attested that defendant failed to respond normally to discussions of the charges, defendant has been under treatment for severe depression, and government agreed that defendant's attitude is bizarre and that he may be incompetent. Under federal law, a showing of reasonable cause mandates a competency hearing and strongly counsels in favor of a psychiatric evaluation, although the latter remains in the District Court's discretion.

***United States v. Blohm,***  
**579 F.Supp. 495 (S.D. N.Y. 1983)**

Defendant was incompetent to stand trial, though he had a factual understanding of the proceedings against him and though mental health experts deemed him competent, because the requirement that defendant have a rational understanding of the proceedings was not satisfied by the mental health experts' testimony that defendant was rational in the sense that his reasoning was logically consistent with his underlying delusions. Defendant could not be said to have a rational understanding (in the lay sense of that phrase) in that he believed that the charges against him grew out of a conspiracy among a judge, Richard Nixon, and Arnold Palmer.

***Evans v. Raines,***  
**534 F.Supp. 791 (D.Ariz. 1982)**

Trial court violated petitioner's due process rights in failing to hold hearing on petitioner's competence to waive counsel. Although petitioner was able to understand the nature of the proceedings and to participate in them meaningfully, and thus was competent to stand trial, he was not competent to waive counsel in that he was unable to make reasoned choices among the alternatives presented to him. Trial court knew that petitioner had been diagnosed as paranoid schizophrenic and that petitioner believed the public defender was part of a conspiracy against him. The Circuit Court endorsed the above findings of the district judge, but held that the state court might be able to cure the error through a retrospective competency hearing. *Evans v. Raines*, 705 F.2d 1479 (9<sup>th</sup> Cir. 1983). Ultimately, the state court found that petitioner had been competent and a presumption of correction attached to that finding. *Evans v. Raines*, 800 F.2d 884 (9<sup>th</sup> Cir. 1986). **Note:** in *Godinez v. Moran*, 113 S.Ct. 2680 (1993), the U.S. Supreme Court held that there is one standard for both competency to stand trial and competency to waive counsel.

***Meeks v. Smith,***  
**512 F.Supp. 335 (W.D. N.C. 1981)**

Petitioner's due process rights were violated when state trial court failed to hold competency hearing, where petitioner had recently been found incompetent in another proceeding, one mental health expert consistently found petitioner incompetent and another mental health expert, who diagnosed petitioner as paranoid schizophrenic, alternated between findings of competency and incompetency.

***Osborne v. Thompson,***  
**481 F.Supp. 162 (M.D. Tenn. 1979)**

Trial court should have inquired further into petitioner's competency to enter guilty pleas, where pre-trial evaluator deemed petitioner only marginally competent, where petitioner gave unclear or nonresponsive answers to open-ended questions during the plea colloquy, and where trial court had petitioner committed for treatment of mental illness prior to sentencing. Passage of four years made retrospective hearing unfeasible.

#### **IV. MILITARY CASES**

***United States v. Collins,***  
**60 M.J. 261 (U.S. Armed Forces 2004)**

Military judge abused his discretion by not inquiring further into appellant's mental responsibility when the sole member of the sanity board appeared to change his testimony and conclusion about the central issue.

## V. STATE CASES

***State v. Connor,***  
**\_\_\_ A.2d \_\_\_, 2009 WL 1941780 (Conn. July 14, 2009)**

Convictions of pro se defendant for kidnapping in the first degree, robbery in the third degree, robbery involving an occupied motor vehicle and larceny in the third degree, would be remanded under the state supreme court's inherent supervisory authority over the administration of justice for a determination of whether defendant had the ability to carry out the basic tasks needed to present his own defense without the help of counsel, though defendant was competent to stand trial and voluntarily, knowingly and intelligently waived his right to counsel, as law had changed since trial such that court was no longer obligated to allow a mentally disabled defendant who was competent to stand trial to represent himself without the help of counsel.

***In re Personal Restraint of Jian Liu,***  
**208 P.3d 1207 (Wash. App. 2009)**

Alleged fugitive, in proceedings to extradite her to Florida, was required to be proven competent to assist counsel in raising or waiving the factual defenses to extradition, rather than competent to the same degree as required to stand trial, since limited level of competence ensured that alleged fugitive could seek the protection of the limited defenses available in the proceeding.

***Scarbo v. Eighth Judicial District Court,***  
**206 P.3d 975 (Nev. 2009)**

Prior to a hearing on a defendant's competency to stand trial, fundamental notions of due process under the United States and Nevada Constitutions demand that full and complete copies of the competency examination reports must be forwarded to the court that ordered the examination, and the court must cause copies of the report to be delivered forthwith to the office of the district attorney and to defense counsel, or to the defendant personally if not represented by counsel.

***State v. Anene,***  
**205 P.3d 992 (Wash. App. 2009)**

Trial court violated defendant's due process right and right not to be tried during a period of incompetency by continuing child molestation trial in defendant's absence, while defendant was comatose following defendant's suicide attempt the morning of the third day of trial.

***People v. Ary,***  
**92 Cal.Rptr.3d 472 (Cal.App. 2009)**

At retrospective competency hearing, burden of proof is on prosecution to demonstrate that defendant was competent at the time of trial. Placing the burden of proof on defendant to demonstrate incompetency to stand trial at a retrospective hearing would violate defendant's due process right to fair trial.

***People v. Mondragon,***  
**\_\_\_ P.3d \_\_\_, 2009 WL 1012980 (Colo. App. April 16, 2009)**

If defendant's mental disease or defect rendered him incompetent to decide whether or not to exercise his right to testify in his own defense, he was incompetent to stand trial. Because the trial court did not apply the correct legal standards in addressing the issue of defendant's competence, the case is remanded for further proceedings. (The trial court failed to consider whether defendant's delusions impaired his ability to rationally understand the proceedings, focusing instead solely on defendant's factual understanding and cognitive ability.)

***State v. McCurry-Bey,***  
**\_\_\_ S.W.3d \_\_\_, 2009 WL 679492 (Mo. App. March 17, 2009)**

“[T]he trial court erred and violated [defendant's] Constitutional right to due process by finding him competent to stand trial and to be sentenced because the uncontroverted evidence showed that Defendant was mentally retarded with a present full-scale IQ of 55, consistent with his school records and history, and that his chronic and consistent mental deficits rendered him incapable of making intelligent, knowing decisions about his legal proceedings and incapable of generating ideas that would refute the State's evidence or would mitigate his sentence.” (The trial court had rejected post-trial expert opinions that defendant had not been competent to stand trial. In finding defendant competent, it had noted: (1) experienced trial counsel had not earlier suspected defendant was unable to assist in his defense; (2) defendant had in fact assisted in his defense by testifying and providing an alibi; (3) the fact that the guilty verdicts were being attacked pre-sentencing “suggest[ed] a degree of guile inconsistent with the proposition that [defendant] was incapable in assisting in his defense”; and (4) defendant had many previous experiences with the court system which suggested there may have been some malingering in his responses to the experts.)

***Sanders v. State,***  
**9 So.3d 1132 (Miss. 2009)**

Defendant convicted of murder was entitled to new trial, where trial court granted defendant's motion for a psychiatric evaluation, record did not reflect that an

on-the-record hearing regarding defendant's competency was ever held, record did not contain an explicit finding by the trial court that defendant was competent to stand trial for murder, and there was no definitive testimony or report that determined defendant competent to stand trial. Testimony regarding defendant's sanity at the time of the offense was insufficient to demonstrate competency to stand trial.

***Mairena v. State,***  
**6 So.3d 80 (Fla. App. 2009)**

Although defendant was found to be competent by an expert appointed at defense counsel's request, the trial court erred in permitting the trial to proceed when, seven months later, the defendant made statements during an attempt to plead guilty that should have caused the trial court to harbor a doubt about defendant's competence. Indeed, the defendant's remarks that he heard "voices and sounds," that his brain was hurting him, and that in his head "it's a scream that I'm crazy," convinced the trial court that it could not accept the plea. But "[i]f the defendant was not competent to enter a plea due to concerns about his mental status, he was not competent to stand trial." Because a retrospective competency assessment could not be held, the conviction was reversed and the case remanded for a new trial contingent upon a determination that defendant is competent to proceed.

***State v. C.C.,***  
**5 So.3d 1034 (La. App. 2009)**

Where a mental health expert had concluded defendant was marginally competent to stand trial during an evaluation performed two years before trial and conditioned his competence findings on defendant receiving psychiatric treatment and medication, the trial court abused its discretion in failing to inquire about defendant's psychiatric status at the time of the competency hearing and in finding that defendant was competent to stand trial. (At the pre-trial competency determination, the trial court failed to inquire about whether the recommended treatment and medication had been provided to defendant.) Further, the record showed that there were reasonable grounds to question defendant's competency and, therefore, the trial court also abused its discretion in failing to re-open competency proceedings. (During defendant's testimony, for example, he expressed the belief that charges were not being pressed against him. At sentencing, defendant did not appear to understand that a trial had taken place.) Also error on this record was the trial court's denial of defense counsel's request for appointment of a mental health expert. Defendant, who was diagnosed by one expert as mildly mentally retarded and suffering from a psychotic disorder, was denied a fair trial. Because a nunc pro tunc competency hearing would not likely rectify the trial court's error, a new trial was required.

***Phelps v. State,*  
674 S.E.2d 620 (Ga. App. 2009)**

In case involving convictions for aggravated assault, making terrorist threats, and burglary, trial court violated due process by failing to conduct a competency hearing. Defense counsel had originally requested a mental evaluation, raising concern about defendant's competence. Defendant fired his attorney and refused to undergo an evaluation. Counsel was eventually reappointed and his renewed request for a mental evaluation was denied with the trial court noting defendant's prior refusal to cooperate with such an examination and his insistence that he wanted to go to trial. Counsel made a final unsuccessful request for an evaluation, noting defendant's paranoia and presenting prior mental health evaluations related to an earlier criminal matter that discussed defendant's mental illness and questioned his ability to rationally understand the proceedings. During trial, defendant's father testified that defendant had been diagnosed with mental illness. Defendant's own testimony also appeared to reflect his paranoia. Finally, following defendant's conviction, the prosecutor at sentencing expressed the hope that defendant would receive appropriate mental treatment in prison. Given this record, "it was incumbent on the trial court to conduct a hearing to determine Phelps's competency to stand trial." Remand to determine whether retrospective competency determination is possible.

***State v. Lane,*  
669 S.E.2d 321 (N.C. 2008)**

Where defendant was sentenced to death before the Supreme Court decided *Indiana v. Edwards*, case was remanded to the trial court for a determination of whether at the time defendant sought to represent himself in this matter, he came within the category of "borderline-competent" defendants defined by the Supreme Court as parties "competent enough to stand trial under *Dusky* but who still suffer from severe mental illness to the point where they are not competent to conduct trial proceedings by themselves" If that question is answered in the affirmative, the trial court is to decide whether it would have exercised its discretion to preclude self-representation pursuant to *Indiana v. Edwards*, and if so, whether in this case defendant was prejudiced by his period of self-representation.

***State v. Davis,*  
898 N.E.2d 281 (Ind. 2008)**

It is a violation of due process not to dismiss criminal recklessness charges against the mentally incompetent defendant in this case who likely would never be competent to stand trial and who had already spent more time under commitment than she could be sentenced to if convicted. (In so ruling, the court decided the question left unresolved in *Jackson v. Indiana*, 406 U.S. 715 (1972).) The court did acknowledge that a different

result could occur in a case where the state had a heightened interest in determining the guilt or innocence of the accused. The examples of cases where a heightened interest might be found were where a conviction was needed: (1) to enhance a sentence for a felony committed by a member of a gang; (2) to require the defendant to register as a sexual offender; and (3) to prove status as a habitual offender.

***Olivares v. State,***  
**195 P.3d 864 (Nev. 2008)**

In murder case, district court abused its discretion and denied defendant his right to due process by failing to hold a hearing to address the serious doubts regarding defendant's competency. The following facts provided substantial evidence that defendant might have been incompetent: (1) at every opportunity, from initial arrest until the date set for trial, defense counsel alerted the court to doubts about defendant's ability to assist in his own defense; (2) the prosecutor did not object to defendant's remand for mental health examinations and acknowledged the problem created by defendant's delusions; (3) each time defendant was returned from the state mental health facility at least one treating doctor found him incompetent to stand trial; (4) even the reports opining that defendant was competent recognized that defendant included his attorney in his delusions and believed that his counsel was assisting the prosecution; and (5) most significantly, on the eve of trial, six months after the last competency report and determination, defense counsel informed the court that defendant had rejected a plea offer but had been unable to appreciate or process the negotiations. Conviction reversed and case remanded for a competency hearing and new trial should defendant be found to be competent.

***State v. Camper,***  
**996 So.2d 571 (La. App. 2008)**

Remand for nunc pro tunc hearing on defendant's competency where record showed that defense counsel had moved for a "lunacy" commission, a lunacy hearing had been set, and defendant had been interviewed by an expert, but the record did not indicate that the trial court had ruled on defendant's capacity to proceed.

***State v. Harrison,***  
**270 S.W.3d 21 (Tenn. 2008)**

After criminal defendant petitioned for declaration of incompetence to stand trial, trial court erred in failing to quash judicial subpoena issued by prosecutor seeking records relating to defense expert's examination of defendant. Prosecutors are not permitted to use judicial subpoenas to seek discovery from an indicted defendant or from experts retained by the defense in an ongoing criminal prosecution. Because no existing rule or statute governs discovery for pre-trial competency proceedings, the court exercises its inherent authority to adopt temporary rules setting forth timing for reciprocal discovery of

competency reports and governing the admissibility of defendant's statements during competency proceedings. As to the latter, the court ordered: "No statement made by the defendant in the course of any examination relating to his or her competency to stand trial (whether conducted with or without the defendant's consent), no testimony by any expert based on such statement, and no other fruits of the statement are admissible in evidence against the defendant in any competency hearing or criminal proceeding, except for impeachment purposes or on an issue concerning a mental condition on which the defendant has introduced evidence of incompetency or evidence requiring notice under Tenn. R.Crim. P. 12.2(a), Tenn. R.Crim. P. 12.2(b), or *State v. Reid*, 981 S.W.2d 166 (Tenn.1998)."

***Ferguson v. State*,  
192 P.3d 712 (Nev. 2008)**

Reversed and remanded for competency hearing. Although defendant's request for competency determination may have been untimely under statute, a hearing should have been held because request was based in part on defendant's inability to consult with counsel. Also, defendant's motion was supported by evidence sufficient to raise doubt about defendant's competency, including prior evaluations questioning whether defendant had ability to regain competency. Further, counsel submitted affidavit that if hearing had been held, psychologist would have opined that defendant was not competent to stand trial or assist counsel despite commitment to mental health facility.

***People v. Schoreck*,  
894 N.E.2d 428 (Ill.App 2008)**

Regardless of whether State sustained burden at earlier fitness hearing, "defendant's remarks at trial and sentencing raised further *bona fide* doubt of his fitness." Trial court should have adjourned proceedings and conducted second fitness hearing, but "at minimum," should have determined whether defendant fit to be sentenced. Defendant had "profound misunderstanding" of "certain vital rights." Because "no practical way" to determine whether defendant was fit for trial or sentencing, conviction vacated and matter remanded for new trial.

***Nowell v. Rees*,  
199 P.3d 654 (Ariz.App. 2008)**

Where defendant who was found incompetent to stand trial underwent restoration treatment and provider opined that defendant was competent, the trial court erred in finding defendant competent following a hearing where the provider did not testify. The prior incompetency adjudication "gave rise to presumption of continued incompetency" and that presumption could not be rebutted simply by new expert's disagreement with prior experts. Instead, new expert must explain restoration efforts that were "effective."

Because statutory time to restore competency had passed, and incompetent defendant could not be tried, charges dismissed.

***Ex parte Wilkinson,***  
**2008 WL 2078508 (Tex. App. May 15, 2008)(unpublished)**

Trial court abused discretion by finding that defendant had been competent at time of guilty plea, based on original counsel's testimony that the defendant had been "lucid" and able to consult with counsel, given expert opinion that defendant was incompetent to stand trial or to enter a guilty plea and defendant's long history of mental illness. At the time of original counsel's representation of defendant, counsel was unaware that defendant had long history of mental illness -- prior diagnoses of delusions, bipolar disorder, schizoaffective disorder and polysubstance, as well as a history of failing to take medications. Counsel never requested competency hearing, but pursued plea agreement where defendant pleaded guilty to attempted burglary charge and was placed on community supervision. After later-completed presentence report identified defendant's mental illnesses, his forgetfulness or refusal to take medication and delusions he suffered, judge appointed new counsel and defendant's competency was evaluated. According to appellate counsel, the expert's testimony established defendant's incompetence to enter plea.

***State v. Taylor,***  
**2008 WL 624913 (Tenn.Crim.App. Mar. 7, 2008) (unpublished)**

Where a defendant has been found incompetent to stand trial, the State then bears the burden of proving his restoration to competence by a preponderance of the evidence. Trial court committed reversible error in this capital case by not appointing counsel at a pre-trial competency hearing. The defendant had earlier been found incompetent to stand trial but was later determined to be competent and he waived his right to counsel. The trial court ordered another competency hearing prior to the start of trial. Because the trial court must have had "sufficient doubt" about the defendant's competence, as shown by the scheduled competency determination, "counsel should have been appointed to vigorously cross-examine the State's witnesses and present witnesses on behalf of the Defendant." In addition, the trial court abused its discretion in not appointing advisory counsel over defendant's objection. The failure to do so resulted in prejudice to the judicial process "because the nature and history of the Defendant's competency was such that advisory counsel would have been in the unique position to raise any competency issues arising during trial." The trial court also committed reversible error in not inquiring into defendant's competence after trial commenced given: prior testimony by a mental health expert that he did not think defendant was "equipped to represent himself" and was unsure if defendant would "hold up to the stress of trial"; the doctors, on defendant's conservator's orders, changed defendant's medication on the eve of trial; defendant wore sunglasses throughout trial; defendant had a history of mental illness; and

defendant did not conduct any substantial questioning or give a closing statement. There was no error in the trial court's failure to determine whether defendant was competent to proceed with post-trial motions, however, as there is no right to competence at that stage of the proceedings.

***State v. Hartman,***  
**881 N.E.2d 891 (Ohio App. 2007)**

In assault case, at change-of-plea and sentencing hearing trial court was required to act sua sponte to order a competency evaluation where it had been disclosed on the record that defendant was a full-time charge of a facility for persons with mental retardation and developmental disabilities, a representative of the facility was present at defendant's arraignment, an evaluation of defendant had been scheduled at a hospital, defendant stated "what's going on" during the plea colloquy, and defendant stated that he had not had adequate time to speak to his attorney and requested additional time, which he did not receive.

***In re Commitment of Reilly,***  
**970 So.2d 453 (Fla. App. 2007)**

Substantial evidence failed to support trial court's finding that petitioner was incompetent to stand trial where trial court relied on a six-month-old report from a mental health expert. (Petitioner's attorney had stipulated to the findings of the "stale" competency evaluation. Petitioner unsuccessfully objected.) Case is remanded for further proceedings.

***State v. Purnell,***  
**925 A.2d 71 (N.J. Super. A.D. 2007)**

In case involving charges of kidnapping and related sexual assault and weapons offenses, evidence was insufficient to support judge's finding that defendant was competent to stand trial where the mental health expert equivocated in the educated guesses he offered regarding defendant's competence, defendant persisted in his belief that the charges against him involved nothing more than controlled substances, and defendant persisted in wearing prison garb to trial even after repeated efforts by two judges and defense counsel to persuade him it would be in his best interest to wear civilian clothing.

***Timothy J. v. Superior Court,***  
**58 Cal.Rptr.3d 748 (Cal. App. 2007)**

Proper standard to be applied by juvenile court in delinquency proceedings, in order to determine whether minors were competent to stand trial, did not require a finding that minors had a mental disorder or developmental disability in order to be deemed

incompetent. Under applicable California Rule of Court, minors could be found incompetent on the basis of developmental immaturity alone.

***People v. Kaplan,***  
**57 Cal.Rptr.3d 143 (Cal.App. 2007)**

In attempted murder case where defendant had previously been found competent to stand trial, expert's report showing that defendant was no longer able to assist counsel in his defense due in part to recent change in his psychotropic medication, although not expressly stating opinion that defendant was incompetent, constituted substantial evidence of change in circumstances requiring trial court to conduct second competency hearing. Remand for determination of whether retrospective competency determination is possible.

***People v. Jenan,***  
**56 Cal.Rptr.3d 360 (Cal.App. 2007)**

In case involving charges of offering false or forged instrument for filing and related offenses, trial court's failure to appoint counsel for defendant after twice expressing doubt about defendant's mental competence and warning of a competency hearing but never ordering one, compelled reversal of judgment.

***Molina v. State,***  
**946 So.2d 1103 (Fla. App. 2006)**

Trial court committed fundamental error by proceeding to trial of defendant charged with robbery with a firearm, who was previously declared incompetent to stand trial, without conducting a proper competency hearing and adjudicating defendant competent to stand trial. The trial court ordered trial to proceed after it considered, over defendant's objection, two reports made before defendant was found incompetent and the transcript of a witness who testified at a hearing before a predecessor judge, and without specifically finding defendant to be competent. Even if defendant had been properly adjudicated competent to proceed, his prior adjudication of incompetence in conjunction with his bizarre behavior during voir dire and his counsel's request for a competency evaluation at that time should have given the trial court reasonable grounds to believe that defendant was incompetent, necessitating further inquiry. (As the voir dire examination commenced, defendant, who was seated at the defense table with one half of his head completely shaved, began to hurl verbal vulgarities and obscenities in Spanish at the trial judge. The judge responded by holding defendant in contempt. Defendant was not present in the courtroom for the remainder of the trial.)

***State v. Ford,***  
**930 So.2d 138 (La. App. 2006)**

Defendant charged with simple criminal damage to property lacked mental capacity to proceed to trial in the foreseeable future and was a danger to himself and others, where two psychiatrists who examined defendant both noted mental disease or defects, first psychiatrist diagnosed him with dementia and personality changes secondary to head trauma, second psychiatrist observed that defendant's "judgmental defect" made it difficult for him to assist in his defense, and first psychiatrist noted that defendant had engaged in acts which were aggressive and threatening to others.

***State v. Davis,***  
**130 P.3d 69 (Kan. 2006)**

Failure to complete the pretrial competency evaluation ordered by trial court, and failure to hold a competency hearing after the trial court found that there was reason to believe that the defendant was incompetent to stand trial, violated due process. Under the facts of this case, a second retrospective determination of competency would not adequately protect the defendant's due process rights.

***Culbreath v. State,***  
**903 So.2d 338 (Fla. App. 2005)**

Second competency examination and second competency hearing were warranted in proceeding to revoke probation, even though period between initial competency hearing and revocation hearing was only 47 days; defense counsel had visited defendant in jail and was unable to communicate with him, and defendant had attempted suicide the week before revocation hearing.

***Sims v. State,***  
**614 S.E.2d 73 (Ga. 2005)**

Reversing conviction in aggravated sodomy case where defendant was not competent to stand trial. Defendant had an IQ of 45-46 and was considered moderately mentally retarded and evidence showed that defendant did not have the sufficient present ability to consult with his lawyer with a reasonable degree of rational understanding or possess a rational understanding of the proceedings against him. "Any evidence" standard of review was not appropriate standard for reviewing trial court's finding of defendant's competency to stand trial because the statutory presumption of competency would always provide "some evidence" in support of a finding of competency. Because a substantive competency claim requires the defendant to meet the higher standard of proof of incompetency by a preponderance of the evidence, the appropriate standard of appellate review is whether, after reviewing the evidence in the light most favorable to the State, a

rational trier of fact could have found that the defendant failed to prove by a preponderance of the evidence that he was incompetent to stand trial.

***People v. Solorzano,***  
**24 Cal.Rptr.3d 735 (Cal. App. 2005)**

Defendant was entitled to a new trial where trial court denied his motion for substitution of counsel while his competency hearing was pending without providing defendant with the opportunity to establish the incompetence of his counsel.

***People v. Shanklin,***  
**814 N.E.2d 139 (Ill. App. 2004)**

In case where petitioner pleaded guilty to attempted murder, he was entitled to post-conviction relief on his claims that the trial court should have inquired into his fitness to enter a guilty plea and trial counsel was ineffective in failing to request a fitness determination. The hospital records that were part of the presentence investigative report revealed that petitioner had an IQ in the mildly mentally retarded range and a history of mental health treatment. Significantly, the records focused on petitioner's deficiencies in "receiving and retaining verbal information." The trial court's reliance on responses made by petitioner during the plea colloquy as establishing that petitioner understood the proceedings was misplaced. "It is not idle speculation to consider whether [petitioner] may have answered questions from the court in a way that would avoid exposing his intellectual deficit."

***State v. Leonard,***  
**855 A.2d 531 (N.H. 2004)**

Where trial court found that defendant was not competent to stand trial, but his competence could probably be restored "with appropriate services of legal counsel," on interlocutory appeal, the New Hampshire Supreme Court held that a psychiatrist must be appointed to supervise a defendant's treatment, and that "tutelage in the law" by his attorneys is not appropriate treatment. Case is reversed and remanded.

***Commonwealth v. Santiago,***  
**855 A.2d 682 (Pa. 2004)**

The issue of competence to stand trial is not waived where it was not raised at trial or on appeal and it may be raised initially in a PCRA (Post Conviction Relief Act) petition. Under certain circumstances, however, a PCRA court may hold a retrospective competency hearing in lieu of granting a new trial. Here, the findings of the PCRA court that petitioner was competent to stand trial are affirmed.

***In Re Erick B.,***  
**777 N.Y.S.2d 253 (N.Y.Fam.Ct. 2004)**

In a juvenile delinquency proceeding, the court commits the defendant to the custody of the Commissioner for the Office of Mental Retardation and Developmental Disabilities for a period of 90 days. The court found that the defendant presented evidence that rebutted the application of the presumption of fitness and competence, after which the prosecution failed to prove he was not an incapacitated person.

***Jackson v. State,***  
**880 So.2d 1241 (Fla.App. 2004)**

The trial court erred in failing to hold a competency hearing where the defendant had been adjudicated incompetent on four separate occasions. A defendant cannot be adjudicated from incompetent to competent without a competency hearing that includes an opportunity to call witnesses, so the court's oral declaration that defendant was competent was invalid. Thus, the defendant remained incompetent when brought to trial and his right to due process was violated. Harmless error review is inappropriate with such fundamental error, so the case is reversed and remanded.

***People v. Johnwell,***  
**18 Cal.Rptr.3d 286 (Cal.App. 2004)**

Erroneous circumstantial evidence instructions at defendant's competency trial placed a higher standard of proof on defendant and violated due process. The error was not harmless and the case is reversed and remanded for a new trial.

***People v. Ary,***  
**13 Cal.Rptr.3d 482 (Cal.App. 2004)**

Defendant was denied due process when the trial court failed to hold a competency hearing despite substantial evidence that defendant was incapable of understanding the proceedings against him because of his mental retardation. On remand, the State has the burden of establishing that a retrospective competency hearing can be held.

***State v. Kent,***  
**584 S.E.2d 169 (W.Va. 2003)**

Defendant was found incompetent after his arrest and was treated for 9 months until he regained competency and was tried and convicted of murder. Because of his behavior during trial, counsel immediately requested an examination of defendant. It was subsequently determined that correctional authorities had failed to advise the court and the parties that defendant was no longer taking his medication. At a competency hearing,

the treating physician testified that defendant had been incompetent, while another State doctor who examined defendant 23 days after resumption of medication opined that he had been competent at trial. The trial court agreed and sentenced defendant to life in prison. The West Virginia Supreme Court found that the trial court had erred and reversed and remanded for a new trial because the defendant had lacked the mental capacity to meaningfully participate in his defense.

***Wilson v. State,***  
**875 So.2d 1225 (Ala. Crim. App. 2003)**

A hearing was required on whether defendant was competent at time he pleaded guilty to theft and burglary, where the trial judge had ordered a mental evaluation of defendant, the forensic examiner expressed doubts as to defendant's intellectual functioning and knowledge comprehension, the examiner referred defendant for screening by the Department of Mental Health and Mental Retardation, and nothing in record indicated any action was taken on the examiner's recommendations, and no reference was made at guilty plea proceedings to defendant's mental evaluation.

***Tate v. State,***  
**864 So.2d 44 (Fla.App. 2003)**

Defendant was convicted of first degree murder and sentenced to mandatory life in prison for an offense committed when he was 12 years old. Post-trial his appellate counsel sought a competency evaluation, as well as an evidentiary hearing on the adequacy of explanations to the defendant regarding pre-trial plea negotiations. The trial court denied the competency evaluation, explaining that defendant's competency to stand trial had never before been questioned. The appellate court held that defendant's due process rights were violated by the trial court's failure to order, sua sponte, pretrial and post-trial competency evaluations. In light of defendant's age, his lack of previous exposure to the criminal justice system, and further developmental evidence presented at trial, a competency evaluation was constitutionally mandated.

***Baqleh v. Superior Court,***  
**122 Cal.Rptr.2d 673 (Cal.App. 2002)**

The provisions of the Civil Discovery Act apply to competency hearings; the order directing defendant to submit to an examination by a prosecution expert is vacated because it fails to adequately specify the time, place, manner, conditions, scope, and nature of the examination, as required by the Civil Discovery Act, and improperly allows unidentified examiners to videotape the examination; an accused person cannot on the basis of the Fifth Amendment refuse to submit to a mental examination by a prosecution expert when properly ordered to do so in connection with a competency hearing because a judicially declared rule of immunity provides the necessary assurance that an accused will not be convicted of a crime by use of any information obtained at a court-compelled

mental examination or the use of information obtained from that examination, or that his sentencing may be affected by such information or the fruits thereof; there is no Sixth Amendment right to counsel at a court-ordered mental examination because the judicially declared rule of immunity provides adequate protections; if a proper order is entered requiring defendant to submit to a competency examination by a prosecution expert, and defendant refuses to cooperate, the trial court may disclose to the jury the fact of the defendant's refusal to comply with the order.

***State v. Morales,***  
**2002 WL 1331757 (Conn. Super. April 5, 2002) (unpublished)**

Connecticut statute governing procedures for when the court determines that there is not a substantial probability that the defendant will obtain competency within the period of treatment allowed by the law was unconstitutionally vague. Although the statute clearly provided the available options -- release or civil commitment -- it provided no standards for the trial judge to use in selecting the choice or implementing the choice of remedy.

***State v. Bevins,***  
**2002 WL 440753 (Ohio App. March 22, 2002) (unpublished)**

Because the trial court raised the issue of defendant's competency, even though it may have been inadvertent, it was reversible error under state law for the trial court to fail to conduct a competency hearing. (The trial court ordered a sanity evaluation in response to defendant's NGRI plea but utilized a form that included a competency examination.)

***In re Grimes,***  
**769 N.E.2d 420 (Ohio App. 2002)**

The right not to be tried while incompetent applies to juvenile proceedings just as it does in criminal trials of adults. Report in prior case finding that juvenile defendant was not competent to stand trial, of which the judge in the present case was familiar, raised "sufficient indicia of incompetence" that defendant should have been afforded a competency hearing.

***Anderson v. State,***  
**2002 WL 432674 (Tex. App. -- San Antonio March 20, 2002) (unpublished)**

While an informal dialogue may constitute a competency inquiry in some instances, it is insufficient when, as in this case, the competency issue is specifically raised by the defendant; trial court erred in failing to conduct a competency inquiry given the well-supported incompetency finding of an appointed expert; the appointed expert's later unexplained opinion that defendant was competent did not extinguish the bona fide doubt that had been raised about defendant's competence; the case is remanded to the trial court

to determine whether there is "some evidence" of incompetence, and, if there is, to determine whether a retrospective competency determination by a jury is practicable.

***State v. Were,***  
**761 N.E.2d 591 (Ohio 2002)**

In case involving the murder of a prison guard, the capital conviction and death sentence are reversed due to the trial court's failure to conduct an evidentiary hearing after trial counsel repeatedly raised the issue of defendant's competency. The trial court's finding of competence based upon its review of the competency evaluation report violated the competency statute then in effect, as well as the United States Constitution. "[A]n evidentiary competency hearing is constitutionally required whenever there are sufficient indicia of incompetency to call into doubt defendant's competency to stand trial." Here, defense counsel documented defendant's paranoia and bizarre beliefs that interfered with his ability to cooperate with his attorneys. Defendant's pro se filings corroborated defense counsel's assertions. That defendant had refused to speak with the appointed mental health experts did not prevent the trial court from conducting the required hearing. Further, the record did not support the lower court's conclusion that defendant was engaged in a "calculated effort to avoid prosecution by delaying the progress of the trial."

***In re Kerch,***  
**2002 WL 86831 (Cal.App. Jan. 23, 2002) (unpublished)**

After state supreme court directed appellate court to vacate its summary denial of petitioner's habeas petition and remanded for further proceedings, the appellate court grants relief on claims that petitioner was incompetent at the time of trial and incompetent at the time she waived her right to counsel. Post-trial affidavits established that petitioner suffered from bipolar disorder and that she was delusional at the relevant times.

***People v. Green,***  
**2002 WL 86987 (Cal.App. Jan. 23, 2002) (unpublished)**

Trial court abused its discretion by denying motion to continue sentencing to allow defendant to present a formal competency motion based on newly discovered information about defendant's narcolepsy.

***In re Staten,***  
**2001 WL 1647286 (Ohio App. 7 Dist. Dec. 21, 2001) (unpublished)**

Trial court was required to conduct a competency hearing before accepting minor's plea of guilty, which resulted in an adjudication of delinquency, where the CAST-MR indicated that the minor was not competent to stand trial.

***State ex rel. Reed v. Frawley,***  
**59 S.W.3d 496 (Mo. 2001)**

Juvenile was entitled to hearing to determine whether he was competent to understand extradition proceeding and to assist counsel in defending against extradition.

***State v. Marshall,***  
**27 P.3d 192 (Wash. 2001)**

In a capital case, the trial court erred in denying defendant's motion to withdraw his guilty plea without holding a competency hearing mandated by state statute where there was ample evidence calling defendant's competency into question at hearing on motion to withdraw guilty plea.

***Thompson v. Com.,***  
**56 S.W.3d 406 (Ky. 2001)**

In a capital case where the defendant pled guilty, the trial court erred in not holding a competency hearing mandated by state statute; the statute protects the due process right not to be tried while incompetent; a retrospective competency hearing is permissible depending on the facts of the case; remanded for trial court to determine if a retrospective hearing is possible and if so, to conduct it.

***State v. Sanders,***  
**549 S.E.2d 40 (W.Va. 2001)**

In a non-capital case, the defendant was found incompetent and committed; later, court found defendant competent; during trial, defense moved for mistrial, saying the defendant was psychotic; conviction reversed because the information before the trial court raised sufficient doubt about the defendant's mental fitness to warrant an additional inquiry regarding his competency; the trial court has a duty to employ adequate procedures for determining competency, whether or not a formal motion is made; where there has been a competency hearing and the defendant has been found competent, the trial court need not suspend proceedings for another hearing unless it is presented with new evidence casting serious doubt on the validity of the earlier competency finding or with an intervening change of circumstances that renders prior determination unreliable; on remand, the trial court may attempt a nunc pro tunc determination of the defendant's competency at the time of trial.

***Kelly v. State,***  
**797 So.2d 1278 (Fla. App. 2001)**

In non-capital case, trial court abused its discretion in not sua sponte holding a competency hearing before proceeding with trial. The court found on the record that Kelly was only borderline competent, a finding that was supported by defendant's disruptive behavior during trial, nonsensical ramblings about leaving the country, and rantings about Jesus. "Because all the parties involved, including defense counsel, worried about Kelly's 'reduced capacity,' it was incumbent upon the court to speak up and order a hearing when no one else asked for it."

***In re J.M.,***  
**769 A.2d 656 (Vt. 2001)**

In a non-capital case, an expert testified at the competency hearing that the mentally retarded juvenile defendant was "marginally competent," but would need special help before he could meet the competency standard; teachers and others from defendant's school testified about his limited abilities; the court's sole finding in ruling defendant competent was that the expert "should be believed"; although the evidence was sufficient to find defendant competent, the court's findings were inadequate to explain its reasoning and did not address defendant's need for special help; reversed.

***State v. Haycock,***  
**766 A.2d 720 (N.H. 2001)**

In a non-capital case, the only witness at the competency hearing was defendant's expert, who testified defendant did not have rational understanding and lacked ability to consult with attorney; trial court found defendant competent, focusing on factual understanding; under state law, the state must prove competency by a preponderance of the evidence; the trial court erred in finding defendant had a rational understanding when no evidence supported that finding; on remand, court should consider if a retrospective determination of competency could be made.

***In re Fleming,***  
**16 P.3d 610 (Wash. 2001)**

Guilty plea vacated because trial counsel was ineffective in failing to apprise court that defendant's competence was in doubt.

***State v. Sullivan,***  
**739 N.E.2d 788 (Ohio 2001)**

In a non-capital case, experts testified that defendant was incompetent and that no form of treatment would be effective in restoring his competency in foreseeable future; trial court found defendant incompetent and committed him; relying upon *Jackson v. Indiana*, 406 U.S. 715 (1972), court found statute under which defendant was committed unconstitutional because it requires all defendants found incompetent to be committed for a fixed time up to one year regardless of whether treatment will be effective in restoring competency.

***Roberts v. State,***  
**761 S.2d 885 (Md. 2000)**

In a non-capital case, court found under state law that trial court erred in denying, without a hearing, a motion for examination of defendant for competency, when attorney's motion was sufficient to overcome the presumption of competency.

***Ex Parte Potter,***  
**21 S.W.3d 290 (Tex.Crim.App. 2000)**

Hearing required on incompetency to proceed at extradition hearing; defendant must be able to consult with counsel regarding his "identity and presence"

***Head v. Taylor,***  
**538 S.E.2d 416 (Ga. 2000)**

In capital state post-conviction case, court affirmed lower court's order finding trial counsel ineffective in failing to assure defendant was medicated before trial so he could assist in his defense and in failing to obtain jail records which would have contradicted testimony of jail doctor and jailers about defendant's mental condition.

***Permenter v. State,***  
**796 So.2d 1147 (Ala. Crim. App. 2000)**

In non-capital case, court found that although defendant was initially found competent, court erred in denying second competency hearing where the defense presented evidence that defendant's mental condition had deteriorated since first competency hearing; remanded for trial court to conduct competency hearing, at which state has burden of proving competency.

***State v. Paul,***  
**2000 WL 1239728 (Minn. App. Sept. 5, 2000) (unpublished)**

In non-capital state post-conviction proceeding, court found that trial court violated defendant's procedural due process rights in not holding competency hearing where there was reason to doubt defendant's competency.

***State v. McRae,***  
**533 S.E.2d 557 (N.C. App. 2000)**

In non-capital case, trial court's failure to conduct competency hearing violated federal due process; evidence before the court raised bona fide doubt sufficient to require court to conduct hearing sua sponte; remanded for retrospective competency determination, if that is possible; if retrospective determination is not possible, conviction must be reversed.

***People v. Castro,***  
**78 Cal.App.4th 1402 (Cal.App. 2000)**

In non-capital case, trial court committed reversible error in denying defense counsel's request to appoint the director of the regional center for the developmentally disabled to evaluate defendant pursuant to Cal. Pen. Code, § 1369 (trial of issue of mental competence) in light of substantial evidence that raised a suspicion that defendant was developmentally disabled.

***Woods v. State,***  
**994 S.W.2d 32 (Mo. App. 1999)**

Defendant's due process rights were violated when trial court failed to order a competency evaluation and hearing after defendant, who had a history of psychiatric problems, attempted suicide the day before the sentencing hearing.

***State v. Snyder,***  
**750 So.2d 832 (La. 1999)**

Trial court's refusal to grant a "continuance to allow [defendant's] antidepressant medication time to remedy his unfocused, tangential and circumstantial ideation [which] rendered him unable to effectively communicate with his attorney" violated due process because the trial court failed to conduct adequate inquiry into defendant's competency. Defendant had been diagnosed with severe depression while in jail awaiting trial. Experts testified that the anti-depressant medication defendant received further clouded his thinking, and trial counsel informed the court that defendant was unable effectively to communicate with her. Remanded for retrospective competency determination, and if necessary a new trial, due to trial court's failure adequately to investigate defendant's

competency further before denying continuance.

***State v. Tilden,***  
**1999 WL 136944 (Mo. App. March 16, 1999)(unpublished slip opinion)**

The failure of the trial court, defense counsel, and the prosecutor (who all shared in the responsibility) to raise the issue of defendant's competency despite their knowledge of his brain damage, "partial lobotomy, self-mutilating behavior, alcohol abuse, extensive criminal activity, extensive mental health treatment and observation dating back to childhood" violated due process. After being found guilty but before sentencing, defendant was sent to state hospital. At the sentencing hearing the court asked defendant and the prosecutor if defendant had been evaluated and found competent to stand trial. Both answered yes, although no competency evaluation had been performed. Trial court had an obligation to order competency evaluation and a post-examination hearing once he was "presented with sufficient facts to form reasonable cause to believe the accused lack[ed] the mental fitness to proceed," and the failure to do so will require a new trial, if defendant is competent to stand trial. Neither the erroneous belief that defendant had been found competent, the fact that the evidence supported the conviction, nor the fact that defendant exhibited no bizarre behavior during the trial could change this result.

***Garcia Estrada v. State,***  
**1999 WL 12749 (Tex. App. Jan. 14, 1999)(unpublished opinion)**

Defendant's bizarre behavior raised a bona fide doubt about his competency, which required the trial court to conduct a competency hearing although not requested by either the defense or prosecution. Defendant had filed "numerous incomprehensible pro se motions," could not explain his objection that "something was 'missing from his defense,'" fired three lawyers, and made several ranting outbursts during the trial.

***Commonwealth v. Simpson,***  
**704 N.E.2d 1131 (Mass. 1999)**

Defendant had been allowed to represent himself. Although he was coherent and rational in early stages of proceedings, his opening statement asserting that he was victim of conspiracies and scams by the police, and his subsequent trial conduct raised sufficient doubt about his competency to require a hearing. Court would not address the issue on appeal, but held that defendant's new counsel would be required to raise issue in a motion for new trial. Addressing defendant's earlier resistance to efforts by previous defense counsel to challenge his competency, the court held that if defendant were first found competent, the trial court could permit him to withdraw the motion for new trial "on a finding an appropriate waiver, equivalent in quality to a plea of guilty."

***People v. Hill,***  
**697 N.E.2d 316 (Ill. App. 1998).**

Court held, per statute, that defendant was entitled to a retrospective fitness hearing due to defendant's use of psychotropic medication. If at the hearing the trial court determines that the case is one of those "exceptional cases" in which the defendant's sanity at the time of trial may fairly and accurately be determined despite the time intervening, his conviction may be affirmed. If the evidence is inconclusive or suggests that defendant was impaired, his conviction and sentence must be vacated and he must be granted a new trial.

***People v. Kinkead,***  
**695 N.E.2d 1255 (Ill. 1998)**

Defendant was entitled to a new trial having established that there was a bona fide doubt as to fitness at time of plea and sentencing due to his use of psychotropic medication during trial, and, where five years had passed since the original proceeding, a retrospective competency hearing was inappropriate.

***Hatten v. State,***  
**978 S.W.2d 608 (Tex. App. 1998)**

Case remanded to trial court to determine whether defendant's competency at the time of trial can be ascertained after the passage of two years and, if so, to hold a hearing on the issue of defendant's competency to stand trial where the trial court failed to hold a competency hearing and "some evidence (at least more than a scintilla)" of the defendant's incompetence had been brought to the attention of the trial court.

***Ex Parte Janezic,***  
**723 So.2d 725 (Ala. 1997)**

During trial expert changed his opinion from "the defendant is competent" to "the defendant is not competent." Although the evidence in the record does not conclusively prove that the defendant had become incompetent during the course of the trial, the shift in opinion when considered in the context of other evidence related to the defendant's mental health created a reasonable and bona fide doubt as to the defendant's competency during the guilt-determination phase of the trial.

***People v. Smith,***  
**694 N.E. 2d 681 (Ill.App. 1998)**

Failure of defense counsel to request, and trial court to order, hearing as to the fitness of defendant required remand for fitness hearing where the defendant's presentence

investigation report contained information from medical doctors, a clinical psychologist, and defendant concerning use of the drugs Effexor and Xanax and treatment for symptoms of depression and anxiety and where the state did not contest the possibility that defendant might have taken these psychotropic medications prior to, around the time of, and subsequent to trial.

***Commonwealth v. Simpson,***  
**689 N.E.2d 824 (Mass.App. 1998)**

Failure of trial judge to raise the issue of competency and to hold a competency hearing required reversal of judgment where the defendant, proceeding pro se, though initially determined competent to conduct own defense in prosecution for mayhem and assault with a deadly weapon, manifested paranoid delusions and an underlying defense position that he was entitled to hammer a sleeping woman in the head, as well as knife her, because of a pervasive conspiracy against him. Though the defendant, at a certain level, understood the offenses for which he was charged and the punishment the court might impose, the defense position was irrational.

***People v. Abraham,***  
**689 N.E.2d 278 (Ill.App. 1998)**

Defendant's conviction vacated where the State failed to show within a reasonable degree of medical certainty that the psychotropic medication that the defendant had been taking did not impair his ability to participate in and understand his defense prior to pleading guilty and sentencing. Though the defendant was afforded the type of supplemental hearing required on his motion to withdraw his guilty plea, the only medical expert to testify in the case testified that he could not give an opinion as to the defendant's fitness at the time of the guilty plea and the trial court made no specific ruling with respect to the effect of the psychotropic drugs on the defendant.

***People v. Carlson,***  
**691 N.E.2d 1156 (Ill.App. 1997)**

Limited remand to determine whether the defendant was entitled to a fitness hearing where both the trial court and defense counsel knew that defendant was taking psychotropic drugs (lithium) and was diagnosed manic depressive. The court and defense counsel were made aware that drugs were taken proximate to the pretrial continuance, defendant's appeal bond hearing, in defendant's physician's letter attached to the pre-sentencing investigation report, and in defendant's statement during the sentencing hearing, all of which put the court on notice of the issue of defendant's mental incapacity to stand trial. An Illinois statute entitles a defendant who is receiving psychotropic drugs to a fitness hearing while under medication.

***People v. Johns,***  
**687 N.E.2d 138 (Ill.App. 1997)**

Limited remand to determine whether defendant was taking psychotropic drugs at any critical stage of the proceeding where the presentence investigative report indicated that he was prescribed the drugs Thorazine and Haldol while incarcerated awaiting trial, but which report did not specify the dates the drugs were taken.

***People v. Nitz,***  
**670 N.E.2d 672 (Ill. 1996)**

The order of dismissal of defendant's petition for post-conviction relief is reversed and the case remanded with directions to set aside the conviction and to grant a new trial for failure of trial court to grant a fitness hearing. The State withheld information that it was administering psychotropic medication (Tranxene) to defendant throughout trial and sentencing. Had the trial court known, it would have been required, pursuant to Illinois statute, to hold a fitness hearing. Prior Supreme Court decisions have interpreted the statute to mean that the administration of psychotropic drugs during trial raises a bona fide doubt as to a defendant's fitness to stand trial, thus a fitness determination, through a fitness hearing, is constitutionally required.

***Williams v. State,***  
**685 N.E. 2d 730 (Ind.App. 1997)**

The trial court abused its discretion by allowing previously recorded deposition testimony into evidence where defendant was present at the time the testimony was recorded, but was incompetent. Because defendant was deemed incompetent, defendant did not have "the opportunity" to cross exam the witness.

***Nunez v. State,***  
**942 S.W.2d 57 (Tex.App. 1997)**

Jury verdict that defendant was competent to stand trial for murder was held to have been against the great weight and preponderance of evidence as to be manifestly unjust where the defense called two doctors at the competency hearing who testified that defendant was not fit to stand trial, where defendant's mother and sister testified to defendant's strange behavior for years prior to the crime, and where the state presented little evidence to contradict the evidence presented by the defense.

***Artiles v. State,***  
**691 So.2d 1130 (Fla. App. 1997)**

An indigent defendant has the right to be examined by a confidential expert even if two other experts appointed by the court agree that defendant is competent to proceed. The trial court's refusal to continue the competency hearing to allow examination by the confidential expert was an abuse of discretion, depriving the defendant a reasonable opportunity to prepare for the competency hearing in terms of presenting evidence and challenging the opinions of the other experts.

***State v. Levy,***  
**700 So.2d 1283 (La.App. 1997)**

The State of Louisiana appealed the trial court's finding that defendant lacked necessary mental capacity by a "clear preponderance of the evidence" as opposed to "by clear and convincing evidence," which was required by statute. The Court held that the lower standard was not erroneous in light of the Supreme Court's decision in *Cooper v. Oklahoma*.

***Howard v. State,***  
**701 So.2d 274 (Miss. 1997)**

The trial court's failure to order a competency hearing before allowing the defendant to represent himself constituted reversible error in a murder prosecution where the trial judge did not have a complete evaluation of defendant's mental capacity, defendant's court-appointed attorney repeatedly expressed concerns about defendant's competency to assist or conduct his own defense, and where defendant exhibited paranoid behavior at trial, asked irrational questions of witnesses, and engaged in rambling commentary. Where facts appear on the record which, when objectively considered, reasonably raise questions of defendant's competence to stand trial or to represent himself, the trial court is obliged to order a competency hearing.

***Howard v. State,***  
**697 So.2d 415, *withdrawn, republished as corrected at,* 701 So.2d 274 (Miss. 1997)**

The court reverses Howard's capital conviction and death sentence on the grounds that the trial court should have conducted a competency hearing before allowing Howard to proceed to trial and certainly before allowing him to represent himself. The court should not have relied on a state psychiatrist's written finding of competency since the same psychiatrist said that he could not venture even a provisional diagnosis in light of Howard's refusal to cooperate. The court was warned by all four of Howard's attorneys that he was unable to assist them, let alone to represent himself. Finally, the trial court should have been alerted to the need for a hearing by Howard's irrational behavior, such

as insisting on the seating of jurors likely to be biased against, asking witnesses questions that were irrational or relevant only to his elaborate conspiracy theories, and accusing one of the jurors of having committed the murder.

***In re Williams,***  
**687 N.E.2d 507 (Ohio App. 1997)**

The magistrate's finding of competency is not reliable since both experts who gave written reports and testified at the competency hearing appear to have based their opinions on inappropriate considerations, the state's expert focusing on Williams' moral culpability and dangerousness if released and the defense expert focusing on the excessiveness of charging a mentally impaired juvenile with rape. After subtracting these inappropriate considerations, the evidence of incompetency predominates. According to the defense expert, Williams has an I.Q. of 40 and the mind of a six-year-old. Even the state's expert admitted that Williams would have difficulty understanding the roles of judge and jury and would be afraid to confide in his attorney. The court remands Williams' case for a new competency hearing. A concurring judge takes the magistrate to task for allowing himself to be swayed by the cost of the treatment that would be required if Williams were found incompetent.

***In re Hinnant,***  
**678 N.E.2d 1314 (Mass. 1997)**

The evidence raised a substantial doubt about Hinnant's competence to understand the extradition proceedings against him, where a court in the state seeking his extradition had earlier found him unfit to stand trial because of a head injury, where Hinnant's attorney stated that Hinnant was unable to communicate with him and where Hinnant had been found incompetent by a physician. The court remands the case to the lower court for a formal competency determination and the issuance of a stay for the duration of Hinnant's incompetency.

***State v. Garfoot,***  
**558 N.W.2d 626 (Wis. 1997)**

The intermediate appellate court incorrectly subjected the trial court's finding of incompetence to de novo review. Under the proper "clearly erroneous" standard, the trial court's finding was entitled to stand, since a defense expert testified at the competency hearing that Garfoot would never be able to meaningfully participate in a criminal trial because of a developmental disability and where the state's expert testified that he had an IQ of 64 and was only marginally competent.

***State v. Gowan,***  
**666 So.2d 1325 (La.App. 1996)**

Once defense counsel filed a motion for the appointment of a sanity commission, the trial court erred in accepting petitioner's guilty plea before resolving the issue of his mental capacity. The reviewing court declined to bar the habeas petition as untimely, because petitioner had unsuccessfully raised the same issue in earlier proceedings and because it would be unfair to enforce the deadline against someone who may not have understood the proceedings against him.

***State v. Johnson,***  
**551 N.W. 2d 741 (Neb.App. 1996)**

Trial court committed plain error for failing to hold a full, fair, and adequate hearing on the issue of defendant's competency when the court was faced with a reasonable doubt regarding defendant's competency twice: at the plea hearing and at sentencing. The trial court had conducted a competency hearing of sorts: the court admitted into evidence a psychiatrist's report (offered by defense counsel), questioned the defendant, allowed questioning of counsel, and observed defendant in the context of a hearing to enter a plea. This "hearing" was not sufficient to provide adequate procedural due process to protect defendant's substantive due process right not to be tried while incompetent. The issue of competency was determined principally on the basis of the trial court's colloquy with Petitioner at the plea hearing; the colloquy, however, went only to defendant's ability to understand the procedures, not his capability for rational decision making, which is what the psychiatrist's report said was lacking.

***Casey v. State,***  
**924 S.W.2d 946 (Tex.Crim.App. 1996)**

Trial court incorrectly concluded that defendant need not be competent during the course of a probation revocation hearing. Trial court should have held a competency hearing after a psychiatrist testified that defendant was experiencing psychogenic amnesia.

***State v. Soares,***  
**916 P.2d 1233 (Haw. 1996)**

Trial court should have suspended trial for a competency hearing where (1) several experts who had earlier found defendant competent warned that he required medication to remain competent, (2) the court was aware that defendant had missed his weekly dose of medication, and (3) trial counsel notified the court that defendant's demeanor had changed, that defendant wanted to change trial strategy and that defendant refused to cooperate with him.

***Brogdon v. State,***  
**467 S.E.2d 598 (Ga.App. 1996)**

Trial court should have interrupted trial for a competency hearing, where (1) an evaluator who had earlier found defendant competent also noted that he suffered from paranoid delusions, needed medications, and was severely mentally ill, (2) defendant's trial testimony was confused and not grounded in reality, and (3) defendant had to be restrained after an outburst. It was not sufficient to inquire of the defendant whether he was competent.

***State v. Carney,***  
**663 So.2d 470 (La. App. 1995)**

Where trial counsel filed pre-trial motion for sanity commission, pointing to defendant's hallucinations and inability to understand the proceedings or assist counsel, it was error for the trial court to proceed to trial without a competency ruling merely because trial counsel withdrew his motion at a hearing at which defendant was not present.

***Calloway v. State,***  
**651 So.2d 752 (Fla. App. 1995)**

Trial court should have ordered psychiatric evaluation and hearing on competency to be sentenced, where defense counsel notified the court that defendant was so heavily medicated that he could not discuss the presentence report, where defendant's allocution was rambling and incoherent, where those who testified to defendant's competency were neither experts nor able to describe his medications, and where the record indicated that defendant had brain damage, memory problems, and a history of seizure disorders. Remanded for competency hearing and resentencing.

***People v. Kinkead,***  
**660 N.E.2d 852 (Ill. 1995)**

Trial court should have ordered competency hearing sua sponte upon learning that the jail administered thiorazine to defendant. Trial counsel's failure to make a motion did not waive defendant's state-law right to a competency hearing upon a showing that he was receiving psychotropic medication. Remanded for clarification whether defendant's doses of thiorazine coincided with his entry of a guilty plea.

***People v. Johnson,***  
**659 N.E.2d 22 (Ill. App. 1995)**

Under state law, defendant is entitled to competency hearing if receiving psychotropic drugs under medical supervision during the pendency of her prosecution or sentencing.

Remand for determination whether defendant was in fact on psychotropic medication and whether it may have had an effect on her competency.

***People v. Gevas,***  
**655 N.E.2d 894 (Ill. 1995)**

Under state law, defendant who is taking psychotropic medications during the course of his trial is entitled to a competency hearing. It was error for trial court to deny motion for competency hearing, where defense counsel presented evidence that defendant was administered antipsychotics and antidepressants during the month prior to his entry of a guilty plea. Passage of two years made a meaningful retrospective hearing impossible.

***People v. Gutierrez,***  
**648 N.E.2d 928 (Ill. App. 1995)**

Under state law, trial court should have sua sponte ordered a competency hearing upon learning that defendant was administered psychotropic medication. Furthermore, trial counsel, who was aware that defendant was receiving antidepressants, was ineffective for failing to request such a hearing.

***Aragon v. State,***  
**910 S.W.2d 635 (Tex. App. 1995)**

Jury's finding of competency is against the weight and preponderance of the evidence, where the defense presented several witnesses to defendant's bizarre thoughts and behavior, where the only mental health expert to testify found defendant incompetent, and where the prosecutor presented no evidence and, indeed, initially conceded defendant's incompetence, only changing his mind during cross-examination of defendant.

***State v. Bartlett,***  
**898 P.2d 98 (Mont. 1995)**

Under state law, trial court must order psychiatric evaluation upon written motion by stand-by counsel, even if defendant had previously been ruled competent to represent himself and opposed the motion.

***State v. Pollard,***  
**657 A.2d 185 (Vt. 1995)**

Trial court's finding of competency was erroneous, where examining physician appeared to believe that competency required only a factual understanding of the proceedings and did not assess defendant's ability to consult rationally with his attorneys, where defendant's garbled speech was nearly impossible to understand, where defendant was in

a hurry to plead guilty to avoid commitment to the state hospital, refused to take the advice of his attorneys and took the stand during the competency hearing for no apparent reason.

***State v. Cooks,***  
**642 So.2d 23 (Fla. App. 1994)**

Trial court did not abuse its discretion in finding defendant unfit to stand trial, where one expert testified that defendant was competent, but another expert stated that a gunshot wound to defendant's head interfered with his memory and cognitive functions and rendered him incompetent.

***Holland v. State,***  
**634 So.2d 813 (Fla. App. 1994)**

Where defendant had been adjudicated incompetent to stand trial on three occasions in connection with the instant offense, it was error for the trial court to proceed to trial without a hearing and formal determination of competency. The trial court's delayed finding of competency was of no effect because defendant's notice of appeal deprived the court of jurisdiction. A retroactive hearing would not be adequate since defendant had been adjudicated incompetent, not merely suspected of incompetency.

***State v. Green,***  
**632 So.2d 1187 (La. App. 1994)**

Defendant's due process rights were violated when the trial court that ordered a competency evaluation erroneously ruled that the evaluator's finding of competency obviated the need for a hearing or a formal finding as to competency. The reviewing court appears to hold that defendant waived this objection, but grants relief on the ground that defense counsel was ineffective for failing to make an objection.

***People v. Brandon,***  
**643 N.E.2d 712 (Ill. 1994)**

Under state law, trial court must order a competency hearing sua sponte upon learning that defendant is receiving psychotropic medication. Defendant was denied effective assistance of counsel when his trial counsel failed to notify the court that defendant was receiving psychotropic medication.

***Gabbard v. Commonwealth,***  
**887 S.W.2d 547 (Ky. 1994)**

Trial court should have sua sponte held a competency hearing immediately after the mental health expert appointed by the court found defendant incompetent. Furthermore, when the trial court later ruled that defendant was competent based on subsequent report by the same expert, it was error for the trial court not to give the defense the opportunity to cross-examine the expert.

***State v. P.E.,***  
**664 A.2d 1301 (N.J. Super. Law Div. 1994)**

Although the usual rule is that a defendant who is not facing consequences of magnitude (e.g., jail time) need not be appointed an attorney, an exception must be made when the court has a reasonable doubt as to defendant's competence to proceed pro se. Such a doubt was raised in this case, where court was aware that defendant had been hospitalized and was supposed to be taking psychotropic medication, was once a client of the Mental Health Law Project, behaved so bizarrely during the offense that police had her evaluated, and behaved in the courtroom in a manner that indicated distorted thinking.

***State v. Lambert,***  
**645 A.2d 1189 (N.J. Super. App. Div. 1994)**

Trial court should have suspended the trial and ordered a psychiatric evaluation after notified by defense counsel that defendant had been diagnosed as paranoid and schizophrenic, was receiving psychotropic medication at the jail where he was put on suicide watch, and that defendant formulated his ill-advised trial strategy on the basis of conversations with God. This error was not cured by the presentence psychiatric evaluation ordered by the court, inasmuch as the examining psychiatrist did not assess whether defendant might have had a valid defense of diminished capacity and appeared to hedge his finding of competency by suggesting that defendant obtain an independent evaluation.

***Brown v. State,***  
**871 S.W.2d 852 (Tex. App. 1994)**

Trial court erred in not ordering competency hearing sua sponte, where mental health expert appointed by a previous judge never filed a competency report with the court and testified only as to sanity at the time of the offense and where trial testimony indicated that defendant had suffered a severe head injury that changed his behavior, had been recently hospitalized for a nervous breakdown, had written a letter accusing the alleged victims of initiating the conduct for which he was charged, and had threatened to castrate himself. Remanded for retrospective hearing if feasible.

***Bright v. State,***  
**865 S.W.2d 135 (Tex. App. 1994).**

Trial court should have impaneled a competency jury when, following defendant's conviction, trial counsel filed a motion for such a hearing, offering in support his own testimony and the testimony of defendant that defendant, against counsel's advice, failed to cooperate in the preparation of the presentence report and that defendant failed to understand that a reduction in sentence was the best that he could hope for. Remanded for retrospective competency hearing if feasible.

***State v. Nomey,***  
**613 So.2d 157 (La. 1993)**

Once defendant petitioned for a sanity commission, the trial court violated his due process rights in accepting his guilty plea without first conducting a hearing on defendant's mental capacity to proceed to trial. This violation of state procedure was not, and could not be, cured by the trial court's nunc pro tunc hearing. Conviction reversed.

***State v. Corethers,***  
**629 N.E.2d 1052 (Ohio App. 1993)**

It was not harmless error for trial court to fail to conduct a competency hearing, where initial psychiatric evaluation indicated that defendant suffered from organic mental disorder with manic and delusional features and was incompetent, where trial counsel alerted court that defendant remained delusional and uncooperative after having been reported as restored to competency, where the report of restoration appeared to be based on incomplete information, and where defendant's courtroom behavior gave signs of paranoid and grandiose thinking.

***Addkison v. State,***  
**608 So.2d 304 (Miss. 1992)**

Trial court improperly denied a competency hearing solely on the basis of an expert's written report of competency; the only non-hearsay evidence before the court was the testimony of counsel that defendant could not assist in his defense and the testimony of defendant's sister that defendant was mentally retarded and suffered blackouts and strange spells.

***People v. Meurer,***  
**184 A.D.2d 1067, 584 N.Y.S.2d 370 (N.Y. App. Div. 1992)**

Having received conflicting psychiatric reports as to defendant's competency, the trial court violated state law in failing to hold a competency hearing.

***People v. Smart,***  
**184 A.D.2d 341, 585 N.Y.S.2d 346 (N.Y. App. Div. 1992)**

Trial court violated defendant's state-law rights when the court received conflicting psychiatric reports as to defendant's competency and yet failed to hold a hearing.

***Martin v. State,***  
**588 N.E.2d 1291 (Ind. App. 1992)**

Trial court should have inquired into defendant's competency to make decisions regarding his defense, where defendant was initially found to be psychotic and incompetent by court-appointed experts, where defendant was receiving Social Security disability payments, where defendant continued to express paranoid and delusional ideas to the court even after experts reported the restoration of his competency, and where defendant dismissed his retained counsel and refused to answer questions necessary to the appointment of pauper counsel. Remanded for retrospective hearing.

***State v. Berger,***  
**828 P.2d 1258 (Ariz. App. 1992)**

Where trial court had previously committed defendant for restoration of competency, it was error to proceed to trial without a competency hearing or formal finding after hospital reported that defendant's competency had been restored. Trial court also erred in failing to make an express finding that defendant was competent to waive a jury trial on the issue of whether he had a prior conviction that could be used for sentence enhancement, where defendant had 20-year history of schizophrenia and hospitalizations, where defendant did not testify at trial, and where defendant sometimes gave nonresponsive answers to the court's questions. Remanded for determination whether a retrospective hearing is feasible.

***White v. State,***  
**414 S.E.2d 328 (Ga. App. 1992)**

Trial judge erred in failing to hold a hearing on defendant's competency to have stood trial, where, after conviction, trial counsel moved for a new trial on the grounds that defendant had been hostile and uncooperative during trial, the trial judge himself stated on the record that he doubted defendant's competency, and psychological evaluation ordered by the trial judge indicated that defendant was not competent to be sentenced. Remanded for retrospective hearing if possible.

***Boggs v. State,***  
**575 So.2d 1274 (Fla. 1991)**

Once notified that a psychiatrist had found defendant incompetent, the trial court should have ordered further evaluation and a hearing pursuant to state law, rather than ruling that defendant was competent based solely on a brief conversation with him.

***Finkelstein v. State,***  
**574 So.2d 1164 (Fla. App. 1991) (interlocutory appeal)**

Trial court erred in removing public defender from case, contrary to wishes of defendant, when the public defender declined to proceed with a suppression hearing until after the court completed its findings with respect to defendant's competency. Public defender was correct that defendant must be competent during all critical stages of the trial.

***State v. Phelps,***  
**600 N.E.2d 329 (Ohio App. 1991)**

Under state law, defendant committed for restoration of competency to be sentenced must receive a hearing within a time certain. Trial court's failure to conduct a timely hearing deprived it of jurisdiction over defendant.

***Bell v. State,***  
**814 S.W.2d 229 (Tex. App. 1991)**

Trial court erred in allowing four of defendant's prior convictions to be used for enhancement of sentence. The convictions were not valid in that they were entered after defendant had been adjudicated incompetent in another proceeding but were not accompanied by a specific finding that defendant was fit to stand trial. Remanded for a new sentencing hearing.

***People v. West,***  
**171 A.D.2d 1026, 569 N.Y.S.2d 33 (N.Y. App. Div. 1991)**

Under state law, trial court did not have discretion to deny a one-week adjournment that was necessary so that a defense expert, who had recently undergone an operation, could examine defendant and report on his competency.

***People v. Superior Court,***  
**820 P.2d 613 (Cal. 1991)**

Trial court's failure to conduct competency hearing after expressing doubts about defendant's competency was reversible error but did not deprive the court of subject

matter jurisdiction. Thus defendant's conviction of second-degree murder was not fundamentally void and double-jeopardy prohibited his retrial on a charge of first-degree murder.

***Lambert v. State,***  
**808 P.2d 72 (Okla. Crim. App. 1991)**

Where defendant, who was entitled to a jury trial on competency under state law, presented evidence that he had attempted suicide on several occasions, including after his arrest, that he had previously been hospitalized for mental health problems and that he did not understand the proceedings against him, the trial court erred in granting a directed verdict of competency and dismissing the jury. Remanded for retrospective hearing if feasible.

***Nowitzke v. State,***  
**572 So.2d 1346 (Fla. 1990)**

Although the rejection of a favorable plea does not necessarily indicate incompetence, trial court should have ordered a second competency hearing when informed on the eve of trial by defense counsel that defendant had rejected a plea agreement that would have made him ineligible for the death penalty because defendant had a dream in which a judge told him that he would be spiritually released on Independence Day on account of the number of letters in defendant's name.

***Harringer v. State,***  
**566 So.2d 893 (Fla. App. 1990)**

Where defendant was a psychiatric patient at the time of the offense and where experts reported that at best defendant was only marginally competent, it was improper for the trial court to allow the state and defense counsel to stipulate to a plea of not guilty by reason of insanity without a hearing and a determination that defendant was competent to consent to the plea.

***Unruh v. State,***  
**560 So.2d 266 (Fla. App. 1990)**

Trial court should have granted motion for psychiatric evaluation and competency hearing, where defendant was incarcerated in a psychiatric unit, had recently suffered a nervous breakdown and attempted suicide, and had been diagnosed as suffering from mixed substance abuse disorder and psychosis in remission.

***People v. Harris,***  
**460 N.W.2d 239 (Mich. App. 1990)**

Although defendant had earlier been adjudicated as restored to competency, the trial court should have re-evaluated defendant's competency at the start of trial, when defendant told the court she felt incoherent and incompetent, where defendant had been hospitalized for schizophrenia at least 15 times, where the record was replete with the bizarre statements and behavior of defendant, and where a psychologist who testified on an earlier remand stated that defendant's delusions persisted even when she was on medication and that she was unlikely to have been competent at trial.

***People v. Torres,***  
**556 N.Y.S.2d 401 (N.Y. App. Div. 1990)**

Once the trial court made a threshold finding that a defendant's conduct warranted a psychiatric evaluation, the trial court's failure to comply with statutory procedures deprived defendant of the right to a full and fair determination of competency. A retrospective hearing would not be feasible.

***Porter v. State,***  
**795 P.2d 105 (Okla. Crim. App. 1990)**

Given that two years had passed since the reviewing court had ordered the trial court to conduct a retrospective competency hearing, during which time the trial court took no action, and given that almost six years had passed since trial, a retrospective hearing was no longer possible and defendant was entitled to a new trial.

***Hill v. State,***  
**788 S.W.2d 858 (Tex. App. 1990)**

In determining whether a competency hearing is merited, a trial court should put aside the evidence in favor of competence (in this case, a finding of competence by Dr. Grigson) and examine whether there is more than a scintilla of the remaining evidence that might lead to a finding of incompetency. There was more than a scintilla of evidence in the report of a second expert that defendant suffered from organic brain syndrome with psychosis, was functionally illiterate, and was presently incompetent. Remanded for a competency hearing.

***State v. Sadler,***  
**549 So.2d 1236 (La. 1989)**

Trial court should have ordered a sanity commission when informed by defense counsel that defendant had once been diagnosed as schizophrenic and that defendant's brother had

noticed strange behavior on defendant's part and tried to have him admitted to a hospital. Since defense counsel related the brother's statements solely for the purpose of establishing that there was a reasonable basis for ordering a competency hearing, it was error for the trial court to disregard them as hearsay.

***White v. State,***  
**548 So.2d 765 (Fla. App. 1989)**

Under state law, trial court that found defendant competent after a hearing should have entered a written order to that effect. Remanded for nunc pro tunc order.

***Shaw v. State,***  
**546 So.2d 796 (Fla. App. 1989)**

Trial court erred in accepting nolo contendere plea without holding competency hearing, where defendant informed the court prior to sentencing that he did not understand what was going on, where defendant's mother testified to his history of mental illness, where defendant asked to withdraw his plea when given prison time and then, when that request was denied, tried to flee the courtroom, became unconscious and experienced a seizure, and where, immediately after sentencing, trial court ordered that defendant be evaluated for treatment.

***Robertson v. State,***  
**765 S.W.2d 936 (Ark. 1989)**

Trial court erred in denying trial counsel's motion for a ruling on defendant's competency, where testimony about defendant's history of mental illness and defendant's own courtroom behavior should have raised doubts in the court's mind. The court's decision to proceed with trial could not be taken to be an implicit finding of competency, since the trial court was under the mistaken impression that fitness to stand trial is a jury question.

***Warren v. State,***  
**543 So.2d 315 (Fla. App. 1989)**

Where defense counsel's motion for competency hearing cited defendant's erratic behavior and statements to counsel, it was error for the trial court to dismiss the motion based on his own personal observation of defendant.

***Thomas v. State,***  
**777 P.2d 399 (Okla. Crim. App. 1989)**

Once the trial court determined that there was doubt as to defendant's competency, it was error not to hold a hearing on the issue even if defendant failed to request one. As the trial

court had determined on a remand that a retrospective hearing was not feasible, the defendant is entitled to a new trial.

***People v. Marks,***  
**756 P.2d 260 (Cal. 1988)**

Where trial court stated that it had a doubt as to defendant's competency and ordered a hearing, it was error to proceed to trial without conducting the hearing, even though defense counsel agreed to waive the hearing.

***Burks v. State,***  
**748 P.2d 1178 (Alaska App. 1988)**

A remand was necessary to determine defendant's competence to proceed pro se, where pre-trial judge concluded that defendant was not competent to represent himself and where trial judge's finding of competency was somewhat ambiguous and may have reflected the erroneous view that defendant had an absolute right to represent himself even if incompetent.

***Jacobs v. State,***  
**744 S.W.2d 728 (Ark. 1988)**

Testimony of psychiatrist that defendant's competence was highly questionable should have caused trial court to order a full-scale psychiatric evaluation and competency hearing, even though a physician found defendant competent after a brief examination.

***Tingle v. State,***  
**536 So.2d 202 (Fla. 1988)**

There was reasonable ground to believe defendant was incompetent and therefore to order a competency hearing, where defense counsel notified the court that defendant had stabbed himself with a pen, was hallucinating, and had been tentatively diagnosed as paranoid schizophrenic. The trial court's reliance upon a review of hospital records did not sufficiently protect defendant's due process rights.

***Pridgen v. State,***  
**531 So.2d 951 (Fla. 1988)**

Trial court should have suspended penalty phase of capital trial and ordered competency hearing, where defense counsel moved for a hearing because defendant refused to allow the presentation of mitigating evidence, where defendant asked the judge to kill him several times during a colloquy, where defendant protested his innocence but asked the jury to sentence him to death, where a psychiatrist who examined defendant during recess

found him to be incompetent, and where trial court later ordered a psychiatric evaluation before final entry of defendant's sentence. Remanded for a new sentencing hearing.

***People v. Mayes,***  
**248 Cal.Rptr. 899 (Cal. App. 1988)**

Trial court violated defendant's due process rights by prohibiting defendant from calling his own expert witnesses after defendant refused to cooperate with a court-appointed psychiatrist. The trial court's action would have been appropriate if the court concluded that defendant was merely unwilling, rather than unable, to cooperate, but here the trial court still entertained some doubts about defendant's competency.

***Newman v. State,***  
**369 S.E.2d 902 (Ga. 1988)**

During a jury trial on defendant's competency, trial court erred in excluding evidence that defendant had been found to be incompetent to manage his own affairs by a probate court and had previously been found to be incompetent to stand trial at an earlier stage of the instant proceedings. Remanded for a new trial on the issue of competency.

***People v. Bey,***  
**144 A.D.2d 972, 534 N.Y.S.2d 275 (N.Y. App. Div. 1988)**

If one of the experts appointed by the trial court did not meet the statutory guidelines for a "qualified psychiatrist," then defendant is entitled to a new hearing on competency. Remanded for determination whether the expert was qualified.

***People v. Hale,***  
**749 P.2d 769 (Cal. 1988)**

Failure to conduct competency hearing was a due process violation, where two psychiatrists concluded that defendant was incompetent, where two other psychiatrists believed that defendant should be committed to state hospital, and where trial court stated that it had a doubt about defendant's competency and ordered, but never conducted, a hearing.

***Kelly v. State,***  
**735 P.2d 566 (Okla. Crim. App. 1987)**

Under state law, once trial court made a finding that there was doubt as to defendant's competence to stand trial, it should have held a hearing on that issue.

***Holloway v. State,***  
**361 S.E.2d 794 (Ga. 1987)**

Trial court should have conducted hearing on defendant's competency to stand trial, where one mental health expert reported that defendant had an IQ of 49, another expert reported that defendant was competent though his understanding of the proceedings was marginal, and the trial court refused to accept defendant's guilty plea on the grounds that defendant did not understand what he was doing. Trial court also erred in failing to appoint an independent mental health expert to assist the defense with respect to the competency determination.

***Gammage v. State,***  
**510 So.2d 802 (Miss. 1987)**

Trial court's denial of a competency hearing was error inasmuch as its finding of no probability of incompetency was manifestly against the overwhelming weight of the evidence. Defendant was reported to have an IQ of 48 to 52, two psychologists testified the defendant could not assist in his defense, and both defense counsel and the district attorney urged that defendant be committed to a mental institution.

***State v. Haskins,***  
**407 N.W.2d 309 (Wis. App. 1987)**

Trial counsel was ineffective for failing to request a competency hearing, where counsel knew that defendant had been adjudicated incompetent in connection with previous offenses, where counsel conceded that defendant was unable to assist in his defense, and where trial counsel's strategy was "to roll the dice and take a chance with the jury" in the hope that defendant would not face any confinement at all, either in prison or in a hospital for restoration of competency. Although this is an ineffectiveness-of-counsel case, the remedy seems more appropriate to a competency case: the reviewing court held that defendant's conviction could stand if he were found competent at a nunc pro tunc hearing.

***Barber v. State,***  
**737 S.W.2d 824 (Tex. Crim. App. 1987)**

There was more than a scintilla of evidence of incompetence and, consequently, court should have ordered a jury trial on the issue of competency, where one expert found that defendant's delusions rendered him incompetent, even though many of defendant's statements that the expert interpreted as delusional were in fact true and even though another expert opined that defendant was competent. Remanded for jury trial on competency.

***Manning v. State,***  
**730 S.W.2d 744 (Tex. Crim. App. 1987)**

Under state law, once a person has been adjudicated incompetent, the burden shifts to the state in any subsequent proceeding to prove beyond a reasonable doubt that the person is competent. Testimony of mental health expert was sufficient to prove that defendant had previously been adjudicated incompetent, and therefore, defendant was entitled to a new competency hearing at which the burden of proof is properly allocated.

***People v. Colon,***  
**128 A.D.2d 422, 512 N.Y.S.2d 809 (N.Y. App. Div. 1987)**

Trial court erred in denying motion for a hearing on defendant's competence to be sentenced, where in the intervening months since defendant's conviction he had been adjudicated incompetent in an unrelated proceeding. Remanded for resentencing.

***People v. Murphy,***  
**513 N.E.2d 904 (Ill. App. 1987)**

Under state law, once the trial court determines that there is a bona fide doubt as to competency, a presumption of competency no longer attaches and the state then has the burden of production and persuasion. Thus, it was error for the trial court to base its finding of competency on the presumption, on defense counsel's failure to bring to the court's attention any problems in dealing with defendant, and on the court's own observations of defendant.

***Scott v. State,***  
**730 P.2d 7 (Okla. Crim. App. 1986)**

As a matter of state law, once the trial court found that there was doubt as to defendant's competence, it was error not to hold a hearing on the issue, notwithstanding that defendant did not request a hearing.

***People v. Clark,***  
**499 N.E.2d 701 (Ill. App. 1986)**

Trial court erred in failing to hold competency hearing where evaluation requested by the defense indicated that defendant functioned at a "borderline" level, gave odd responses to questions, had a severe speech impediment, and was generally incompetent. Remanded for retrospective hearing.

***Byrd v. State,***  
**719 S.W.2d 237 (Tex. App. 1986)**

It was error for trial court not to make a formal adjudication of defendant's competency, where defendant had been committed for restoration of competency following a jury verdict of incompetency. Remanded for retrospective hearing.

***State v. Johnson,***  
**395 N.W.2d 176 (Wis. 1986)**

Defendant was denied effective assistance of counsel when trial counsel failed to bring to the court's attention the reports of two experts who questioned defendant's competency. Remanded for a retrospective competency hearing, if feasible.

***People v. Maddicks,***  
**118 A.D.2d 437, 499 N.Y.S.2d 93 (N.Y. App. Div. 1986)**

Under state law, once the trial court orders a competency evaluation, the defendant is entitled to a hearing upon request, and therefore it was error in this case for the trial court to deny a hearing merely because defense counsel waited for a third opinion before requesting a hearing. Remanded for retroactive hearing.

***People v. Weech,***  
**116 A.D.2d 975, 498 N.Y.S.2d 601 (N.Y. App. Div. 1986)**

Retrospective hearing was inadequate where the only witnesses called by the state were two experts who had no specific recollection of defendant and who could only relate their conclusory opinions that defendant was competent, but not the factual basis for those opinions. Remanded for new retrospective hearing.

***Meraz v. State,***  
**714 S.W.2d 108 (Tex. App. 1986)**

Jury's finding of competency was against the weight of the evidence, where two psychiatrists testified that defendant was incompetent, where defendant had long history of hospitalizations for paranoid schizophrenia and where the only evidence pointing to competence was the psychiatrists' testimony, brought out on cross-examination, that defendant had served successfully in the Marine Corps, that defendant had not been tested for malingering, that defendant had a basic understanding of the courtroom situation, and that one of the psychiatrists had previously thought that defendant was competent.

***Holmes v. State,***  
**494 So.2d 230 (Fla. App. 1986)**

Where expert opinion had been divided at defendant's first competency hearing, it was error for the trial court to fail to conduct a second competency hearing when it became clear that defendant, a seventeen-year-old deaf-mute, was unable to answer questions on the stand that were crucial to his defense.

***People v. O'Reilly,***  
**125 A.D.2d 979, 510 N.Y.S.2d 375 (N.Y. App. Div. 1986)**

Under state law, trial court should have conducted a competency hearing once it received conflicting psychiatric reports.

***People v. Powell,***  
**225 Cal.Rptr. 703 (Cal. App. 1986)**

When presented with expert testimony that pro se defendant's recent psychotic break rendered him incapable of assisting in his defense, trial court should have appointed defendant an attorney to aid in determining whether a competency hearing was necessary.

***State v. Haun,***  
**695 S.W.2d 546 (Tenn. Crim. App. 1985)**

Trial court should have held competency hearing sua sponte, where trial counsel informed the court that they were unable to communicate with defendant and where trial court was aware of defendant's long history of mental illness and recent diagnosis as a suicide risk.

***People v. Christopher,***  
**482 N.E.2d 45 (N.Y. 1985)**

It was a violation of state statute for the trial court to limit testimony at a competency hearing to that of the state mental health evaluator who reported that defendant's competency had been restored and to refuse to hear expert testimony offered by the defense. Remanded for retrospective hearing.

***People v. Brown,***  
**476 N.E.2d 469 (Ill. App. 1985)**

There were sufficient indicia of defendant's incompetence that trial court should have made a formal finding as to whether there was a bona fide doubt about defendant's competency, where trial counsel alerted the court that defendant was uncooperative and irrational and where defendant was recently ruled incompetent in an unrelated

proceeding. Remanded for finding as to whether there existed a bona fide doubt.

***W.S.L. v. State,***  
**470 So.2d 828 (Fla. App. 1985)**

Trial court improperly denied motion for competency hearing, where defendant was nine-years-old and where psychologist reported that because of his age and intellect defendant could not understand the proceedings or assist in his defense. Remanded for determination whether retrospective hearing is feasible. On appeal, the Florida Supreme Court held that a retrospective hearing would not protect the defendant's due process rights and reversed the conviction. *State v. W.S.L.*, 485 So.2d 421 (Fla. 1986).

***People v. Arnold,***  
**113 A.D.2d 101, 495 N.Y.S.2d 537 (N.Y. App. Div. 1985)**

It was an abuse of discretion to deny competency hearing, where trial court was aware that defendant was epileptic and alcoholic, had suffered a severe head injury, exhibited symptoms of psychosis, had a long history of psychiatric hospitalizations, had experienced trance-like spells, and was visibly shaking in the courtroom. Remanded for determination whether there exist psychiatric reports contemporaneous with defendant's trial, thus making a retrospective hearing possible.

***Gibson v. State,***  
**474 So.2d 1183 (Fla. 1985) (per curiam)**

Given that defendant had previously been adjudicated incompetent, the trial court erred in making a finding of competency on the basis of past medical reports and personal observations rather than taking testimony at a hearing.

***Hill v. State,***  
**473 So.2d 1253 (Fla. 1985)**

Failure to conduct a competency hearing deprived defendant of his due process rights, where evidence indicated that defendant suffered from grand mal epileptic seizures, was mentally retarded, had speech and communication problems, took blame for things he did not do, was referred for psychiatric evaluation by the jail, had severe memory deficits, and exhibited inappropriate courtroom behavior. Furthermore, in denying motion for a competency hearing, trial court erred in refusing to consider the testimony of anyone other than defense counsel based on the court's erroneous view that competence is a judgment call for the lawyer.

***People v. Lowe,***  
**109 A.D.2d 300, 491 N.Y.S.2d 529 (N.Y. App. Div. 1985)**

Defendant was denied a full and fair determination of his competency, where, contrary to statute, only one psychiatrist was appointed to examine defendant, where psychiatrist's report was a conclusory finding of competency without the supporting information required by statute, and where the psychiatrist may not have met the statutory guidelines for an expert. A retrospective hearing would not be possible because of the passage of time and because defendant was absent during much of the trial.

***People v. Johnson,***  
**460 N.E.2d 336 (Ill. App. 1984)**

Trial court should have held competency hearing, where trial counsel alerted court that defendant refused to cooperate in his defense and that defendant had been found incompetent by a mental health expert, where defendant exhibited paranoid and often disruptive behavior in the courtroom and tried to commit suicide while awaiting trial, and where trial court ordered evaluation of defendant's fitness to be sentenced. Passage of time made retrospective hearing unfeasible.

***Commonwealth v. Crowley,***  
**471 N.E.2d 353 (Mass. 1984)**

Defendant was prejudiced when trial court placed on defendant the burden of proving his incompetency, where two experts agreed that defendant was a chronic paranoid schizophrenic, one of the experts testified that defendant was competent but could assist counsel only with great difficulty, the other expert testified that defendant was incompetent, and defense counsel testified that defendant was uncommunicative. Remanded for a retrospective hearing at which the state must prove competence by a preponderance of the evidence. **Note:** this holding may not survive the U.S. Supreme Court's decision in *Medina v. California*, 112 S.Ct. 2573 (1992) that it is not unconstitutional to place the burden of proof on the defendant in a competency proceeding.

***Williams v. State,***  
**663 S.W.2d 832 (Tex. Crim. App. 1984)**

Resolving a point of confusion in state law, the court determined that one standard -- "there is evidence to support a finding of incompetency" -- should trigger a competency hearing no matter what the stage of the trial proceedings. Remanded to lower court for reinstatement of relief. In *Williams v. State*, 628 S.W.2d 848 (Tex.App. 1982), the appellate court ruled that defendant presented more than a scintilla of evidence of incompetency and therefore was entitled to a post-verdict competency hearing, where

testimony indicated that defendant suffered from brain damage and scored low on several tests of mental ability. Remanded for retrospective hearing.

***Lindsey v. State,***  
**314 S.E.2d 881 (Ga. 1984)**

Trial court erred in granting state's motion for a directed verdict on the issue of competency. It cannot be said that the evidence demanded a finding of competency where the sheriff testified that defendant was competent but other evidence established that he had been committed on several occasions with diagnoses of paranoia, paranoid schizophrenia and psychosis, that he refused to cooperate with his attorneys or court-appointed mental health evaluators and that he appeared to have no reaction to important news about the trial at which his life was at stake. Remanded for a new jury trial on competency if the state proves that a retrospective hearing is feasible.

***Pipken v. State,***  
**671 S.W.2d 626 (Tex. App. 1984)**

Trial court erred in failing to hold competency hearing, where court-appointed psychologist had twice found defendant incompetent and where probation officer informed court that defendant was incompetent to abide by the terms of his probation. Remanded for retrospective hearing if feasible.

***State v. Howard,***  
**668 S.W.2d 191 (Mo. App. 1984)**

Trial court erred in not holding a competency hearing, where trial counsel (later stand-by counsel) reported that defendant refused to cooperate in his defense unless counsel took FBI polygraph exam, where court was aware that defendant thought that court and counsel were part of a conspiracy against him, and where court on several occasions let stand-by counsel present evidence over defendant's objections because the court doubted that defendant was acting rationally.

***Poynter v. State,***  
**443 So.2d 219 (Fla. App. 1984)**

Trial court's finding of competency was against the weight of the evidence, where sole evidence was the transcript of a prior hearing, admitted into evidence by stipulation, at which all three experts had agreed that defendant was incompetent and where there was no evidence of competency on the record.

***People v. Arcadie,***  
**692 P.2d 1145 (Colo. App. 1984)**

Once trial counsel voiced his misgivings about defendant's competency, trial court violated state law in failing to make a preliminary finding as to competency.

***Rowell v. State,***  
**676 P.2d 268 (Okla. Crim. App. 1984)**

Once the trial court made a finding that there was doubt about defendant's competency and ordered an evaluation, it was error under state law to deny defendant's motion for a hearing. Remanded for retrospective hearing.

***People v. Matthews,***  
**662 P.2d 1108 (Colo. App. 1983)**

Defendant's due process rights were violated when the trial court failed to follow statutory procedures designed to give the defense notice of a preliminary finding of competency and the opportunity to rebut the preliminary finding.

***State v. Davis,***  
**466 N.E.2d 572 (Ohio App. 1983)**

It was error for trial court to allow defendant who had been committed as unrestorably incompetent to be reindicted based on the hearsay testimony of the prosecutor that the hospital had informed him that defendant would soon be given voluntary status and thus might be able to release himself.

***People v. Harris,***  
**447 N.E.2d 941 (Ill. App. 1983)**

Trial court erred in failing to conduct hearing on defendant's competency to have stood trial upon learning, prior to sentencing, that defendant had history of psychiatric hospitalizations, had recently attempted suicide and had failed to obtain treatment that was the condition of his release on an earlier conviction. Trial judge's death made a meaningful retrospective hearing impossible.

***Smith v. State,***  
**443 N.E.2d 1187 (Ind. 1983)**

It was a violation of state law for court to rule on defendant's competency without having appointed two psychiatrists to examine him and without hearing their testimony. Remanded for retrospective hearing.

***State v. Lee,***  
**660 S.W.2d 394 (Mo. App. 1983)**

Ordering a competency evaluation does not necessarily indicate that a trial court has a bona fide doubt as to competency. Under state law, however, defendant may trigger a hearing if he challenges an unfavorable evaluation and requests the appointment of an independent expert. The record below does not indicate whether defendant knowingly waived his right to such an expert. Remanded for competency hearing unless defendant waives his right to an independent expert.

***Kothman v. State,***  
**442 So.2d 357 (Fla. App. 1983)**

Trial court should have granted motion for competency hearing in light of testimony by defendant's physician that defendant was not in command of his faculties, had memory deficits, suffered blackouts from alcoholism, and was in need of detoxification.

***Ex parte LaFlore,***  
**445 So.2d 932 (Ala. 1983) (interlocutory appeal)**

The intermediate appellate court erred in issuing a writ of mandamus preventing the trial court from holding a jury trial on the issue of competency. State statute denying such a trial to a person not presently in custody (defendant was out on bond) does not comport with due process requirements.

***Trucci v. State,***  
**438 So.2d 396 (Fla. App. 1983)**

Trial court's finding of competency was against the weight of the evidence, where defendant had been treated for chronic schizophrenia for many years, was on military disability, acted in a bizarre manner during the instant offense, and had a bizarre recollection of the offense, and where psychologist reported that defendant had disoriented thinking, memory impairment, delusions, depressive mood and was incompetent. Trial court erred in disregarding this uncontroverted evidence and basing its finding solely on another psychologist's fill-in-the-blanks intake form that was never properly admitted into evidence.

***State v. Bertrand,***  
**465 A.2d 912 (N.H. 1983)**

Trial court should have sua sponte suspended proceedings and ordered a competency hearing after defendant took the stand and testified first that he had set a fire by accident and then stated that he had set it deliberately. Defendant had been hospitalized on 12

occasions for mental illness, and although two psychiatrists had found him to be competent, one of the psychiatrists had warned that defendant had a history of claiming responsibility for offenses that he did not commit. Trial court's sentencing recommendation that defendant be hospitalized indicates that the court did in fact entertain a bona fide doubt as to competency.

***People v. Grisset,***  
**118 Misc.2d 450, 460 N.Y.S.2d 987 (N.Y. Sup. 1983)**

State failed to prove defendant's competency by a preponderance of the evidence, where expert opinion was divided and where trial court's voir dire of defendant revealed that he was disoriented as to time, did not know how long he had been confined, could not remember his attorney's name, and did not know what an Assistant District Attorney was.

***People v. Stankewitz,***  
**648 P.2d 578 (Cal. 1982)**

Trial court erred in failing to conduct a competency hearing, where defense counsel voiced doubts about defendant's competency, where a psychiatrist testified that defendant's delusional and paranoid thoughts prevented him from cooperating in the conduct of his defense, and where defendant's colloquy with the court tended to contradict the court's view that defendant merely had a conflict with the particular attorney he was assigned. Reversal was required, since the trial court had no power to proceed once there arose a doubt as to competency.

***Futch v. State,***  
**632 S.W.2d 743 (Tex. Crim. App. 1982)**

In overruling defense motion for competency hearing, trial court improperly weighed evidence both for and against a finding of incompetency. Under state law, a hearing is mandatory when the evidence of incompetence, considered by itself, is greater than a scintilla. That standard was met where defendant had been declared insane on four occasions, had previously been adjudicated incompetent and had been diagnosed as a severely psychotic chronic schizophrenic. Remanded for a retrospective hearing if feasible.

***Hollis v. State,***  
**633 S.W.2d 947 (Tex. App. 1982)**

Defendant was denied a fair trial on the issue of competency when trial court allowed prosecution to introduce evidence as to defendant's guilt of the charge. Remanded for retrospective hearing.

***Baker v. State,***  
**297 S.E.2d 9 (Ga. 1982)**

Even if defense counsel had failed to follow local rules as to the filing of an incompetency motion, trial court still had a constitutional duty to hold a competency hearing when defense counsel brought to the court's attention a psychiatrist's finding that defendant was incompetent. Remanded for a competency hearing if the state proves that a meaningful retrospective hearing is possible.

***People v. McCabe,***  
**87 A.D.2d 852, 449 N.Y.S.2d 245 (N.Y. App. Div. 1982)**

Trial court should not have permitted defendant to plead guilty without first conducting a competency hearing, where two psychiatrists had reported that defendant was schizophrenic and incompetent, notwithstanding that defense counsel agreed not to dispute the finding of a third psychiatrist that defendant was malingering. Remanded for retrospective hearing.

***Ex parte Turner,***  
**626 S.W.2d 785 (Tex. Crim. App. 1982)**

Petitioner's conviction was fundamentally defective in that trial court submitted question of competency to the same jury that ruled on guilt.

***People v. T.D.W.,***  
**441 N.E.2d 155 (Ill. App. 1982)**

Where trial court ordered a psychiatric evaluation and a fitness hearing, thus indicating the existence of a bona fide doubt as to competency, it was error to rule on competency without holding the hearing. Defendant was given no opportunity to cross examine the experts upon whose reports the court based its finding of competency.

***People v. Stribling,***  
**433 N.E.2d 967 (Ill. App. 1982)**

Trial court should have ordered competency hearing, where court was aware that defendant had been adjudicated incompetent (though later restored) in an unrelated proceeding, where defendant claimed his attorney was part of a conspiracy against him, and where defendant's pro se representation at trial and on appeal gave indications, including paranoid ramblings, that he was unable to assist in his defense.

***State v. McGee,***  
**289 S.E.2d 616 (N.C. App. 1982)**

Trial court erred in relying on its earlier adjudication of competency in dismissing a defense motion for a competency hearing where the trial court itself had re-opened the issue by committing defendant for further evaluation following the earlier adjudication.

***State v. Rogers,***  
**419 So.2d 840 (La. 1982) (interlocutory appeal)**

Trial court's finding of competency was clearly erroneous, where two psychiatrists determined after extensive testing that defendant was severely mentally retarded and unable to understand the proceedings against him and where a third psychiatrist based his finding of competency on defendant's ability to recall certain basic facts such as his street number, conducted no psychological testing, and hedged his opinion by stating he had reached no conclusion about competency, only about defendant's ability to assist his attorney.

***People v. Jackson,***  
**88 A.D.2d 604, 449 N.Y.S.2d 759 (N.Y. App. Div. 1982)**

Where defendant's first trial had ended in a mistrial because he couldn't hear the proceedings, trial court should have suspended second trial for further inquiry when it became clear that defendant was having difficulty hearing.

***People v. Samuel,***  
**629 P.2d 485 (Cal. 1981)**

There was insufficient evidence to support the jury's finding of competency, where each of the several experts agreed that defendant was severely disturbed and incompetent and where the state presented only two lay witnesses who testified as to defendant's ability to perform such basic functions as walking and talking.

***People v. Greene,***  
**430 N.E.2d 219 (Ill. App. 1981)**

Inasmuch as the trial court had previously adjudicated defendant incompetent, it was error to proceed to trial based on the stipulation of the parties that defendant had been restored to competency. Remanded for formal hearing and adjudication.

***State v. Blair,***  
**273 S.E.2d 536 (S.C. 1981)**

Trial court was required by state statute and the federal Constitution to hold a competency hearing once the court ordered a psychiatric evaluation on the issue of competency, even

though the evaluator reported that defendant was competent to stand trial. Failure to make a request does not waive the defendant's right to such a hearing. Remanded for retrospective competency hearing.

***Bayramoglu v. Superior Court,***  
**176 Cal.Rptr. 487 (Cal. App. 1981)**

Even though a jury had recently found defendant competent to stand trial, it was error for the trial court to deny a hearing on defendant's claim that he had been incompetent at his preliminary hearing some five months earlier. At preliminary hearing, defendant's behavior was aberrant and disruptive, and defendant stated that he did not want to live; furthermore, there was expert testimony that defendant was psychotic following the offense and that his competence might be intermittent. Remanded for a hearing.

***State v. Green,***  
**395 So.2d 532 (Fla. 1981)**

Trial court should have granted hearing on defendant's motion to exclude electronic media from the courtroom, where trial counsel notified court that defendant's personal psychiatrist and a court-appointed psychiatrist who had earlier certified defendant as restored to competency both warned that the presence of electronic media would heighten defendant's anxiety and depression and interfere with her ability to assist counsel.

***People v. Sundberg,***  
**177 Cal.Rptr. 734 (Cal. App. 1981)**

Although five experts reported prior to trial that defendant was competent, trial court should have held a hearing when it became evident during the course of the trial that defendant might not be competent. Defendant had been adjudicated incompetent at an earlier stage of the proceedings, was diagnosed as schizophrenic by the experts who examined him, claimed that there was a conspiracy to deny him his rights as the heir to J. Paul Getty, laughed and otherwise acted inappropriately in the courtroom, gave signs of delusional thinking on the stand and in his colloquies with the court and, near the end of trial, was diagnosed as incompetent by one of the experts who had previously found him competent.

***Jones v. District Court,***  
**617 P.2d 803 (Colo. 1980) (en banc) (interlocutory appeal)**

Where defense counsel notified trial court that he perceived a deterioration in defendant's condition, it was error for the trial court to fail to suspend a hearing on pretrial motions, order a psychiatric evaluation and a hearing, and give the defense an opportunity to rebut the court's preliminary finding of competence.

***People v. Davenport,***  
**416 N.E.2d 17 (Ill. App. 1980)**

Trial court should have ordered competency hearing, where defendant had undergone a long psychiatric hospitalization since he was last found competent, where defendant had previously been diagnosed as paranoid schizophrenic, where trial counsel alerted the court that defendant was unable to communicate with him, and where defendant's own efforts at self-representation indicate that he was not in touch with reality. Remanded for retrospective hearing.

***Garcia v. State,***  
**595 S.W.2d 538 (Tex. Crim. App. 1980)**

Trial court erred in relying on a psychiatric report that was never admitted into evidence in denying a motion for a jury trial on competency. Putting aside that report, there was sufficient evidence of incompetency to merit a jury trial, where defendant's mother and wife testified that defendant was behaving much as he had when previously hospitalized for a nervous breakdown, where trial counsel and a clergyman testified that defendant believed he could open jailhouse doors with magic knots, where several witnesses testified as to their difficulties communicating with defendant, and where the only properly admitted evidence of competency was the testimony of a jailer who had never conversed with defendant. Remanded for retrospective hearing.

***People v. James,***  
**404 N.E.2d 1088 (Ill. App. 1980)**

Trial court should have held a competency hearing when the court itself noted that defendant did not appear to understand what he would be giving up by pleading guilty at a hearing on revocation of probation. Because defendant's confusion may have been the cause of his failure to enter a valid plea, the reviewing court remanded to give the defendant the opportunity to uphold his end of the plea bargain he had struck with the prosecution; a competency hearing would not be necessary unless the court presiding over the new plea conference had a bona fide doubt about defendant's competence.

***Callaway v. State,***  
**594 S.W.2d 440 (Tex. Crim. App. 1980)**

Defendant was denied a fair jury trial on competence, where prosecution and prosecution experts repeatedly drew attention to the criminal charges against defendant as well as extraneous offenses and suggested he would go free if found incompetent or would escape from a mental health facility. Remanded for retrospective hearing.

***Sisco v. State,***  
**599 S.W.2d 607 (Tex. Crim. App. 1980)**

Trial court should not have weighed the evidence for and against competency when ruling on whether on whether a jury trial on competency is merited. Proper procedure is to ignore all evidence of competency and examine whether there is more than a scintilla of evidence that rationally could lead to a finding of competency. Remand for determination whether defendant met that standard.

***People v. Turner,***  
**410 N.E.2d 1151 (Ill. App. 1980)**

When trial court ruled, at the close of the state's evidence, that defendant had become incompetent to proceed further, it was a denial of due process not to inquire whether defendant had been competent during the prior course of the trial.

***People v. Williams,***  
**409 N.E.2d 439 (Ill. App. 1980)**

Trial court's finding of fitness was against the manifest weight of the evidence, where two court-appointed experts testified that defendant's memory defects and psychotic symptoms rendered him unable to assist in his defense and where the only evidence of competence was the court's brief exchanges of casual conversation with defendant.

***People v. Teague,***  
**404 N.E.2d 1054 (Ill. App. 1980)**

Petitioner was denied due process when trial court, having entertained a bona fide doubt about petitioner's competence based on defense counsel's representations, vacated its order for a competency hearing. The passage of time made a meaningful retrospective hearing impossible.

***State v. Moon,***  
**602 S.W.2d 828 (Mo. App. 1980)**

Trial court erred in not ordering competency hearing sua sponte, where defendant entered plea of not guilty by reason of insanity, court was aware of defendant's prior commitments to mental institutions, defendant gave inappropriate responses on the witness stand, and defendant's behavior during the instant offense, as well as earlier crimes, was bizarre.

***Williams v. State,***  
**386 So.2d 506 (Ala. Crim. App. 1980)**

Although hospital had discharged defendant as restored to competency, the trial court should have held a second competency hearing in light of evidence that defendant was behaving in a bizarre manner following his discharge. Trial court was aware that defendant had run out of medication prescribed by the hospital, had been observed to eat off the floor, drink out of a commode, and set fire to his cell and that the sheriff and defendant's guardian saw defendant's condition deteriorate.

***Alexander v. State,***  
**380 So.2d 1188 (Fla. App. 1980)**

Although not aware that defendant had previously been adjudicated incompetent and thus was under a continuing presumption of incompetence, trial court nonetheless had reasonable doubt as to defendant's competency, as evidenced by its appointment of two psychiatrists, and should have held a hearing and made a formal determination, even though trial counsel waived the hearing after the psychiatrists reported that defendant was competent. Trial counsel's waiver would not bar defendant's appeal, inasmuch as one who is presumed incompetent cannot waive his right to a hearing.

***State v. Williams,***  
**381 So.2d 439 (La. 1980)**

Trial court's finding of competency was against the weight of the evidence, where both court-appointed psychiatrists agreed that defendant was mentally retarded, had a low tolerance for stress, a speech impediment, and an impaired ability to concentrate and communicate.

***State v. Khan,***  
**417 A.2d 585 (N.J. Super. App. Div. 1980) (interlocutory appeal)**

Although the trial court's finding of competency was not without support in the record, the reviewing court remanded for a new hearing, apparently out of an abundance of caution. Doubts about defendant's competency were raised by his diagnosis of schizophrenia, by the conflicting competency holding of different judges within a short span of time, by the fact that two-years had elapsed since the last medical testimony, by testimony indicating that defendant might not have been taking necessary medication, and by defendant's refusal to allow his attorney to present an insanity defense, notwithstanding that his claim of self-defense rested on the delusional belief that the victim was part of a conspiracy against him.

***People v. Charette,***  
**78 A.D.2d 567, 431 N.Y.S.2d 733 (N.Y. App. Div. 1980)**

Where trial court held statutorily mandated hearing after receiving conflicting reports from two experts, but then ordered further evaluation by a third expert, it was error to make a determination of competency based on the third expert's report without re-opening the hearing so that defendant could conduct cross-examination.

***State v. Sena,***  
**594 P.2d 336 (N.M. App. 1979)**

A doubt as to defendant's competency at the time of his trial and sentencing was raised by a pre-sentencing psychiatric evaluation that found defendant to be schizophrenic, overtly psychotic, delusional and possibly organically impaired, and that recommended that defendant be committed to a hospital for treatment; trial court should have ordered a hearing sua sponte.

***People v. Arias,***  
**71 A.D.2d 551, 418 N.Y.S.2d 75 (N.Y. App. Div. 1979)**

Trial court should have conducted hearing on defendant's fitness at the time he stood trial and on his present fitness to be sentenced, where prior to sentencing defendant was committed to a psychiatric hospital as a dangerous incapacitated person and where two experts subsequently found defendant incompetent to stand trial. Remanded for retrospective hearing.

***State v. Coco,***  
**371 So.2d 803 (La. 1979) (interlocutory appeal)**

Trial court decided the issue of mental competency prematurely, where experts had not yet had time to assess whether defendant was rendered incompetent by his mental retardation and epileptic seizures or whether defendant's seizures and the attendant memory lapses could be brought under control by medication. Remanded for new hearing.

***Commonwealth v. Rise,***  
**386 N.E.2d 745 (Mass. App. 1979)**

Where psychiatrist testified a week before trial that defendant's continued drug use rendered him unfit to stand trial and predicted that defendant might be competent after a week of detoxification, it was error for the court to proceed to trial without holding a competency hearing. Since the record contained no information about defendant's condition on the day of trial, a retrospective hearing would not be possible.

***Ex parte Johnston,***  
**587 S.W.2d 163 (Tex. Crim. App. 1979) (en banc)**

Trial court erred in submitting the question of petitioner's present sanity to the same jury that ruled on guilt. That the trial court had a bona fide doubt as to petitioner's competency is demonstrated by the court's submission to the jury of an instruction to acquit if they found petitioner incompetent, by the trial court's own findings of fact on habeas review, and by the extensive trial testimony as to petitioner's diagnosis of schizophrenia and long history of mental difficulties. Trial court also erred in instructing jury to apply the M'Naghten standard to assess competency.

***Ex parte Locklin,***  
**583 S.W.2d 787 (Tex. Crim. App. 1979) (en banc)**

Trial court's submission of the question of petitioner's competence to the guilt/innocence jury indicated that the court had a bona fide doubt as to competence. Petitioner's due process rights were violated when the trial court failed to convene a separate jury on the issue of competency and when it instructed the jury to apply the M'Naghten standard to assess competency. These violations are not waivable. A retrospective hearing would not be adequate inasmuch as the jury's consideration of the competency issue may have infected its guilt/innocence deliberations.

***State v. Hamilton,***  
**373 So.2d 179 (La. 1979) (interlocutory appeal)**

Trial court's finding of competency was an abuse of discretion, where competency hearing was focused almost exclusively on defendant's ability to distinguish right from wrong, where the finding of one psychiatrist that defendant was competent and only mildly mentally retarded was supported by only a 20-minute interview, and where the conclusion of another psychiatrist that defendant was moderately to severely mentally retarded, possibly brain damaged, unable to understand the meaning of words such as "rape," and unable to assist counsel was supported by an interview of over an hour and by the written reports of psychiatrists who had examined defendant in the past.

***State v. Morris,***  
**590 P.2d 480 (Ariz. App. 1979)**

Trial court should have had doubt about defendant's competency to plead guilty and therefore should have ordered competency hearing when the court learned through a pre-sentencing evaluation that defendant had suffered brain damage resulting in post-traumatic brain syndrome, with a resultant impulsivity and loss of inhibition. Remanded for retrospective hearing.

***Commonwealth v. Hill,***  
**375 N.E.2d 1168 (Mass. 1978)**

Trial court should have held competency hearing, where two psychiatrists who testified in support of insanity defense stated that defendant was paranoid schizophrenic and one of the psychiatrists testified that defendant was incompetent to stand trial, where records of defendant's hospitalizations indicated that his problems were of long standing, where evaluator who found defendant competent prior to trial nonetheless recommended that he receive continued treatment for schizophrenia, and where defendant was later found incompetent to be sentenced.

***People v. Hancock,***  
**375 N.E.2d 909 (Ill. App. 1978)**

Defendant was prejudiced when the trial court unconstitutionally placed on him the burden of proving his incompetence; the evidence for and against competency was close, with one psychiatrist on each side of the question. Remanded for retrospective hearing. **Note:** This holding relies on the view, later repudiated by the U.S. Supreme Court in *Medina v. California*, 112 S.Ct. 2572 (1992), that it is unconstitutional to place the burden of proving incompetence on the defendant.

***People v. Jackson,***  
**373 N.E.2d 583 (Ill. App. 1978)**

Trial court erred in pronouncing sentence without holding a hearing on defendant's competence to be sentenced. After defendant's conviction, the trial court itself expressed doubts about defendant's competence to be sentenced and ordered a psychiatric evaluation that was never completed. Furthermore, the court was aware that at the time of sentencing defendant was not receiving medications that a psychiatrist had previously testified were necessary if defendant was to remain competent. Remanded for resentencing.

***Ex parte Long,***  
**564 S.W.2d 760 (Tex. Crim. App. 1978) (en banc)**

Trial court should have sua sponte ordered a separate competency hearing where several lay people testified as to petitioner's history of mental illness, his childhood head injury and his odd behavior and where hospital records indicated that he was severely disturbed though not insane, even though two mental health experts testified that petitioner was competent. That trial court entertained bona fide doubt as to petitioner's competency is strongly suggested by his submission of the competency issue to the convicting jury. Trial court also erred in instructing jury to follow the M'Naghten standard to determine competency.

***State v. Santillanes,***  
**580 P.2d 489 (N.M. App. 1978)**

Given that defendant had been previously adjudicated incompetent, the burden then shifted on the state to overcome defendant's presumption of incompetence; hence, it was fundamentally unfair for the trial court to instruct the competency jury that defendant bore the burden of proof.

***State v. Wright,***  
**575 P.2d 740 (Wash. App. 1978)**

A remand for a retrospective hearing was appropriate where new information that was not available to the trial court, including evidence that defendant suffered a psychotic break, indicated that defendant might have been incompetent at the time of his sentencing. Though seven years had passed, the existence of contemporaneous psychiatric records made a retrospective hearing feasible.

***Hayden v. Commonwealth,***  
**563 S.W.2d 720 (Ky. 1978)**

Trial court should have held competency hearing, where trial counsel notified court of his doubts regarding defendant's competency, psychologist reported that defendant suffered from schizophrenia, and psychiatrist reported that defendant would be able to assist at trial only if ideas were presented to him in a very simple and concrete form. Reviewing court would have preferred to remand for a retrospective hearing, but felt that a new trial was dictated by the U.S. Supreme Court's decisions in Robinson and Drope.

***Barr v. State,***  
**359 So.2d 334 (Miss. 1978)**

Under state law, when there is a reasonable probability that defendant is unfit to stand trial the court must hold a jury trial on the issue. There was a reasonable probability, where one court-appointed psychiatrist diagnosed defendant as schizophrenic and presently insane and where the staff of a psychiatric hospital that found defendant competent nonetheless variously diagnosed defendant as schizophrenic or as having a paranoid personality. That the trial court in fact entertained some doubt is indicated by the court's decision to hold a bench hearing.

***Miller v. Superior Court,***  
**146 Cal.Rptr. 253 (Cal. App. 1978)**

Because defendant was found unfit to stand trial shortly after his preliminary hearing, it could be inferred that defendant was incompetent during the hearing, and therefore the

information against him should have been dismissed.

***People v. Belanger,***  
**252 N.W.2d 472 (Mich. App. 1977)**

Though trial court had recently adjudicated defendant competent in connection with two charges arising out of the same transaction, it was error not to hold a hearing on defendant's competency with respect to the instant offense but rather to base its decision on a telephone conversation with the examining psychiatrist. Defendant is not entitled to relief unless he can prove, on a motion for a new trial, that he was incompetent in fact at the time of his guilty plea.

***Ex parte Hagans,***  
**558 S.W.2d 457 (Tex. Crim. App. 1977)**

Trial court should have impaneled separate competency jury when several lay and expert witnesses testified that petitioner suffered from brain damage, had a history of psychiatric problems and blackouts, and often had difficulty communicating with others and distinguishing right from wrong. It was error for the trial court to submit the question of competence to the convicting jury and to instruct the jury to apply the M'Naghten standard to assess competency.

***People v. Burnside,***  
**367 N.E.2d 733 (Ill. App. 1977)**

Defendant was denied a fair trial because the trial court failed to halt the proceedings and order a competency hearing as soon as it became evident that defendant might be incompetent. Trial court should have been alerted by defense counsel's pre-trial motion for a competency hearing (notwithstanding that defendant insisted that it be withdrawn), by the expert testimony offered in support of an insanity defense and by the same odd courtroom behavior that led the trial court to order a hearing into defendant's competence to be sentenced.

***Scott v. Commonwealth,***  
**555 S.W.2d 623 (Ky. App. 1977)**

Trial court had doubt as to defendant's competency and therefore should have held a competency hearing inasmuch as in its sentencing order the court recommended that the Department of Corrections conduct a psychiatric evaluation of defendant. The reviewing court appears to have granted a new trial, rather than a retrospective hearing, because of the cumulative effect of this and other errors.

***People v. Boose,***  
**362 N.E.2d 303 (Ill. 1977)**

Defendant was denied a fair jury trial on the issue of his competency when the trial court ordered that defendant remain shackled in the presence of the jury. It was error to order shackling based solely on the seriousness of the charges.

***Crawford v. State,***  
**240 S.E.2d 824 (Ga. 1977)**

During special trial on the issue of competency, trial court erred in allowing the state to cross-examine defense witnesses as to defendant's guilt or innocence of the charges against her; guilt or innocence is irrelevant to the question whether one is fit to stand trial.

***Jones v. State,***  
**372 A.2d 1064 (Md. App. 1977)**

Trial court committed state-law error in basing its finding of competency on psychological reports that were not made part of the record. A remand to permit the trial court to supplement the record would not suffice, in that the failure to properly determine defendant's competency rendered his conviction a nullity.

***State v. Evans,***  
**259 N.W.2d 789 (Iowa 1977)**

Where court appointed expert, though finding defendant competent, reported that he was paranoid schizophrenic with depressive features, where testimony established that defendant was often irrational or uncommunicative and where defendant was civilly committed as mentally ill, trial court should have had a reasonable doubt as to defendant's competency and therefore should have held a jury trial on that issue before accepting defendant's guilty plea.

***People v. McCullum,***  
**362 N.E.2d 307 (Ill. 1977)**

Defendant was denied due process when the trial court placed on him the burden of proving his incompetency.

**Note:** this holding rests on the view, later rejected by the U.S. Supreme Court in *Medina v. California*, 112 S.Ct. 2572 (1992), that it is unconstitutional to place the burden on defendant to prove his incompetence.

***State v. Pierce,***  
**569 P.2d 865 (Ariz. App. 1977)**

Trial court's finding that defendant was competent to plead guilty was not supported by the evidence, where a psychologist's report questioned defendant's reasoning ability, a psychiatrist's report was ambiguous, and where both experts cast doubt on defendant's grasp of reality. Remanded for a retrospective hearing.

***Hayes v. State,***  
**343 So.2d 672 (Fla. App. 1977)**

Having granted a hearing on defendant's fitness to stand trial on new charges, the trial court should not have gone forward with a probation revocation proceeding without conducting a hearing to determine defendant's competency to participate in that proceeding.

***Hill v. State,***  
**369 A.2d 98 (Md. Spec. App. 1977)**

Under state law, a defendant who alleges that he is incompetent is entitled to a hearing on the issue as a matter of right. Thus, it was error for the trial court to refuse to suspend the trial when defendant alleged his incompetency at the close of the state's evidence.

***People v. Salvaggio,***  
**348 N.E.2d 243 (Ill. App. 1976)**

Trial court erred in concluding that sentencing did not require the same level of competency as conviction. Trial court should have ordered a competency hearing, where defense counsel notified the court at the start of the sentencing hearing that defendant was under medication and might not be able to understand the proceedings and where defendant understood only that he was there to go to court and could not remember what sentence was called for by his plea agreement. Remanded for resentencing.

***People v. Chambers,***  
**345 N.E.2d 119 (Ill. App. 1976)**

Trial court should have sua sponte ordered competency hearing, where court was aware that psychiatric reports made in connection with civil commitment proceedings diagnosed defendant as paranoid schizophrenic and recommended that he be committed, where defendant's discharge from civil commitment was not an indication that he met the standards for fitness to stand trial, where defendant's mother testified to defendant's history of mental illness, where defendant's courtroom outbursts and testimony reflected an inability to understand the proceedings or assist counsel and where the trial court

ordered that defendant receive psychiatric treatment as part of his sentence.

***Williams v. State,***  
**543 S.W.2d 385 (Tex. Crim. App. 1976)**

Under then-existing state law, trial court did not have discretion to deny a timely motion for a separate jury trial on the issue of competency.

***State v. Bauer,***  
**245 N.W.2d 848 (Minn. 1976)**

It was error for trial court to deny motion to suspend trial and hold a competency hearing, where public defender notified the court several times that he believed defendant to be competent, where an experienced psychiatrist found defendant incompetent and where an expert who had earlier found defendant competent had also warned that he might regress.

***State v. Milam,***  
**226 S.E.2d 433 (W. Va. 1976)**

Trial court should have granted competency hearing, where one expert reported that defendant was competent but substantially impaired in his ability to recall and discuss both recent and past events and where a second psychiatrist reported that defendant's rational processes were impaired and that he could not assist counsel.

***State v. Rodriquez,***  
**558 P.2d 717 (Ariz. App. 1976)**

There was insufficient evidence to support trial court's finding of competency, where medical reports voiced substantial doubts about defendant's competency and where trial court appeared to base its finding not on record evidence but on its own observations of defendant at a previous trial.

***State v. Carroll,***  
**543 S.W.2d 48 (Mo. App. 1976)**

Under state law, defendant was entitled to a competency hearing once he challenged the results of a court-ordered psychiatric evaluation.

***People v. Matheson,***  
**245 N.W.2d 551 (Mich. 1976)**

Although having earlier ruled, on the basis of a psychiatric report, that defendant was competent, the trial judge should have inquired further before accepting defendant's guilty

plea, where defendant's colloquy responses betrayed confusion, where the circumstances of the offense were bizarre, and where the judge himself expressed doubts about defendant's mental state and recommended that he receive psychiatric treatment in prison.