Evaluating and Restoring Adjudicative Competence in Adults with Intellectual Impairments

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Resources & Handouts

• Kalbeitzer & Benedetti (2009)
  – Assessing CST in MR defendants

• Rogers & Johanssen-Love (2009)
  – Test use in CST evaluation

  – Restoration of CST in MR defendants
Best Practices in Forensic Mental Health Assessment
More Resources

• National Judicial College’s Best Practices Model
  www.MentalCompetency.org

• AAPL Practice Guideline for the Forensic Psychiatric Evaluation of Competence to Stand Trial (2007)
  – Nice summary of relevant legal cases (before Edwards)
  – Delineates 15 areas of inquiry and promotes standardization

• www.concept-ce.com/utah
Training Plan – 2 hours

• Review of Standards for Adjudicative Competence

• Assessing Competency (in Adults with ID)

• Communicating our Opinions

• Restoration (what we know about restoring adults with ID & how our evaluations can guide restoration efforts)
LEGAL STANDARDS FOR COMPETENCE
Relevant Case Law - Standards

• Dusky v. United States (1960)
  – Constitutional Minimum
• Wieter v. Settle (1961)
  – Delineated 8 functional abilities
• Wilson v. United States (1968)
  – Functional and contextual nature of the inquiry
• Drope v. Missouri (1975)
  – “assist in preparing his defense”
• Godinez v. Moran (1993)
  – No higher standard for waiving counsel or pleading guilty; affirms that decision making is part of the competency standard
• Indiana v. Edwards (2008)
  – Higher standard for proceeding pro se
Godinez v. Moran

• Main issue: whether different standards for standing trial, pleading guilty, or waving counsel exist

• Justice Thomas – majority opinion

• Justice Blackmun – dissenting opinion
Implications of *Godinez*

- Majority opinion in *Godinez* appeared to include the defendant’s decision making abilities as being encompassed by *Dusky*
- Concurring opinion suggests that the *Dusky* standard should not be viewed too narrowly
- Commentators have argued that *Godinez* raised the *Dusky* standard to include decision making abilities
Indiana v. Edwards

- The *Edwards* Court considered the issue of whether a state, in the case of a D who meets the *Dusky* standard of CST, can limit the right to self-representation by requiring that D be represented by counsel at trial.

- *Edwards* makes it clear that the standard for competence may indeed vary in certain limited circumstances.

- The *Edwards* court addressed the seeming inconsistency with *Godinez*.
Implications of *Edwards*

- *Edwards* establishes that competence to proceed *pro se* requires a higher level of competence than CST but remains silent on how this should be determined.

- Highlights and underscores the contextual nature of competence and the need for functional evaluation.

• In 1960 and 1975 the Court’s basic definition of competence centered on whether the accused had
  – a combination of situational awareness, and
  – a basic ability to deal with counsel

• In the 1990s/2000s the Court more fully described its view of the ingredients of the necessary interaction between client and lawyer
  – with “the assistance of counsel, the defendant is also called upon to make myriad smaller decisions [than those discussed in the basic competence definitions] concerning the course of his defense” –Cooper v. Oklahoma
Current Standards for Competence

• U.S. Supreme Court cases from the 1990s/2000s are an important part of the current definition of competence
  • This becomes clear upon review of secondary sources (ABA National Benchbook)
  • State courts have acknowledged that controlling case law from the U.S. Supreme Court must guide the review of competence inquiries at the trial level (People v. Jones)

• Philipsborn warns that other sources of standards have not kept up (such as state statutes)
  • “These statutory definitions exemplify part of the problem—understanding competence to stand trial requires understanding all currently applicable law and is beyond any one basic local statutory source”
KEEP EVOLVING STANDARDS WITHIN SIGHT
Rational Decision Making

• Crux of competency (of all types)
  – Various criminal competencies
  – Medical treatment / treatment refusal
  – Research participation
  – Informed consent
  – End of life decision making
    • Physician assisted suicide (Oregon)
  – Various capacities for older adults
    • Testamentary, financial, contractual, etc.
Common Abilities

• Various literatures in all the relevant areas show incredible consistency with respect to the abilities implicated in competency
  – Criminal competencies literatures lag behind
  – Typically do not draw from other literatures; lack the breadth of understanding that is possible by doing so

• A broader understanding of these various literatures is key to being able to conceptualize grey-area cases
Rational Decision-Making Approach

• A robust conception of adjudicative competence that gives meaning to the *Dusky* standard must ask whether a criminal defendant has the capacity to participate meaningfully in the host of decisions potentially required of her
  – Sound assessment of such capacity requires careful attention to both the cognitive and emotional influences on rational decision-making
• Rational decision-making approach provides a model for the conceptualization and assessment of competency (especially in grey-area cases)
Decision-Making Processes

• The components of the decision-making process include:
  – Understanding the relevant information
    • Including accurate perception of the information
  – Assessing the information and forming appropriate beliefs about it with respect to personal involvement
  – Reasoning about the information so as to engage in a logical process of weighing options in light of personally relevant goals
  – Expressing conclusions to others in a coherent and consistent manner

• Cognition or Emotion can impact any of these component processes
Rational Decision-Making Approach

- *Dusky* standard embraces a requirement of “decisional competence”
  - Ability to make, communicate, and implement minimally rational and self-protective choices within the unique context of the criminal case

- Fine-grained analysis of competence will seek to articulate precisely where in the decision-making process the D has gone astray and explain why those defects implicate the ability to represent one’s own interests within a criminal proceeding
FOCUS ON RATIONAL DECISION MAKING
ASSESSING COMPETENCY IN ADULTS WITH INTELLECTUAL DISABILITY
Competency Evaluation

• Data sources:
  – Interview
  – Testing
  – Collateral information
Nature of Competency Evaluation

• Open-Textured
  – Court decisions make clear that competency has evolved
  – w/ emphasis on decision making & rational abilities
• Contextual
  – Underscores the importance of knowing what you need to evaluate against (criterion)
• Functional
  – We evaluate a defendant’s abilities within the context of a clinical interview and extrapolate to the legal proceedings
Context Matters

• Evaluator’s role is to describe for the court the degree of congruence/incongruence between the defendant’s functional abilities and the abilities required of the defendant to proceed with his/her case.

• Competency cannot really be assessed independent of the context of the case.
  – Need to find out as much as possible about what is expected of the defendant for his/her particular case.
Grisso (2003): Trial Demands

• To evaluate CST within the context of the specific defendant’s case, evaluators must be knowledgeable regarding:
  – complexity and multiplicity of charges
  – particular events associated with the alleged offense
  – range of possible penalties for this alleged offense, and probabilities of their occurrence
  – range and types of evidence available to counsel without defendant’s report
  – simplicity or complexity of the legal defenses available
  – necessity for defendant’s own testimony at trial
  – probable length of trial
  – probable complexity of trial (e.g., types and numbers of witnesses)
  – potential of trial to arouse emotion
  – sources of social support for defendant during trial process
“It is both interesting and somewhat alarming to note that some leading secondary sources omit discussion of how a competence examination is to be undertaken if the expert has incomplete knowledge of the breadth of defenses to the charges, possible penalty phase mitigating and aggravating circumstances, or how these might be presented in the case at issue. This kind of practical knowledge would appear to be necessary.”
Philipsborn (2004)

• Indicates that some court decisions suggest that it is incumbent on defense counsel to seek out the expert to relay this pertinent and relevant information about the case and abilities required of the accused, rather than wait for the expert to seek out defense counsel on these matters.

• *Duhon*: “one of the most evident issues is whether the assessing professional, usually a psychiatrist or psychologist, really knows what would go into the defense of a case”
  
  – Expert and lawyer need to work together to ensure that the expert has a full understanding of the case and the abilities to be evaluated in the particular defendant.
SEEK OUT RELEVANT / PERTINENT INFO ABOUT THE PROCEEDINGS
Attorney CST Questionnaire
Interview: Functional Evaluation

• Evaluate the ability of the D to perform specific tasks at trial by engaging in those tasks during the interview
  – Discuss the specific nature of D’s case
  – Engage the D in discussions that allow the assessment of rational decision making abilities

• Observe interactions between defense counsel and D
  – Ask defense counsel to discuss possible case strategies, pleas, consequences, outcomes, etc. (decision making)
Testing in CST Evaluations

• Forensic Assessment Instruments
  • Standardize the assessment process
  • Reduce error and bias
  • Promote meaningful comparisons across time
  • Allow for comparisons between examiners
  • Help to improve communication in legal settings

• Evaluators are being encouraged to use CAIs and are increasingly being questioned about their rationale for choosing not to do so
Evidence-Based Practice


- Integration of clinical interviews w/ standardized measures
  - Embraced by AAPL Guidelines & Best Practices in CST Evaluation
- “Evidence-based practice cannot be achieved without standardization” (p. 453)
- Using reliable & valid measures is the most direct and empirically-defensible method of achieving standardization
  - Systematize evaluation of key points, reduces subjectivity in recording CST-related info, provides normative comparisons, allows for demonstration of IRR for observations and findings
Testing

• Select tests on the basis of the information they provide
  – Consider how well D fits with standardization samples
  – Consider the limitations of the instrument for this D
• Expert should be familiar with the psychometric properties of any test/instruments they use
  – Reliability, validity, standardization/norming samples
  – Easy target of inquiry for cross-examination
Competence Assessment Instruments

• Idiographic
  – IFI-R (Golding, 1993)
  – FIT-R (Roesch, Zapf, & Eaves, 2006)

• Nomothetic
  – MacCAT-CA (Poythress et al., 1999)
  – ECST-R (Rogers, Tillbrook, & Sewell, 2004)

• Special Populations
  – CAST*MR (Everington & Luckasson, 1992)
A Note About the CAST*MR

• Be cautious about using this instrument
• Ceilings out at about IQ = 75
• Over-classes as competent
• Limits the need for expressive abilities (ecological validity)
• Requires a full year of specialized work with MR individuals
• Might provide some useful “normative” data for those with IDD only (no co-occurring mental disorder)
• Better to evaluate against a common, albeit contextual standard
  – ECST-R useful to IQ=60
Competence-Related (Psycholegal) Abilities

• Understanding
  – Factual understanding of general, legally relevant information

• Appreciation
  – Rational application of factually understood information to own case

• Reasoning
  – Use appropriate reasoning processes (weigh, compare, evaluate) in a rational manner (focus on process, not outcome)

• Consulting & Assisting
  – Engage with counsel in a rational manner; communicate coherently

• Decision Making
  – Consider specific, contextually-relevant aspects of the case
Understand (Factual Understanding)

- General information about the arrest process
- General information about court proceedings
- Charges and allegations
- Consequences of conviction
- Roles and functions of key courtroom personnel
- Various pleas and verdicts
- Rights waived in making a guilty plea
Assist (Appreciation/Rational Understanding; Reasoning; Consult; Decision-making)

- Appraisal of the likelihood of being found guilty
- Appraisal of the consequences of being convicted
  - range and nature of possible penalties and how they will affect the defendant
- Appraisal of the available legal defenses and their likely outcomes
- Appraisal of whether or not to testify
- Ability to make rational decisions regarding his or her specific case
- Relate to his or her lawyer
- Ability to assist in planning legal strategy
- Ability to challenge witnesses, testify relevantly, and manage courtroom behavior
Areas of CST Inquiry

- Capacity to understand the arrest process
- Capacity to understand/appreciate the charges or allegations
- Capacity to disclose to counsel pertinent facts, events, and states of mind
- Capacity to comprehend and appreciate the range and nature of potential penalties that may be imposed in the proceedings
- Capacity to appreciate the likely outcome of the proceedings
- Basic knowledge of legal strategies and options
- Capacity to engage in reasoned choice of legal strategies and options (decision making)
Areas of CST Inquiry

- Capacity to understand the adversary nature of the proceedings
- Capacity to manifest appropriate courtroom behavior
- Capacity to participate in trial
- Capacity to testify relevantly
- Relationship with counsel
- Medication effects on CST
- Any other case-specific area of relevance
<table>
<thead>
<tr>
<th>Domain</th>
<th>Subdomain</th>
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<tbody>
<tr>
<td>Capacity to understand the arrest process</td>
<td>Ability to provide an account of police behavior at the time of arrest</td>
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<tr>
<td></td>
<td>Comprehension of the <em>Miranda</em> warning</td>
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<td>Confession behavior (influence of mental disorder, suggestibility, and so forth on confession)</td>
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<tr>
<td>Capacity to comprehend and appreciate the charges or allegations</td>
<td>Factual knowledge of the charges (ability to report charge label)</td>
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<td>Understanding of the behaviors to which the charges refer</td>
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<td>Comprehension of the police version of events</td>
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<td>Understanding of the severity of the charges</td>
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<tr>
<td>Capacity to disclose to counsel pertinent facts, events, and states of mind</td>
<td>Ability to provide a reasonable account of one’s behavior around the time of the alleged offense</td>
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<td>Ability to provide information about one’s state of mind around the time of the alleged offense</td>
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<td>Ability to provide an account of the behavior of relevant others around the time of the alleged offense</td>
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<tr>
<td>Capacity to comprehend and appreciate the range and nature of potential penalties that may be imposed in the proceedings</td>
<td>Knowledge of penalties that could be imposed (e.g., knowledge of the relevant sentence label associated with the charge, such as “5 to life”)</td>
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<td>Comprehension of the seriousness of the charges and potential sentences</td>
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<td>Capacity to appreciate the likely outcome of the proceedings</td>
<td>Capacity to provide a realistic appraisal of the likelihood of being convicted</td>
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<td>Understanding of the finality of the court’s decision and the authority of the court</td>
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<td>Basis knowledge of legal strategies and options</td>
<td>Understanding of the meaning of alternative pleas (e.g., guilty, not guilty, NGRI, GBMI, <em>nolo contendere</em>, as applicable)</td>
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<td>Knowledge of the plea bargaining process</td>
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<td>Capacity to engage in reasoned choice of legal strategies and options (decision-making)</td>
<td>Capacity to comprehend legal advice</td>
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<td>Capacity to participate in planning a defense strategy</td>
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<td>Ability to deal appropriately with disagreements with counsel</td>
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<td>Plausible appraisal of likely outcome (e.g., likely disposition for one’s own case)</td>
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<td>Comprehension of the implications of a guilty plea or plea bargain (i.e., the rights waived on entering a plea of guilty)</td>
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<td>Comprehension of the implications of proceeding <em>pro se</em> (e.g., the rights waived and the ramifications of the waiver)</td>
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<td>Capacity to make a reasoned choice about defense options (e.g., trial strategy, guilty plea, plea bargain, proceeding <em>pro se</em>, pleading insanity) without distortion attributable to mental illness (an ability to rationally apply knowledge to one’s own case and make decisions)</td>
</tr>
<tr>
<td>Understanding of the roles of courtroom personnel (i.e., judge, jury, prosecutor)</td>
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<tr>
<td>Understanding of courtroom procedure (the basic sequence of trial events)</td>
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<tr>
<td>Understanding of legal procedure (types of information that can be used as evidence, what is meant by an oath/pledge, how certain a judge or jury has to be to find one guilty</td>
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| Capacity to understand the adversary nature of the proceedings |
| Appreciation of appropriate courtroom behavior |
| Capacity to manifest appropriate courtroom behavior |
| Capacity to manage one’s emotions and behavior in the courtroom |
| Capacity to track events as they unfold (not attributable to the effects of medication) |
| Capacity to challenge witnesses (i.e., recognize distortions in witness testimony) |
| Capacity to participate in trial |
| Capacity to manage one’s emotional or communication difficulties |
| Capacity to track oral questions and respond appropriately |

| Capacity to testify relevantly |
| Recognition that counsel is an ally |
| Appreciation of the attorney-client privilege |
| Confidence in and trust in one’s counsel |
| Confidence in attorneys in general |
| Particular relationship variables that may interfere with the specific attorney-client relationship (i.e., attorney skill in working with the client; problematic socioeconomic or demographic differences between counsel and client) |
| Relationship with counsel |
| Capacity to track proceedings given sedation level on current medication |
| Medication effects on CST |
| Potentially detrimental effects of medication on the defendant’s courtroom demeanor |

* Adapted mainly from the work of Jennifer Skeem and colleagues (Skeem & Golding, 1998; Skeem, Golding, & Emke-Francis, 2004; Skeem, Golding, Cohn, & Berge, 1998) but with additions made from the *Fitness Interview Test – Revised* (Roesch, Zapf, & Eaves, 2006).
Evaluating CST in Defendants w/ IDD

- Intellectual, academic, & adaptive functioning relevant
- Expressive and receptive language are relevant
- Despite the important influence of D’s cognitive abilities in determining CST, evaluators attend to these capacities much less frequently than other factors, such as psychopathology
- D’s with significant cognitive limitations typically possess characteristics that do not raise concerns about their CST
  - frequently compliant & cooperative and often pretend to understand the proceedings
- Martell (1992): clinicians consistently assess symptoms of psychosis but frequently fail to specifically assess neuropsychological deficits
Common Deficits in Individuals with IDD

- Increased deficits in capacities for communicating with their attorneys and attending to necessary information about their case due to limited expressive abilities and attentional difficulties
- Difficulty with memory
- Impulsive and impaired decision-making
- Lack of self-direction
- Deficits in executive functioning
- Difficulty understanding and responding appropriately in social situations (limitations in self-awareness)
- Heightened suggestibility and compliance (desire to please)
- Willingness to acquiesce and accept blame
- Many similarities with the literature on juveniles
Implications of Deficits for CST Evaluations

- Lack requisite capacities to determine the appropriate information to convey to their attorney
- May not fully and accurately understand nature and gravity of the charge(s)
- May not be able to engage in logical reasoning about and weighting of options in decision making
- May be at higher risk for being disruptive in the courtroom due to attentional difficulties
Bottom Line for CST Evaluation

• Collateral and third-party information sources may be even more important in CST evaluation of individuals with IDD
• Functional / Decision-making model provides a solid foundation for conceptualizing and evaluating CST
• Relationship between functional abilities (e.g., memory for the circumstances of the events, expressive abilities to communicate one’s ideas about the case with one’s attorney) and psycholegal abilities (e.g., rational understanding of the possible sentencing ranges for one’s specific charges, decisionmaking ability about plea options) needs to be delineated
COMMUNICATING OUR OPINIONS
Steps in Opinion Formation

1. Determine whether “mental disease or defect” is met (signs, symptoms, diagnosis)

2. Evaluate relevant functional abilities and deficits (Understanding, Appreciation, Reasoning, Decision Making, Consulting, Assisting)

3. Determine whether there is a causal connection between any noted deficits and mental disorder/cognitive impairment

4. Specify how these deficits might impact functioning at trial (or for proceeding to next stage)
1. Threshold Issue

- Mental disease or defect = threshold issue
- Diagnosis ≠ incompetence
  - Incompetent D’s 8 x more likely to have psychotic disorder
  - Symptoms more important than diagnosis
  - Incompetence associated with
    - Formal thought disorder (disorganized speech, incoherence, word salad)
    - Concentration deficits
    - Rate of thinking (abrupt, rapid changes or profound slowing of speech / thought)
    - Delusions (strongly held irrational beliefs that are not based in reality)
    - Hallucinations (sensory perceptions in the absence of a stimulus)
    - Intellectual or Developmental Disability (MR)
Intellectual Disability (Intellectual Developmental Disorder)

Intellectual disability (intellectual developmental disorder) is a disorder with onset during the developmental period that includes both intellectual and adaptive functioning deficits in conceptual, social, and practical domains. The following three criteria must be met:

A. Deficits in intellectual functions, such as reasoning, problem solving, planning, abstract thinking, judgment, academic learning, and learning from experience, confirmed by both clinical assessment and individualized, standardized intelligence testing.

B. Deficits in adaptive functioning that result in failure to meet developmental and sociocultural standards for personal independence and social responsibility. Without ongoing support, the adaptive deficits limit functioning in one or more activities of daily life, such as communication, social participation, and independent living, across multiple environments, such as home, school, work, and community.

C. Onset of intellectual and adaptive deficits during the developmental period.
Intellectual Developmental Disorder

• Although deficits in intellectual functioning are still required, IQ scores no longer included in diagnostic criteria (in DSM-IV, stated “an IQ of 70 or below on an individually administered IQ test”) although still mentioned in the text

• DSM-IV required “concurrent deficits in adaptive functioning in at least two areas” whereas DSM-5 indicates that the deficits, without support, limit functioning in one or more areas
Intellectual Disability

• DSM-5 text notes that adaptive functioning is assessed using both clinical evaluation and individualized, culturally appropriate, psychometrically sound measures

• Severity specifiers in DSM-IV defined in terms of overlapping IQ ranges (e.g., Moderate= 35-40 to 50-55); in DSM-5, defined according to levels of adaptive functioning, not IQ scores (pp. 34-36)
Mild Severity

• “In adults, abstract thinking, executive function (i.e., planning, strategizing, priority setting, and cognitive flexibility), and short-term memory, as well as functional use of academic skills are impaired. There is a somewhat concrete approach to problems and solutions compared to age-mates….Individuals generally need support to make health care decisions and legal decisions” (p. 34)
Moderate Severity

• “For adults, academic skill development is typically at an elementary level, and support is required for all use of academic skills in work and personal life. Ongoing assistance on a daily basis is needed to complete conceptual tasks of day-to-day life, and others may take over these responsibilities fully for the individual. Social judgment and decision-making abilities are limited, and caretakers must assist the person with life decisions. Spoken language is typically a primary tool for social communication but is much less complex than that of peers.” (p. 35)
DSM in a Forensic Context

• Because of diagnostic heterogeneity, specific functional assessment is crucial
  – “Additional information is usually required beyond that contained in the DSM-5 diagnosis, which might include information about the individual’s functional impairments and how these impairments affect the particular abilities in question.”
  – “Because impairments, abilities, and disabilities vary widely within each diagnostic category that assignment of a particular diagnosis does not imply a specific level of impairment or disability.”
Forensic Implications

• Perhaps less emphasis on IQ scores??
  – Never been as big of an issue in CST v. Death Penalty
• Remember – technically low IQ alone (w/o adaptive deficits) can form the basis for a finding of IST
• Important to focus on signs, symptoms, & abilities
• Link these to deficits in competence-related abilities
  – Rational decision-making model useful
    • Understand, appreciate, reason, communicate a choice
    • Where do D’s capacities break down? What can D do?
A Note about Language Impairments

- Language impairments can cause competence-related deficits (expressive, receptive, pragmatic, narratives)
- Forgetting instructions
- Confusion with non-literal language
- Talking a lot but saying little
- Not asking questions
- Not answering questions
- Seem “difficult”
2. Psycholegal Abilities

- **Understanding**
  - Factual understanding of general, legally relevant information
- **Appreciation**
  - Rational application of factually understood information to own case
- **Reasoning**
  - Use appropriate reasoning processes (weigh, compare, evaluate) in a rational manner (focus on process, not outcome)
- **Consulting & Assisting**
  - Engage with counsel in a rational manner; communicate coherently
- **Decision Making**
  - Consider specific, contextually-relevant aspects of the case
3. Demonstrate Causal Connection

Mental Disorder / Cognitive Impairment

Deficits in Psycholegal Abilities
Research Findings

• 90% of respondents agreed that detailing the link between MI and deficits was essential or recommended (Borum & Grisso, 1996)

• 27% of reports provided an explanation regarding how the defendant’s mental illness influenced his or her abilities/deficits (Robbins, Waters, & Herbert, 1997)

• 10% of competency evaluation reports reviewed provided an explanation regarding how the defendant’s psychopathology compromised his or her abilities (Skeem, Golding, Cohn, & Berge, 1998)
4. Functional Deficits at Trial

Mental Disorder / Cognitive Impairment

Deficits in Psycholegal Abilities

Functional Deficits/Impairments at Trial
Research Findings

• The link between functional abilities and required abilities is rarely addressed in competency evaluation reports.

• 12% of reports delineated the congruence between the defendant’s abilities and his/her case context (Skeem, Golding, Cohn, & Berge, 1998).

• 0% of reports delineated the congruence between the defendant’s abilities and his/her case context (Robbins, Waters, & Herbert, 1997).
Decision Making Abilities

• Rarely addressed in evaluation reports

• Of 7 functional abilities, only the D’s understanding of the charge was described in the majority of reports (LaFortune & Nicholson, 1995)
  • Contextually relevant, decisional abilities—such as appreciation of the plea bargaining process—were rarely addressed

• Certain abilities important and relevant to competency to stand trial—such as decision making abilities—were rarely addressed by evaluators in their reports (Skeem, Golding, Cohn, & Berge, 1998)
Substantiating Conclusions

• All opinions and conclusions need to be substantiated
  – Data, source of data, inferences about the data need to be clearly described for the court
  – Delineate the logic and rationale behind any conclusion

• The evaluator’s role is not to make a determination regarding competency
  – Legal issue; “ultimate issue” issue

• “The examiner’s task is to describe as clearly and accurately as possible that which the defendant knows, understands, believes, or can do.” (Grisso, 2003, p. 38)
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<th>Skeem’s Scheme</th>
<th>Skeem &amp; Golding (1998)</th>
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| None           | Evaluator simply describes competency domain as being impaired but does not provide any info regarding the relationship of this impairment to D’s symptoms | “the defendant is unable to provide information to assist in his defense” |
| Implied        | Evaluator presents quotes from the D or examples that merely imply a link between the CST impairment and psychopathology | “when asked to describe his version of events, the D said he did not know what happened” |
| Asserted       | Evaluator attributes the CST impairment to psychopathology without specifically describing the relationship | “the accused has problems with memory that would preclude him from providing information to assist in his defense” |
| Substantiated  | Evaluator specifies how the CST impairment is caused by psychopathology | “As noted, the accused has problems with memory and could not relate what he and others were doing at the time of the alleged crime. He may have difficulty providing information to his attorney to assist in his defense” |
DELINEATE *ALL* LINKAGES: SUBSTANTIATE CONCLUSIONS
Prescriptive Remediation

• Systematic evaluation of competence-related abilities provides directly relevant / useful info for remediation
• Remediation strategies should be directly tied to deficits in functional abilities
• Suggestions can be provided even when opinion is that the D meets the competency requirement/criteria
Potential Remediation Strategies

- Multiple discussions; targeted discussions
- Visuals and role play
- Multiple modalities
- Provide contextual cues
- Ask questions to get at context and to uncover emotional content
- Unpack the concepts and language
- Put concepts in contexts of client’s case (reframe)
- Shorter, less complex sentences
- Explain expectations, perceptions, and rules of engagement
COMMUNICATE PRESCRIPTIVE REMEDIATION STRATEGIES FOR INCREASING MEANINGFUL PARTICIPATION
COMPETENCY RESTORATION
Competency Restoration

- 75-90% of incompetent individuals are restored within 6 months
- Medication is the single most common form of treatment for restoration
- Responsiveness to psychotropic medications likely has a large impact on restoration
- Clinical factors predictive of poor treatment outcome – earlier illness onset, number of psychotic episodes, and increased duration of untreated psychosis – are also likely related to poor restoration success
Reduced Success of Restoration

• Mossman (2007): 2 types of Ds that had well below average probabilities of being restored
  – (a) chronically psychotic defendants with histories of lengthy inpatient hospitalizations, and
  – (b) defendants whose incompetence stemmed from an irremediable cognitive disorders such as mental retardation

• Prior state inpatient hospitalization and increased age have also demonstrated a relation to decreased restoration success
Restoration Research

• Collwell & Gianesini (2011) found non-restorable patients had more prior hospitalizations, incarcerations, episodes of incompetence, lower level charges, were diagnosed with psychotic and cognitive disorders, were prescribed more medications, and had lower GAF scores (restored patients more likely be diagnosed with personality disorders).

• Wolber’s (2008) survey of forensic clinicians/administrators: developmental disability, severe dementia and brain injury, and refractory and persistent mental illness (e.g., paranoid schizophrenia) were the conditions most associated with Ds who were not restorable.
Predicting Successful Restoration

- Morris & DeYoung (2012) - predictive utility of three primary factors for determining who would regain competency at 3- and 6-month intervals
  - behavior and outlook, factual understanding, rational assistance
- Factual understanding scores (OR=35.2) and rational assistance scores (OR=169.2) predicted who would be restored
- Rational assistance items were the best at predicting a negative outcome while the basic behavior and outlook items fared the worst (at both 3- and 6-months)
- When predicting the probability of restoration at six months, a previous hospitalization significantly decreased the probability of restoration and a substance use diagnosis significantly increased the probability of restoration
Restoration of Ds with Intellectual Deficits

- AAFP (2007) – XII. Restoration of CST
  - Additional educational time
  - Increased one-on-one instruction
  - Simplified terminology
Slater Method – Rhode Island

- 5-module Training Program
  - Purpose of training, review of charges, pleas, potential consequences
  - Courtroom personnel
  - Courtroom proceedings, trial, and plea bargaining
  - Communicating with attorney, giving testimony, & assisting
  - Tolerating the stress of the proceedings
Slater Method

- Focused on competency to assist & decisional competence
- Uses a rational decision-making framework
- Phase I – Knowledge-based training (factual understanding)
- Phase II – Understanding-based training (appreciation)
- Phase II builds upon and elaborates Phase I information and allows the opportunity to consider personal context
- Repetition is key; each module covered > 3 times
- See Wall et al., 2003 for details (manual, worksheets)
Slater Efficacy

• Appears to be a useful method of competency restoration / attainment for adults with intellectual deficits
• Significantly more Ds who underwent Slater treatment were restored (2 year period)
• Lengthy restoration process; not all can be restored
• Resource-intensive program
Future Directions in Restoration

• More research is needed; further program development
• Continued focus on decision-making abilities
• Focus on specific cognitive deficits / symptoms of mental disorder & the interplay between these and competence-related (psycholegal) abilities
• Cognitive remediation models show promise in other areas; need to be applied to CST
  – Improved cognitive function (memory, attention, executive function, reasoning)
THANK YOU!

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