Foundational Aspects of Forensic Mental Health Assessment

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Therapeutic v. Forensic Roles

- Treating experts and retained experts are subject to different rules of discovery
- Competent clinical assessment for the purposes of treatment is unlikely to be adequate for forensic purposes
- The approach to acquiring and verifying information also varies considerably in therapeutic and forensic practice
- The decision to provide therapeutic services and forensic services requires mutually exclusive professional choices
# Therapeutic v. Forensic Roles

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<td><strong>Court Testimony</strong></td>
<td>Not expected</td>
<td>Expected</td>
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Notification (v. Informed Consent)

• Four levels of understanding (Greenberg, 2005):
  – notification of purpose, assent, consent, informed consent
• Level required is determined by the context
• Court-ordered = lowest level of understanding required
  – No voluntary participation therefore no right to refuse to consent
  – Examinee has the right to be notified of nature & purpose, who authorized it, how confidentiality is limited, and the potential consequences of the evaluation
Forensic practitioners inform examinees about the nature and purpose of the examination. Such information may include the purpose, nature, and anticipated use of the examination; who will have access to the information; associated limitations on privacy, confidentiality, and privilege including who is authorized to release or access the information contained in the forensic practitioner’s records; the voluntary or involuntary nature of participation, including potential consequences of participation or nonparticipation, if known; and, if the cost of the service is the responsibility of the examinee, the anticipated cost.
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<td>APA Code</td>
</tr>
<tr>
<td>Consent Procedures</td>
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</table>
Private Practice / Ex Parte Evaluations

• Informed Consent is required
• Ensure that D understands notification information
• Document: Obtain Signature or Audio/Video Recording
• If uncertain about ability to provide consent: contact defense attorney
• See Foote & Shuman (2006) Professional Psychology: Research & Practice for relevant discussion, sample letter to attorney, and sample informed consent form
## Notification for Collaterals / Third-Parties

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Collateral & Third-Party Information

• One of the primary distinctions between the therapeutic and forensic roles is regarding the use of 3rd-party info
• Accepted Principle of FMHA: Use Multiples Sources of Information for each Area being Assessed
  – Relevance and Reliability are your guides to selecting data sources
  – Attribute weight to each data source accordingly
  – In general, self-report holds less weight than collateral info
  – Goal is to verify everything that is relevant to opinion
  – Forensic evaluations are investigative in nature so you will need to request information that will confirm/verify relevant issues
Sources of Authority

• Guideline 8.03: Acquiring Collateral and Third Party Information
  “Forensic practitioners strive to access information or records from collateral sources with the consent of the relevant attorney or the relevant party, or when otherwise authorized by law or court order.”

• NJC Best Practices Model: Section III. Number 4
  “It is a best practice for the mental health professional to consider third-party information in conducting a competency evaluation and to list such information in the report. It is a best practice for sources of data to include the following, when applicable:”

http://www.mentalcompetency.org/model/model-sec-III.html#III_A4
NJC: Best Practices Model

- police reports, including statements from an investigator or someone who dealt directly with the defendant near the time of the alleged offense or the arrest;
- criminal and civil legal records, including criminal convictions and the dates of any civil commitments;
- mental health, medical, and hospital admissions records, including medications prescribed;
- mental health screenings, competency evaluations and/or other mental health evaluations or psychological testing, including results;
- history of competency restorations, including type and length of treatment;
- educational, military, and employment records;
- interviews and consultations with third parties, including defense counsel, relatives, and jail personnel; and
- any other information, data, or collateral sources obtained or reviewed for the evaluation.
Types of Third Party / Collateral Data

**Paper**
- Police reports
- Crime reports
- Jail records
- Prison records
- School records
- Treatment records
- Previous psychiatric history reports/records
- Previous competency evaluations
- Psychiatric institution records
- Files/reports from treatment professionals or programs
- Files/reports from medical/psychiatric/correctional institutions
- Previous criminal and juvenile court records

**People**
- Family members
- Spouse and/or children
- Defense attorney
- Correctional officers
- Parole/probation officers
- People who have had contact with the evaluee
- People who have treated the evaluee
Peer Review Results

Well it looks ok from here.

Peer Review
(BBC Radio 4 “Science Betrayed”)
Don’t Forget: Important Clinical Considerations

• Threshold Issue: “mental disorder or mental retardation” (Utah Statute 77-15-2)
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)
Research Indicates Our Weaknesses

• Third-party information is “an important hallmark of assessment quality” (Nicholson & Norwood, 2000)
  – “all too often examiners did not rely on sources of information other than the examinee” (Christy et al., 2004)

  – memory; concentration and attention; judgment, reasoning, or insight; intellectual functioning; thought form; motor functioning; impulsivity; nonpsychotic thought content; auditory comprehension; and reading comprehension
  – comprehensive and rich description of the examinee’s clinical adjustment and functioning; important behaviors of clinical relevance, such as suicide or violence risk
  – rationale for the decision about a given psycholegal capacity relevant to the issue of competence
10 Common Errors / Shortcomings

- Opinions without sufficient explanations (53%)
- Forensic purpose unclear (53%)
- Organization problems (36%)
- Irrelevant data or opinions (31%)
- Failure to consider alternative hypotheses (30%)
- Inadequate data (28%)
- Data and interpretation mixed (26%)
- Over-reliance on single source of data (22%)
- Language problems (19%)
- Improper test uses (15%)
Peer Review Results

“The peer review process, final round!”
CASE LAW, ASSESSMENT TECHNIQUES & BEST PRACTICES STANDARDS
Best Practices in the Evaluation of CST

- Published by Oxford
- Edited by Heilbrun, Grisso, & Goldstein
- 20 books in the series
- Forensic Mental Health Assessment
  - Criminal
  - Civil
  - Family
LEGAL CONTEXT & STANDARDS
Rationale for Competency Doctrine

• Protect the accuracy of the proceedings
  – ensuring defendant can give appropriate assistance

• Protect the right of the defendant to due process
  – opportunity to choose and assist legal counsel, confront accusers, and testify on own behalf

• Protect the dignity and integrity of the proceedings
  – State and public interest in fair, reliable proceedings
Legal Standards

• Early standards for competency set out in the U.S. in *Youtsey* (1899)
  – traced standards from English Common Law
  – referenced Frith’s case, *R. v. Berry*

• Constitutional standard for competency was set out by U.S. Supreme Court in *Dusky* in 1960

• Further elaboration of the standard came in subsequent cases
Dusky v. United States
362 U.S. 402 (1960)

It is not enough for the district judge to find that the defendant is oriented to time and place and has some recollection of events, but that the 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 (p. 402)
that he has mental capacity to appreciate his presence in relation to time, place and things;
that his elementary mental processes be such that he apprehends (i.e., seizes and grasps with what mind he has) that he is in a Court of Justice, charged with a criminal offense;
that there is a Judge on the Bench;
a Prosecutor present who will try to convict him of a criminal charge;
that he has a lawyer (self-employed or Court-appointed) who will undertake to defend him against that charge;
that he will be expected to tell his lawyer the circumstances, to the best of his mental ability, (whether colored or not by mental aberration) the facts surrounding him at the time and place where the law violation is alleged to have been committed;
that there is, or will be, a jury present to pass upon evidence adduced as to his guilt or innocence of such charge; and
he has memory sufficient to relate those things in his own personal manner. Such a person from a consideration of legal standards, should be considered mentally competent to stand trial under criminal procedure, lawfully enacted.
Drope v. Missouri
420 U.S. 302 (1975)

• *Drope* dealt mainly with procedural issues
  – “[E]vidence of a defendant's irrational behavior, his demeanor at trial, and any prior medical opinion on competence to stand trial are all relevant in determining whether further inquiry is required, but that even one of these factors standing alone may, in some circumstances, be sufficient.”

• However, Chief Justice Burger’s opinion in *Drope* included the phrase “assist in preparing his defense”
  – *ABA Criminal Justice Mental Health Standards* (1989) indicate that *Drope* added an additional prong, requiring defendant to “otherwise assist with [their] defense” (p. 170)
  – Likewise, the Federal standard (U.S. Code Annotated, Title 18, Part III, chapter 13, section 4241) broadens the consult with counsel prong with the more encompassing language, “assist properly in his defense”
Competency to the 1990s

• Until the 1990s, the modern tests for competency were based on two Supreme Court decisions that described competence as comprised of two or three elements (Philipsborn, p. 424)
  • Sufficient present ability to consult with lawyer…(Dusky)
  • Rational as well as factual understanding …(Dusky)
  • Assist in preparing defense (Drope)

• Justice Kennedy, in Riggins (1992), explained part of the requirement for an accused’s competence as follows:
  – “Competence to stand trial is rudimentary, for upon it depends the main part of those rights deemed essential to a fair trial, including the right to effective assistance of counsel, the rights to summon, to confront, and to cross examine witnesses, and the right to testify on one’s own behalf or to remain silent without penalty for doing so”
  – Conversely, when an accused is not competent, we fear that his or her ability to exercise these rights is compromised
Godinez v. Moran

• Main issue in Godinez was whether different standards for standing trial, pleading guilty, or waving counsel exist
  – Court determined that the standards for all three were to be the same; constitutional minimum as per Dusky
• However, the opinion in Godinez appeared to include the defendant’s decision making abilities as being encompassed by the Dusky standard

Justice Thomas, writing for the majority, opined:
  – While the decision to plead guilty is undeniably a profound one, it is no more complicated than the sum total of decisions that a defendant may be called upon to make during the course of a trial….
  – Nor do we think that a defendant who waives his right to the assistance of counsel must be more competent than a defendant who does not, since there is no reason to believe that the decision to waive counsel requires an appreciably higher level of mental functioning than the decision to waive other constitutional rights
Implications of Godinez

• The concurring opinion suggests that the *Dusky* standard should not be viewed too narrowly, as a defendant must be competent throughout the proceedings, from arraignment to pleading, trial, conviction and sentencing, and whenever the defendant must make a variety of decisions during the course of the proceedings.

• Felthous (1994) noted that the court “did not forbid legislatures, courts, attorneys and mental health witnesses from addressing *de facto* those abilities that are embodied in decisions about competency to waive counsel and to make one’s own defense” (p. 110).

• Melton et al. (1997) speculated that *Godinez* may well increase the level of competency evaluators and judges associate with competency to stand trial, since trial competency includes competency to waive counsel.

• In 1960 and 1975 the Court’s basic definition of competence centered on whether the accused had
  – a combination of situational awareness (“a rational as well as factual understanding of the proceeds against him”) and
  – a basic ability to deal with counsel (“sufficient present ability to consult with his lawyer with a reasonable degree of rational understanding”)

• 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
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.

The Court cited an APA/AAPL brief, which argued that mental illness could impair a defendant’s ability to engage in the expanded role required for self-representation even in cases where the D could proceed to trial with representation.

*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*:

- “*Godinez* provides no answer here because the defendant’s ability to conduct a defense at trial was expressly not an issue in that case…and because the case’s constitutional holding that a State may *permit* a gray-area defendant to represent himself does not tell a State whether it may *deny* such a defendant the right to represent himself at trial” (p. 165, italics in original).
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.

- Various *amici* provide some guidance for evaluating competency in the case of a D who wishes to represent him/herself:
  - ABA
  - APA/AAPL

- Highlights and underscores the contextual nature of competence and the need for functional evaluation.
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.”
Utah Statute - Standard

• Review of Utah’s statutes indicate the following:
  – Comprehend and appreciate = factual understanding and rational understanding, respectively
  – Reasoned choice of legal strategies and options = decision making as a component of assistance
  – Perhaps the most progressive competency statute in USA
  – Informed consent to treatment to restore competency
    • Any issues with attempting to obtain informed consent of those with impaired competence (given that competence is a component of informed consent)?
ASSESSMENT PROCESS (Data Collection)
Context Matters

• 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

• 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
Handout: Attorney CST Questionnaire

Who brought your client’s competency to the attention of the court?
- Myself
- Processing Attorney
- Client’s own
- Probation officer
- Detention staff
- Someone else
- Client’s family
- Other

What factors, if any, contributed to the perceived need for a competency evaluation?
- History of mental illness
- History of psychiatric medication
- History of psychiatric hospitalization
- History of counseling therapy
- History of social problems
- History of marital
- Difficulty communicating with client
- Client’s unusual behavior
- Other

One aspect of competency is the client’s understanding of the charges and the associated possible dispositions. To assist in evaluating this, please describe:

The charges against your client:

The nature of the dispositional issues that your client might face, given these charges and your client’s prior record:

Competency is in part a comparison of the client’s abilities to the demands of his or her case. Please rate the likelihood of the following demands for this client’s case (circle one response for each):

1. The client is likely to have to make a decision about a plea agreement
2. Evidence against client is unclear and the defense largely depends on the client’s ability to provide information
3. Case will involve many adverse witnesses
4. Client will need to testify in the case
5. The pretrial adjudication process will be lengthy
6. The adjudication hearing will be lengthy
Data Collection

“Data collection should be guided by theories and empirical research findings (within the examiner’s areas of expertise) that provide the empirical relations and theoretical assumptions from which causal explanations and predictions generally are made.”

--Grisso, 2003, p. 39
Data Collection: Interview

• Notification
  • Purpose of evaluation
  • For whom the evaluation is being performed (report)
  • Procedures to be used & types of info to be elicited
  • Possibility of testimony in competency hearing
  • Additional limits on confidentiality (legally mandated)
  • Whether there is a right to refuse

• Background and history
  • Context
  • Thoroughness
  • Rapport
  • Sample of verbal behavior
  • Information that can be corroborated
Data Collection: Interview

• Current clinical assessment
  – Mental status exam
  – Diagnostic evaluation

• Issues specific to competency
  – Recommend use of competency assessment instrument
  – Semistructured interview of competence-related abilities required

• Trial Demands
  – Grisso (2003) provides a list to aid in the assessment of degree of congruence between individual’s functional abilities and situational demands of his/her case
Data Collection: Interview

• Observed interactions with defense counsel
  – Functional evaluation
  – Evaluator can provide tasks (engage in discussion of relevant pleas and probabilities; engage in consideration of plea offer)
  – When not possible ask about D’s observations, attitudes, experiences

• Issues of response style
  – Concordance between content and process
  – Melton et al. (2007) recommend: “low threshold for suspecting dissimulation…accompanied by a conservative stance with respect to reaching conclusions on that issue”
  – Information must be weighted according to response style
Data Collection: Testing

• Forensic assessment instruments
  – Competency assessment instruments
• Forensically relevant instruments
  – Malingering / response style
• Psychological instruments
  – Relevant psychological constructs
Data Collection: Collateral Info

• Records
  – Minimal requirements v. aspirational

• Interviews
  – Third-party information sources

• Evaluating the reliability of collateral information
  – Weighting accordingly
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.
FORENSIC ASSESSMENT INSTRUMENTS
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 should be questioned about their rationale for choosing not to do so
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
Functional Abilities/Deficits

• Competency assessment instruments delineate specific functional abilities to be evaluated
  – FIT-R (Roesch, Zapf, & Eaves, 2006)
  – ECST-R (Rogers, Tillbrook, & Sewell, 2004)
  – MacCAT-CA (Poythress et al., 1999)
  – **CAST*MR (Everington & Lucksson, 1992)**

• Competency is open-textured; thus, evaluator needs to assess all specific, relevant abilities

• Context is key; all FAIs/CAIs are “tools” not “tests”
  – Must be considered in light of the context of the D’s case
Fitness Interview Test – Revised
Roesch, Zapf, & Eaves (2006)

• semi-structured interview covering 16 areas within 3 domains
• evaluator may probe and query as he/she wishes to clarify
• evaluator may personalize the questions
• use of the FIT ensures that all important aspects of fitness/competence are assessed
• use of the FIT will increase uniformity of fitness/competency assessments
FIT-R

• Items scored on a 3-point scale (0, 1, 2) as a guide
• answers of “I don’t know” not penalized; probed
• cynicism
• focus on the ability rather than the specific answers
• focus on capacity rather than knowledge
• evaluator can override answers on the basis of observations
• individual items can be weighed heavier than others
Psychometric Properties

• FIT has good interrater reliability
  – .98 for overall determination of fitness
  – Sections ranged from .54 - .70
  – Item ICCs = .80s - .90s
  (Viljoen, Roesch & Zapf, 2002)
Research: FIT-R

- FIT has excellent utility as a screening instrument when paired with an instrument used to assess mental disorder
  - BPRS, SCID
- High rate of agreement between the FIT and institution-based decisions of fitness
  - 86% (n = 57) Zapf & Roesch, 1997 CJCMH
  - 87% (n = 100) Zapf & Roesch, 1998 CJP
  - 74% (n = 100) Zapf, Roesch, & Viljoen, 2001 CJP
Research: MacCAT-CA / FIT-R

- Zapf & Roesch (2001) IJLP
  - Compared FIT-R and MacCAT-CA (n=100)
  - Good agreement, Kappa = .513
  - 48% (MacCAT) v. 32% (FIT) impairment
  - 20% impaired on MacCAT but not on FIT
  - 4% impaired on FIT but not MacCAT
    - MacCAT may be a stricter measure
    - Standards may be higher in USA than Canada
Evaluation of Competency to Stand Trial-Revised
Rogers, Tillbrook, & Sewell (2004)

• 18 items that yield scores on 4 scales
  – Factual understanding, rational understanding, consult with counsel, overall rational ability

• 28 items yielding scores on 5 atypical presentation (response style) scales
  – Realistic, psychotic, nonpsychotic, impairment, both psychotic and nonpsychotic
ECST-R

• Hybrid instrument design
  – Structured (response style)
    • No alteration of administration permitted
    • Scoring of inquiries similar to SIRS
      – 2 = Yes; 1= Sometimes; 0 = No
  – Semistructured (competency scales)
    • Standard questions & optional probes
    • Examiner free to include additional inquiries
ECST-R: Competency Rating Scales

- Most items rated on a 5-point scale
  - 0 = not observed
  - 1 = questionable clinical significance
  - 2 = Mild impairment, unrelated to competency
  - 3 = moderate impairment, peripherally related to competency (will affect but not impair competency)
  - 4 = severe impairment, directly related to competency (will substantially impair competency)
ECST-R: Competency Rating Scales

• A couple items use a variant scale
  • 0 = correct
  • 1 = correct when prompted
  • 2 = correct with attempts to educate
  • 3 = wrong despite attempts to educate
  • 4 = grossly psychotic and totally unrelated to the question (even with follow-up questions)
ECST-R: Feigning Scales

• Screen for possible feigning
  – *ECST-R is intended to screen for feigning, but does not provide formal determination of malingering*

• Response style scales created to minimize missed cases of malingering
  – Majority of defendants classified as “possible feigners” will subsequently be classified as nonfeigning defendants after thorough evaluation
ECST-R: Nomothetic Interpretation

• Standardization samples included competency referrals & jail/correctional
  – Aggregate data on multiple smallish n groups
  – Combined n of about 200 for most analyses

• Each competency scale to be interpreted individually
  – Competency scales are NOT combined to form an overall score/interpretation
ECST-R: Nomothetic Interpretation

• Scale scores converted into T scores
  – Nomothetic interpretive statements
  – Degree of certitude associated with T scores

• Significant limitation: possible to obtain an overall nomothetic interpretation indicative of extreme impairment with no item scores in extreme impairment (mathematical limitation)
  – Evaluators should be cautious about this; impossible to defend against on cross-exam
Psychometric Properties

• Interrater reliability
  – .88 - 1.00 for competency scales across 3 studies
    • (aggregate = .91 - .96)
  – Average = .62 - 1.00 for items
    • (aggregate = .72 - .90)

• Internal consistency
  – Alphas = .83 to .89 for competency scales
    • (aggregate = .86)
MacArthur Competence Assessment Tool – Criminal Adjudication

• Theory-based content
• Assesses multiple, discreet psycholegal abilities
• Standardized administration
• Criterion-based scoring
• Norm-referenced interpretation
• Vignette methodology
• 22 items broken into 3 domains
• Items scored on 3-point scale (0, 1, 2)
Bonnie’s Theory of Adjudicative Competence

- Adjudicative competence requires functional capacity in 2 legal domains
  - Competence to Assist Counsel (CAC)
    - Basic abilities needed to take the role of defendant and to assist lawyer
  - Decisional Competence (DC)
    - Includes some ability for autonomous participation in making important decisions that arise during the course of adjudication (i.e., take the stand, waive jury trial, plead guilty)
Norm Referenced Interpretation

• Clinical norms developed on 3 legally relevant defendant groups
  – Hospitalized incompetent: defendants committed to forensic psychiatric hospitals for competence restoration (N = 283)
  – Jail treatment defendants: presumably competent jail inmates receiving psychiatric treatment in jail (N = 249)
  – Jail unscreened defendants: presumably competent jail inmates not receiving psychiatric treatment in jail (N = 197)
Norm Referenced Interpretation

• Separate normative score tables for Understanding, Reasoning, Appreciation

• Recommended cutoff scores distinguish 3 levels of impairment for each ability
  – Minimal or no impairment
  – Mild impairment
  – Clinically significant impairment

• Scores on the 3 MacCAT-CA measures are NOT combined & normed to yield dichotomous competent/incompetent interpretation
MacCAT-CA

• MacCAT-CA is a tool not a “test”
  – Yields quantitative scores of competence-related abilities, but not a single global index of competence
  – It is used to inform (not replace) clinical judgment

• Does not systematically assess all relevant factors
  – Case complexity
  – Memory for case-specific events
  – Vulnerability to stresses of court
  – Malingering
## MacCAT-CA: Interrater Reliability

<table>
<thead>
<tr>
<th></th>
<th>Intraclass Correlation</th>
<th>Range (Items)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Understanding</td>
<td>.90</td>
<td>.82 - .92</td>
</tr>
<tr>
<td>Reasoning</td>
<td>.85</td>
<td>.34 - .93</td>
</tr>
<tr>
<td>Appreciation</td>
<td>.75</td>
<td>.42 - .73</td>
</tr>
</tbody>
</table>
### MacCAT-CA: Convergent / Concurrent Validity

<table>
<thead>
<tr>
<th></th>
<th>Understanding</th>
<th>Reasoning</th>
<th>Appreciation</th>
</tr>
</thead>
<tbody>
<tr>
<td>Mental Capacity</td>
<td>.41***</td>
<td>.34***</td>
<td>.14***</td>
</tr>
<tr>
<td>Psychopathology</td>
<td>-.23***</td>
<td>-.29***</td>
<td>-.36***</td>
</tr>
<tr>
<td>Clinician Ratings</td>
<td>.36***</td>
<td>.42***</td>
<td>.49***</td>
</tr>
</tbody>
</table>
# MacCAT-CA & ECST-R: Convergent / Concurrent Validity

<table>
<thead>
<tr>
<th>ECST-R scale</th>
<th>Rational-consult (Reasoning)</th>
<th>Factual-proceedings (Understanding)</th>
<th>Rational-proceedings (Appreciation)</th>
<th>Overall ability</th>
</tr>
</thead>
<tbody>
<tr>
<td>CWC</td>
<td>.32</td>
<td>.33</td>
<td>.48</td>
<td>.43</td>
</tr>
<tr>
<td>FAC</td>
<td>.40</td>
<td>.45</td>
<td>.24</td>
<td>.42</td>
</tr>
<tr>
<td>RAC</td>
<td>.34</td>
<td>.43</td>
<td>.54</td>
<td>.59</td>
</tr>
<tr>
<td>Overall Ability</td>
<td>.43</td>
<td>.51</td>
<td>.41</td>
<td>.55</td>
</tr>
</tbody>
</table>
Competence Assessment for Standing Trial for Defendants with MR (CAST*MR)  
(Everington & Luckasson, 1992)

- Multiple Choice format reduces demand on D to answer independently
- Vocabulary and syntax are appropriate for those with lower linguistic ability
- Focus on legal criteria, not MI (no longer an issue)
- Validated on adults with MR/ID
- 3 sections: Basic Legal Concepts (25 MC); Skills to Assist Defense (15 MC); Understanding Case Events (10 OE)
CAST*MR

- **Section I and II:** Questions and answer options are read aloud (examinee can follow along on test form)
  - Can be repeated up to 3 times
  - Scored 1 (Correct) or 0 (Incorrect)
- **Section III:** Open ended questions, can be asked twice
  - Prompt for more information
  - Scored 1, ½, 0 according to rubric provided for each question
CAST*MR: Psychometric Properties

- Internal reliability = .92
- Test-retest reliability = .89
- Interscorer reliability (open ended) = 80%, 87%
- Norms for No MR, MR-IST, MR-CST (& MR-Not Referred)
  - No MR: M = 45.4, SD = 2.7
  - MR-NR: M = 39.2, SD = 8.0
  - MR-CST: M = 37.2, SD = 8.0
  - MR-IST: M = 26.3, SD = 10.2
## Competency Assessment Instruments

<table>
<thead>
<tr>
<th>Domain/Prong</th>
<th>FIT-R</th>
<th>ECST-R</th>
<th>MacCAT-CA</th>
</tr>
</thead>
<tbody>
<tr>
<td>Factual Understanding</td>
<td>Understand Nature/Object of Proceedings</td>
<td>Factual Understanding of Proceedings</td>
<td>Understanding</td>
</tr>
<tr>
<td>Rational Understanding</td>
<td>Understand Possible Consequences</td>
<td>Rational Understanding of Proceedings</td>
<td>Appreciation</td>
</tr>
<tr>
<td>Assist Counsel</td>
<td>Communicate with Counsel</td>
<td>Consult with Counsel</td>
<td>Reasoning</td>
</tr>
</tbody>
</table>
## Factual Understanding

<table>
<thead>
<tr>
<th>FIT-R</th>
<th>ECST-R</th>
<th>MacCAT-CA</th>
</tr>
</thead>
<tbody>
<tr>
<td>Arrest process (police, Miranda, jail)</td>
<td>Role of a judge</td>
<td>Role of defense attorney and prosecutor</td>
</tr>
<tr>
<td>Nature and severity of current charges</td>
<td>Role of the prosecutor</td>
<td>Behavioral and mental elements of serious offense</td>
</tr>
<tr>
<td>Role of key participants (judge, jury, prosecutor, defense counsel, witness…)</td>
<td>Role of the defense counsel</td>
<td>Elements of a less serious offense</td>
</tr>
<tr>
<td>Legal process (evidence, oath, standard of proof)</td>
<td>Role of the jury</td>
<td>Role of jury</td>
</tr>
<tr>
<td>Pleas (guilty, not guilty)</td>
<td>Criminal charges</td>
<td>Responsibilities of the judge at a jury trial</td>
</tr>
<tr>
<td>Court procedure (testify (direct, cross), enter plea)</td>
<td></td>
<td>Sentencing as a function of offense severity</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Process of a guilty plea</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Rights waived in pleading guilty</td>
</tr>
</tbody>
</table>
## Rational Understanding

<table>
<thead>
<tr>
<th>FIT-R</th>
<th>ECST-R</th>
<th>MacCAT-CA</th>
</tr>
</thead>
<tbody>
<tr>
<td>Appreciation of range and nature of possible penalties</td>
<td>Personal awareness</td>
<td>Likelihood of a fair trial</td>
</tr>
<tr>
<td>Appraisal of available legal defenses</td>
<td>Investment in the outcome of the trial</td>
<td>Beliefs about being helped by lawyer</td>
</tr>
<tr>
<td>Appraisal of likely outcome</td>
<td>Understanding of the adversarial process</td>
<td>Beliefs about whether to disclose information</td>
</tr>
<tr>
<td></td>
<td>Rational participation</td>
<td>Beliefs about likelihood of being found guilty</td>
</tr>
<tr>
<td></td>
<td>Self-defeating motivation</td>
<td>Beliefs about likelihood of being punished if guilty</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Beliefs about whether to accept a plea bargain</td>
</tr>
<tr>
<td>FIT-R</td>
<td>ECST-R</td>
<td>MacCAT-CA</td>
</tr>
<tr>
<td>-----------------------------------------------------------</td>
<td>-----------------------------------------------------------</td>
<td>------------------------------------------------------------</td>
</tr>
<tr>
<td>Capacity to communicate facts to lawyer</td>
<td>Expectations about the case and defense counsel</td>
<td>Evidence suggesting self-defense</td>
</tr>
<tr>
<td>Capacity to relate to lawyer</td>
<td>Ability to participate in one’s defense</td>
<td>Evidence related to criminal intent</td>
</tr>
<tr>
<td>Capacity to plan legal strategy</td>
<td>Ability to communicate coherently</td>
<td>Evidence for provocation</td>
</tr>
<tr>
<td>Capacity to engage in own defense</td>
<td>Capacity to make decisions</td>
<td>Motivations for one’s behavior</td>
</tr>
<tr>
<td>Capacity to challenge prosecution witnesses</td>
<td></td>
<td>Potential impact of alcohol on behavior</td>
</tr>
<tr>
<td>Capacity to testify relevantly</td>
<td></td>
<td>Capacity to identify info that might inform plea</td>
</tr>
<tr>
<td>Capacity to manage courtroom behavior</td>
<td></td>
<td>Capacity to identity costs/benefits of a legal choice</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Capacity to compare legal options</td>
</tr>
</tbody>
</table>
Functional Abilities

Understand

- 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
Functional Abilities

Assist (Appreciation/Rational Understanding; Reasoning; 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
## Handout: Domains of Inquiry

### Appendix D

**List of Relevant Competence-Related Domains and Areas of Inquiry**

<table>
<thead>
<tr>
<th>Domain</th>
<th>Subdomain</th>
</tr>
</thead>
<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>
</tr>
<tr>
<td></td>
<td>Comprehension of the Miranda warning</td>
</tr>
<tr>
<td></td>
<td>Confession behavior (influence of mental disorder, suggestibility, and so forth on confession)</td>
</tr>
<tr>
<td></td>
<td>Factual knowledge of the charges (ability to report charge label)</td>
</tr>
<tr>
<td></td>
<td>Understanding of the behaviors to which the charges refer</td>
</tr>
<tr>
<td></td>
<td>Comprehension of the police version of events</td>
</tr>
<tr>
<td></td>
<td>Understanding of the severity of the charges</td>
</tr>
<tr>
<td>Capacity to comprehend and appreciate the charges or allegations</td>
<td>Ability to provide a reasonable account of one’s behavior around the time of the alleged offense</td>
</tr>
<tr>
<td></td>
<td>Ability to provide information about one’s state of mind around the time of the alleged offense</td>
</tr>
<tr>
<td></td>
<td>Ability to provide an account of the behavior of relevant others around the time of the alleged offense</td>
</tr>
<tr>
<td></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>
</tr>
<tr>
<td></td>
<td>Comprehension of the seriousness of the charges and potential sentences</td>
</tr>
<tr>
<td>Capacity to disclose to counsel pertinent facts, events, and states of mind</td>
<td>Capacity to provide a realistic appraisal of the likelihood of being convicted</td>
</tr>
<tr>
<td></td>
<td>Understanding of the finality of the court’s decision and the authority of the court</td>
</tr>
<tr>
<td>Capacity to comprehend and appreciate the range and nature of potential penalties that may be imposed in the proceedings</td>
<td>Understanding of the meaning of alternative pleas (e.g., guilty, not guilty, NGRI, GBMI, nolo contendere, as applicable)</td>
</tr>
<tr>
<td></td>
<td>Knowledge of the plea bargaining process</td>
</tr>
<tr>
<td>Capacity to appreciate the likely outcome of the proceedings</td>
<td>Capacity to provide legal advice</td>
</tr>
<tr>
<td></td>
<td>Capacity to participate in planning a defense strategy</td>
</tr>
<tr>
<td></td>
<td>Ability to deal appropriately with disagreements with counsel</td>
</tr>
<tr>
<td></td>
<td>Plausible appraisal of likely outcome (e.g., likely disposition for one’s own case)</td>
</tr>
<tr>
<td>Basis knowledge of legal strategies and options</td>
<td>Capacity to comprehend legal advice</td>
</tr>
<tr>
<td></td>
<td>Capacity to participate in planning a defense strategy</td>
</tr>
<tr>
<td></td>
<td>Ability to deal appropriately with disagreements with counsel</td>
</tr>
<tr>
<td></td>
<td>Plausible appraisal of likely outcome (e.g., likely disposition for one’s own case)</td>
</tr>
<tr>
<td></td>
<td>Comprehension of the implications of a guilty plea or plea bargain (i.e., the rights waived on entering a plea of guilty)</td>
</tr>
<tr>
<td></td>
<td>Comprehension of the implications of proceeding pro se (e.g., the rights waived and the ramifications of the waiver)</td>
</tr>
<tr>
<td></td>
<td>Capacity to make a reasoned choice about defense options (e.g., trial strategy, guilty plea, plea bargain, proceeding pro se, 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>Capacity to engage in reasoned choice of legal strategies and options (decision-making)</td>
<td>Comprehension of the implications of a guilty plea or plea bargain (i.e., the rights waived on entering a plea of guilty)</td>
</tr>
<tr>
<td></td>
<td>Comprehension of the implications of proceeding pro se (e.g., the rights waived and the ramifications of the waiver)</td>
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<td></td>
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</tr>
</tbody>
</table>

*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).
FAI’s: Juvenile Offenders
USING A MODEL TO NAVIGATE FROM EVALUATION – RESTORATION – RE-EVALUATION
Importance of Standardization

• “Every competence evaluation must employ a semistructured interview that focuses specifically on defendants’ competence abilities and deficits” (Grisso, 2014, p. 30)
  – Standardized assessment instruments serve to provide additional normative information about how D compares to relevant groups
  – Agreement regarding how competence-related abilities and deficits will be evaluated fosters communication and serves to ensure everyone is on the same page (reduces random error)
  – Use of the same structure facilitates treatment planning and re-evaluation
Initial Evaluation

• Delineates relevant competence-related abilities and deficits
• Details the degree of (in)congruence between current abilities and those (likely) required to proceed
• Provides all relevant information that informs the logical process of opinion formation (opinion tied to data)
• Drives the plan for restoration/attainment
  – Each piece of data tied to the opinion becomes fodder for tx
Treatment for Restoration/Attainment

• Follows from initial evaluation
  – Areas of deficit
  – Causal explanation for deficit
• Report should delineate all areas of deficit and the causal connection
  – Causal connection provides information about treatment plan
    • Mental illness, developmental disorder, both, other?
  – Deficits in psycholegal abilities highlight areas to be targeted
    • Factual understanding – education about court procedures, etc
    • Rational understanding – medication/training to improve insight, reduce symptoms (MI); practice thinking through how factually understood info applies to own case (ID)
    • Assisting counsel & decision-making – weighting relevant/important information; reduction of delusional/non-reality-based beliefs through reality testing
    • Other prescriptive remediation – relaxation training for anxiety reduction, etc
• Drives re-evaluation (allows apples to apples comparisons)
Experiences with Juvenile Process

• Changes made to juveniles process in Utah some of the most progressive in the country
• Thoughts about a similar process for adult evaluations?
  – Concerns?
  – Advantages?
  – Disadvantages?
  – Discussion
THANK YOU!

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212.866.0608