Criminal Competency Evaluations—State of the Art

Mark Siegert, Ph.D.
E-mail: marksiegertphd@yahoo.com

Criminal Competency Evaluations have had an interesting history. From British Common Law, we share a tradition in which "idiots" and those with emotional defects, who are unable to assist their attorneys in their own defense, cannot be tried for a crime. In our adversarial legal system, it is considered unfair to try someone who can't meaningfully grasp the charges against them, nor meaningfully participate in his or her own defense. The principles supporting competency are the fairness of the proceedings and the subsequent integrity of the judicial system if it does not appear to be fair.

The earliest competency evaluations were simple, clinical, mental health evaluations that looked into the pathology or intellectual defects of those evaluated. These evaluations were naïve to the legal principles that have proven important to the courts. In these early evaluations, the severity of the intellectual defect or mental illness was considered synonymous with the determination of the ability to grasp the charges against the defendant, and the ability assist counsel in one's defense. Over the years, the courts have found some who are quite ill, by psychological standards, to be competent to grasp the relevant charges and assist in his or her defense. Conversely, it found others who have much less dramatic psychological symptoms to be unable to assist in one's defense.

Currently, it is estimated that between **25,000 and 39,000** criminal competency evaluations are conducted in the United States annually. That is, between **two and eight percent** of all felony defendants are referred for competency evaluations. The landmark case in competency to proceed is Dusky v. United States (1960). Although wordings differ from state to state, all states use the Dusky standard as the basis of its competency law. In Dusky, the Supreme Court held that defendants needed more than orientation to time, place and recollection of some events to be tried for a crime. Rather, the Court held that the defendant must have **sufficient present ability** to meaningfully consult with his attorney, and have **a reasonable degree of rational** (as well as factual) understanding of his case. Psychiatrists and psychologists became involved in assessing just what that sufficient present ability is.

The first person to try to systematize the relevant legal functions implied by the Dusky decision was Dr. Ames Robey, who in (1965) published a checklist of competency related attributes. This first attempt at systematization led others, originally at the Harvard Medical School, to devise a standardized procedure for evaluating competency, or what Thomas Grisso, Ph.D., called "first-generation" competency instruments. The first of these is the Competency Screening Test (1971) developed by Lipsitt et al. It was followed, in short order by the Competency to Stand Trial Assessment Instrument (1973, Harvard Medical School, also known as the CAI.) In 1979, the Georgia Court Competency Test (GCCT) was developed by Wildman et al., and in 1984, the Interdisciplinary Fitness Interview (IFI) was developed by Golding, Roesch, & Schreiber. The CST and GCCT were designed as brief screening instruments to facilitate rapid identification of those who were clearly incompetent. Scores below a specific cutoff score were referred for more extensive clinical evaluations. The CAI and IFI were more comprehensive assessments of competence, but as semi-structured interviews, neither were administered in a standardized way, nor scored objectively. So while they allowed a clinician to cover a broader range of issues, neither was standardized or normed to meet the validity required by modern psychological testing.

Grisso (1991) applauded these first generation tests in beginning to standardize and structure assessments that covered the legally relevant competency variables in a manner that began to compare from clinician to clinician. However, as all of these first generation tests lacked either a standardized administration or standardized method of scoring, all were lacking the reliability and validity required by modern psychological tests. Hence it became clear that we needed second-generation tests — those that offered standardized administration and scoring, showed **good reliability** from administration to administration by differing clinicians and **had valid statistical methods** to determine the meaning of the test results.

Caroline Everington, Ph.D. and Ruth Luckasson, JD developed the first of the second-generation tests for the evaluation of competency of the mentally retarded. **The Competency Assessment to Stand Trial for the Mentally Retarded, CAST*MR**, was published in 1990, and is the first example of a

second-generation test demonstrating good reliability and validity for those who are mentally retarded. Recently, the New Jersey Appellate Court (State v. Moya) ruled that a defendant must be educated prior to administering the CAST*MR if they appear to score poorly due to a lack of knowledge of the legal system. This ruling is intended to be sure that a defendant is not found incompetent based on a level of naiveté equal to that of many jurors, and ruled that such a defendant should be given education equivalent to that of the videotape shown to prospective jurors, and in fact suggested showing the same video to prospective jurors. This modification in the standard administration of a competency evaluation can provide more certainty and a more convincing finding. However it is easily misused. For example, in a recent competency hearing I heard one expert describe her modification in administering the CAST*MR. She gave the defendant the test, asked the defendant to point out any words which were not known or understood, and then explained the meaning of those words. While I presume the intention was to provide the defendant with the necessary education so that the finding is not based on naiveté to the legal system, this method actually provided the defendant with answers to the very questions the test was assessing, thereby invalidating the objectiveness of this test and leading the defendant to provide answers beyond those which could be comprehended in a real-time situation of a courtroom.

For those without cognitive limitations, the MacArthur Foundation funded research leading to the MacCAT-CA, or **MacArthur Competency Assessment Tool-Criminal Adjudication** (they had previously created a test for competency to consent to treatment in civil settings.) This test is broader, in that it covers the ability to plead guilty, as well as to stand trial, and uses various psycho-legal perspectives on a competency evaluation — such as appreciation of the crime and the outcomes of a plea negotiation, recognition of relevant information, and most importantly, the competency to make decisions which are central or crucial to a particular criminal case (**decisional competency**.) It, too, has demonstrated good reliability and validity.