

Empirical Assessments for Legal Competencies

The conceptual approach to legal competence assessments outlined in Chapter 2 requires the assessment of functional abilities and behaviors related to the legal competence in question. Most assessment methods traditionally used in psychiatry and clinical psychology, however, were designed to assess psychopathological states, personality traits, and general intelligence. These assessment methods will continue to play an important role in many legal competence assessments (see Causal component, Chapter 2). Yet the previous analysis has shown that the use of these methods alone will not satisfy courts' needs for relevant and credible information about examinees' functional abilities related to legal competencies.

For this reason, a specialized set of assessment tools has evolved as a response to the special demands of assessments for legal competencies. The first part of this chapter defines this special class of instruments and provides a model that clarifies their objectives and value. The second section describes special issues in the evaluation of these instruments and establishes criteria for reviews that appear in later chapters. The third section briefly describes the criteria that were employed in selecting the

instruments that are reviewed in Chapters 4–9, as well as the standardized outline for each of those review chapters.

FORENSIC ASSESSMENT INSTRUMENTS

The earliest, comprehensive effort to develop a specialized instrument for use in evaluating a legal competence—competence to stand trial—appeared in the early 1970s in the work of an interdisciplinary research team headed by a psychiatrist, A. Louis McGarry (Laboratory for Community Psychiatry, 1973). They proposed that legal criteria for competence to stand trial could be “accurately translated into psychological and clinical terms and retranslated into relevant legally oriented data” (Laboratory of Community Psychiatry, 1973, p. 4). Reviewing the law, they arrived at three broad classes of abilities and capacities of defendants that were relevant for determining competence to stand trial. They translated these legal concepts into 13 psychological “functions,” or cognitive, attitudinal, and ability constructs that were believed to be important factors for describing the defendant role in trial settings (e.g., “Quality of Relating to Attorney,” “Understanding of Court Procedure”; see Chapter 4 for a listing of the 13 functions). These functions were then used to create the content for two assessment instruments (reviewed in Chapter 4): the *Competency Assessment Instrument* and the *Competency Screening Test*.

The instruments were not intended to predict defendants’ later functioning in trials, but rather to describe trial-relevant abilities at the time of the assessment itself. Further, the research team did not intend for the instruments to replace other clinical methods for assessment that might clarify pathological states or cognitive characteristics. These new instruments were to be used in conjunction with other clinical methods of assessment, especially in order to define and clarify the relation between “psychological and clinical terms” and “legal criteria for competence” (Laboratory for Community Psychiatry, 1973).

The efforts of that research group provided the earliest example of a systematic approach to assessment of abilities specifically relevant for a legal competence construct. During the 1980s, other researchers employed a similar logic to develop instruments for use in assessments related not only to competence to stand trial, but also to other legal competencies. For example, Grisso (1981) developed several instruments to assess juveniles’ and adults’ capacities to waive rights in police interrogations, and Weithorn (1980) and Roth et al. (1982) researched methods for evaluating competence to consent to treatment.

Each of these test developers employed a somewhat different approach to the task than did the pioneering Harvard group. Yet all of

them had a similar purpose—to develop standardized, quantitative methods with which to observe and describe behaviors of direct relevance to the law's questions about human competencies and capacities. Recognizing that the law's questions about competencies usually cannot be answered by psychiatric diagnoses or personality descriptions alone, researchers and practitioners alike have sought instruments that assess functional abilities—what people know, understand, believe, or can do—related to specific environmental contexts to which legal competencies refer.

These instruments, whether developed specifically for legal purposes or adapted from other fields of psychology, were first grouped conceptually as a class of instruments in the first edition of EC, wherein they were referred to as "Forensic Assessment Instruments" (FAIs).

OBJECTIVES OF FORENSIC ASSESSMENT INSTRUMENTS

Test developers and forensic examiners seem to have perceived a need for FAIs in order to meet *conceptual objectives* and *procedural objectives*.

Conceptual Objectives

FAIs may improve our ability to conceptualize the relations between legal definitions of abilities and psychological constructs associated with human capacities. This objective is clarified in Figures 1 and 2, to which the following discussion refers.

In Figure 1, *A* represents any legal competence construct. In Figure 2, which applies the model to Competence to Stand Trial, *A* is stated as the *Dusky v. U.S.* (1960) standard for competence to stand trial (i.e., "rational as well as factual understanding of proceedings... and sufficient present ability to consult with his lawyer with a reasonable degree of rational understanding"). *A* also would include interpretations and refinements of the *Dusky* construct, as applied and explained in subsequent legal cases.

Traditionally, mental health professionals employed general psychological theories and constructs (such as intelligence, reality testing, defense mechanisms, or psychiatric symptoms) as the conceptual basis for their assessments related to legal competencies. These clinical constructs, represented as *B* in Figure 1, often are defined operationally by clinical assessment instruments or methods, designated *B'*, that are designed to assess the clinical and personality attributes. Yet mental health professionals frequently were able to establish only a vague conceptual link between psychological theories (*B*) or data (*B'*) on the one hand, and legal competence constructs (*A*) on the other. Thus clinical data about psychological traits and states, no matter how reliable and valid, were difficult to employ when relating findings to the questions of legal competencies.

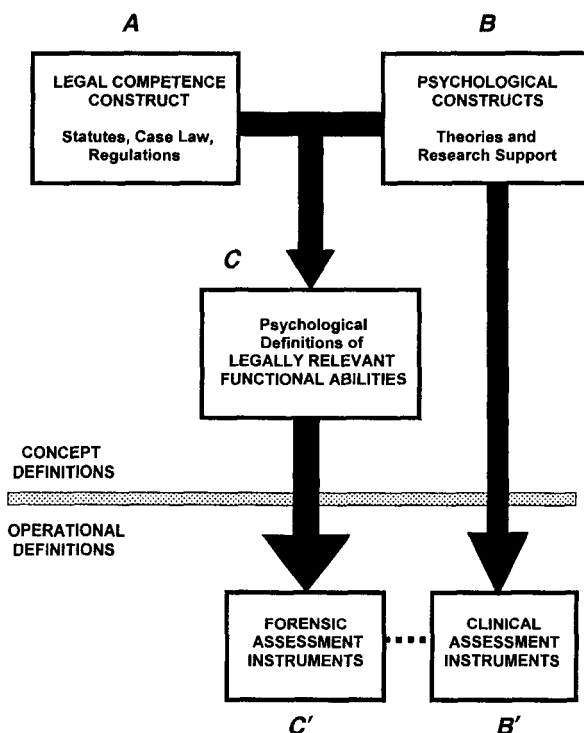


Figure 1. Conceptual and Operational Definitions for Forensic Assessments.

In Figure 1, *C* represents psychological definitions of functional abilities that have been derived logically from an analysis of a legal competence construct. For example (see Figure 2), the construct representing competence to stand trial (*A*) may be considered to include a number of functional ability concepts (*C*), one of them being "Capacity to Disclose to Attorney" (one of the 13 functions by Laboratory of Community Psychiatry, 1973). This legally relevant ability in turn is conceptualized as related to basic psychological constructs (*B*) such as "intelligence," "memory," and "interpersonal honesty and trust." The functional ability concept (*C*), therefore, acts as a conceptual link between the legal standard (*A*) and basic clinical or psychological constructs (*B*).

A forensic assessment instrument (*C'*) is an operational definition of a legally relevant functional ability concept (*C*). Therefore, FAIs are intended to provide data that can manage the conceptual gap between legal constructs and psychological constructs. In addition, the dotted line in Figure 1 represents potential relations between FAI data (*C'*) and information from

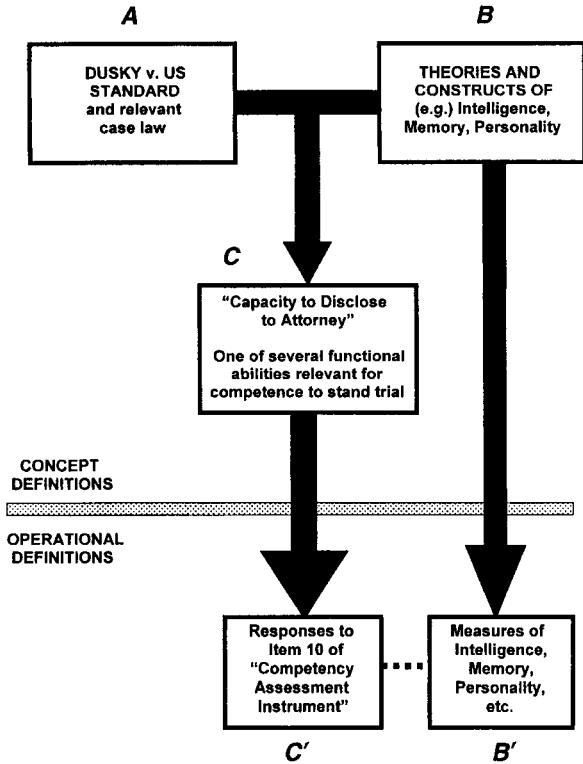


Figure 2. Conceptual Model Applied to Competence to Stand Trial.

traditional psychological tests and psychiatric methods (*B'*) that operationally define psychological constructs. These relations provide a data base for making causal inferences relating psychological constructs (*B*) to legally relevant functional abilities (*C*). Figure 2 demonstrates these conceptual relations for one of the functional abilities in competence to stand trial.

These conceptual purposes of FAIs and functional ability concepts have an important limit. They are not intended to define the legal competence construct as a whole. They define only the human abilities and capacities to which the legal construct is believed to refer. Nevertheless, FAIs offer several logical benefits for forensic assessments.

First, *they provide structure for the examiner*. From the outset, FAIs make it clear to the examiner what it is that the law wants to know about human capacities, because these capacities are part of the structure of the FAI itself. Thus they can assist the examiner in arriving logically at data and inferences consistent with the purposes of forensic assessments outlined in Chapter 2.



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