

Preface to the Second Edition

The second edition of *Evaluating Competencies* (hereinafter, EC) retains the outline of the first edition, but it has a somewhat different purpose. When the first edition was published in 1986, it introduced an untested conceptual framework for organizing an empirical approach to competence assessments. It introduced the term “forensic assessment instruments” to the field. It borrowed on others’ works and ideas, combining them for the purpose of proposing a systematic, cohesive foundation for the development of legally-relevant assessment tools.

Much of that purpose has been accomplished. The principles for conceptualizing what legally-relevant competence evaluations are about, and the values of an empirical foundation for competence assessments, are accepted by most forensic researchers and practitioners who entered the field in the 1990s.

Therefore, while the first edition of EC was an unveiling of principles for consideration, the second edition of EC is an affirmation of their continued value, evidenced by their survival and reflected in their absorption into the mainstream of forensic assessment. In addition, the book chronicles the significant progress that has been made in this field since the first edition.

Changes in the second edition will be described in more detail below, but first it is worthwhile to revisit briefly the function of the first edition of EC and the intellectual process that it reported.

WHAT WAS EVALUATING COMPETENCIES?

One of the central and best-known features of the first edition of EC was its review of “forensic assessment instruments” (FAIs), tools that could provide an empirical foundation for clinicians’ evaluations in a variety of areas of legal competence. But from the author’s perspective, the value of those reviews to clinicians was almost secondary to a more fundamental purpose—the testing of an hypothesis that predicted the utility of a set of concepts. In other words, the process of writing EC was itself a research project, designed to test whether the author’s theory would fit when applied to a wide range of legal competencies.

The “theory” proposed that all legal competencies—whether criminal or civil, and despite their very different histories of development in the law—had certain underlying features in common. Moreover, those features could be used to structure a legal or a clinical psychological inquiry about any legal competence. Structured in this way, both legal and clinical inquiries would be mutually consistent in form, terminology, and clarity of translation across legal and clinical domains. For the clinician, this would increase the potential for a legally-relevant assessment of characteristics of individuals about whom questions of legal competence are raised.

Six characteristics of all legal competencies were proposed (see Chapter 2, although they have been reduced to five in the second edition), based on an initial examination of the law’s application of legal definitions for a variety of competencies. In addition, EC introduced a model for developing psychological tools structured to provide information related to those six characteristics (see Chapter 3). Then six chapters tested the application of these characteristics for six legal competencies. Each of those chapters first analyzed the legal competence in question to examine the fit of the model to the contours and details of legal definitions in that area. Then the chapter applied the same model to evaluate the potential utility of a variety of assessment tools for providing information to the courts relevant to the six-part model.

The hypothesis that the model would be applicable across legal competencies, and that it would have utility in analyzing potential assessment tools, was largely confirmed as a matter of conceptual feasibility. The process also revealed a number of ways in which existing instruments fell short of the demands placed on them by the model, leading to specific recommendations for the use of the model to drive future development of forensic assessment instruments.

Returning to my earlier note about the purpose of the current volume, the second edition is not a “replication” of the “experiment” that the first edition represented. It is best seen as a restatement of the theory, a

review of what has happened to the field since the theory was first introduced 15 years ago, and its application to a new generation of forensic assessment instruments that has evolved in that time.

CONTENT OF THE SECOND EDITION

THE CONCEPTUAL CHAPTERS (1–3)

Chapter 1 of the first edition classified and described the many deficiencies in forensic mental health evaluations for legal competencies, identifying the need for a systematic and empirically-based foundation for legally-relevant competence assessments. The new Chapter 1 revisits these deficiencies and reviews empirical evidence regarding the degree to which the field has improved in subsequent years. There is evidence that it has, although the job is not done.

Chapters 2 and 3 of the second edition are almost identical to those in the first edition. These are the chapters that introduced the conceptual model of legal competencies, designed to improve the legal relevance and empirical quality of forensic clinical assessments for competencies. The only fundamental change is a reduction of the six-part model to five components of legal competencies. Experience indicated that one of them (the Contextual component) could be folded into another (the Functional component), reducing complexity with no appreciable loss for the model's utility.

THE REVIEW CHAPTERS (4–9)

The six review chapters in the second edition cover the same six legal competencies as in the first. Moreover, the chapter outline used in the first edition has been retained. But the content of these chapters has been greatly revised.

The first half of each chapter provides legal and psychological analyses of the competence in question. For most of the legal competencies, these analyses required substantial revisions in the second edition, related to the evolution of law and clinical practice in most of the competence areas during the past 15 years.

The second half of each chapter reviews tools and instruments for assessing abilities associated with the specific legal competence in question. It is here that the greatest revisions have been made. The first edition reviewed 26 instruments, while there are 37 in the second edition. But this is not merely the addition of 11 instruments. Only nine of the instruments reviewed in the first edition were retained for the present review (in addition to four instruments that were significantly revised

versions of prototypes that were reviewed in the original EC). Thus 28 of the 37 instruments reviewed here—about three-fourths of the second edition's total—were not in the first edition.

In deciding what instruments to include, we focused primarily on tools that have been developed specifically for use in forensic evaluations of legal competencies. Moreover, instruments were required to have an available manual and at least a few studies examining their conceptual validity and psychometric properties.

Exclusion of instruments that had been reviewed in the first edition occurred for three reasons. First, most of the instruments reviewed in the areas of Parenting Capacity and Guardianship/Conservatorship in the first edition were not developed as “forensic assessment instruments.” They had evolved in developmental or geriatric psychology and psychiatry for general (non-forensic) clinical and research applications. They were reviewed in the first EC, however, to stimulate the field's interest in the potential for some existing clinical instruments to meet our needs for assessments of functional abilities related to legal decisions about the need for guardianship/conservatorship. While the review of those instruments served a conceptual purpose, subsequently most of them did not acquire extensive use in forensic evaluations for legal competencies. Therefore, up-dated reviews would have been of questionable value.

Second, those same two areas of legal competence enjoyed a considerable growth in instruments designed specifically for use in assessing parents in custody cases or elderly persons with disabilities that might require guardianship. Thus the need to rely on *general (non-forensic)* clinical tools focusing on functional abilities—as well as review of those instruments—was reduced.

Finally, a few forensic assessment instruments reviewed in the first edition simply languished. Subsequently they received no discernable clinical use and produced no further research reports, thus warranting no further review.

THE CONCLUDING CHAPTER (10)

Although modified substantially, the final chapter has the same purposes as in the first edition. It summarizes the “lessons learned” for future research and development of forensic assessment instruments for legal competencies, and it applies the book's model as a guide for clinical forensic practice in assessments for legal competencies. It concludes with new observations about the questionable future of forensic assessment instruments, in light of practical and legal obstacles to clinicians' adoption of empirically-based assessment methods as “routine practice.”

THE FUTURE: NO THIRD EDITION

It is not at all clear where the field of empirical forensic assessment is headed. Two directions for future evolution of the field seem to have equal potential, and neither leads to a need for a third edition of EC.

In the first scenario, forensic assessment instruments become a significant part of almost all competence evaluations. Examiners understand that scores should never define whether a person is legally incompetent, so that the instruments take their proper place as part of a broader assessment. Existing or new forensic instruments are adapted to computerized administration where feasible. Courts and attorneys learn the language of the instruments and come to understand their values and limitations. New forensic assessment instruments focus on specialized tools for particular populations and for use in various clinical–legal systemic contexts. This development is so substantial that instruments across six areas of legal competence can no longer be reviewed in a single volume. So a third volume of EC is not feasible. Instead, it becomes the prototype for similar volumes (by a variety of authors), each devoted to separate legal competencies.

In the second scenario, managed care continues to shrink the provision of mental health services to persons with mental illnesses and disabilities associated with old age. The needs of the mentally and physically disabled do not go away, requiring continued and increasing responsibility for the courts to identify and respond to them. The demands for competence evaluations grow to a proportion that places an inordinate emphasis on efficiency in obtaining clinical opinions in competence cases. Standardized empirical approaches to clinicians' evaluations are deemed unessential—indeed, extravagant—under these circumstances. Moreover, courts liberally allow testimony based on clinical interviews and theoretical impressions alone. In contrast, expert opinions based in part on the use of new forensic assessment instruments encounter increasingly difficult and time-consuming challenges to meet *Daubert* and *Frye* tests of admissibility of scientific evidence, threatening exclusion of the examiner's opinions altogether. Clinicians who can no longer support themselves under the squeeze of managed care turn in droves to forensic assessment as a source of income. Paid by the case, they learn to provide the courts with the minimally acceptable amount of information that can be obtained in the least possible time. Forensic assessment instruments languish under these withering demands, and a third edition of EC is deemed irrelevant.

May the eventual demise of *Evaluating Competencies* be for the former reason rather than the latter.



<http://www.springer.com/978-0-306-47344-9>

Evaluating Competencies
Forensic Assessments and Instruments
Grisso, Th.
2003, XXI, 541 p., Softcover
ISBN: 978-0-306-47344-9