

RATIONAL UNDERSTANDING IN COMPETENCY TO STAND TRIAL:
A QUALITATIVE STUDY AND DEVELOPMENT OF AN
ASSESSMENT INSTRUMENT

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ASSESSMENT INSTRUMENT

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ABSTRACT

RATIONAL UNDERSTANDING IN COMPETENCY TO STAND TRIAL:
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Mental competency as a prerequisite for due process was established by the United States Supreme Court's Dusky decision (1960). The Court mandated that a defendant must possess reasonable levels of factual and rational understanding in order to competently participate in the adjudication process. The precise definitions of competence were not included in any of the Court's decisions regarding the concept of Competency to Stand Trial (CST). The original purpose of this research was to contribute knowledge regarding the psychological dimensions of CST and to suggest definitions of the psychological dimensions of CST and the standardization of the CST evaluation process. However, a review of the existing literature regarding CST revealed a significant omission in the current CST evaluation process. Courts have not adequately defined the dimensions of rational capacity. In addition, CST assessment instruments focus almost exclusively on a defendant's factual understanding and take few steps to evaluate the defendant's rational capabilities. The research included a qualitative analysis of seven hours of interviews with an incarcerated individual whose CST was in question. That case study was initially designed to analyze for psychological

dimensions of CST using a predominant CST assessment instrument. The case study revealed that rational capacities are not a prominent part of current evaluation protocols and the impact of rational incompetence on the CST assessment of defendants is minimal. As a result of these discoveries the focus of the research was modified from a study of a broad-spectrum of psychological dimensions of CST into a study specifically focused on identifying and defining dimensions of rational understanding. In addition, the researcher developed a new CST assessment tool explicitly designed to measure a defendant's capacity to rationally understand and participate in the adjudication process - the Cole Rationality Assessment Instrument (C-RAI). A small pilot study of the C-RAI is included. No examples of a similar research approach for exploring the psychological dimensions of CST were found during the review of the literature for this study and no other tools specifically designed to measure rational competencies were located. The electronic version of this dissertation is at OhioLink ETD Center, www.ohiolink.edu/etd.

Dedication

I dedicate this dissertation work to my family, who has patiently supported me throughout this lengthy process. I especially want to express my feeling of enormous gratitude to my wife Charlette, who was incredibly tolerant and an unwavering source of encouragement and tenacity.

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I wish to thank my committee members who were more than generous with their expertise and precious time. I would like to gratefully acknowledge Dr. Mary Wieneke, my committee chairwoman for her countless hours of reflection, reading, and limitless patience, and most importantly for her steadfast encouragement to me throughout the entire dissertation process. My sincere thanks go to Dr. Catherine Koverola for agreeing to serve on my committee and for challenging me to produce a meaningful contribution to forensic psychology. I especially want to express my heart-felt gratitude to Dr. Philip Barnard for his encouraging service on my committee, but also for his willingness to be my mentor and role model of professional excellence in the practice of forensic psychology.

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Introduction

A fundamental American ideal is that all defendants have the right to a fair trial while participating in an adjudication process. Mental competency as a prerequisite for due process was established by the United States Supreme Court's Dusky decision (1960), but the precise definitions of mental competence were not included in any of the Supreme Court decisions regarding the psycholegal concept known as Competency to Stand Trial (herein after referred to as CST) . Thomas Grisso (2003) suggested that the psychological dimensions that make up CST have not been adequately identified and defined and that the forensic evaluations utilized to measure CST have not been administered in a standardized manner. In response to Grisso's observations this study set out to explore the psychological dimensions of CST by conducting a case study of one potentially incompetent defendant in the adjudication process. In this way the researcher hoped to contribute useful information to the body of knowledge regarding the psychological dimensions of CST, and to assist in establishing precise definitions of the psychological dimensions of CST and the standardization of the CST evaluation process.

During the process of reviewing the existing literature regarding CST (i.e., relevant federal and state case histories, CST evaluation assessment instruments and conceptual models of CST), the researcher discovered a significant omission in the evaluative process of CST. In the United States Supreme Court's Dusky decision (1960) the Court directed that defendants must possess two overall psychological capabilities in order to competently stand trial; factual and rational understanding. However, the literature review revealed that federal and state Courts have not clearly or adequately defined the makeup of rational capabilities. In addition, past and current CST assessment instruments focus almost exclusively on the defendant's factual understanding and spend

little or no time evaluating the defendant's rational capabilities. Finally, the qualitative analysis of seven hours of interviews with the research participant revealed that the most prevalent psychological dimensions that occurred during the interviews were predominantly related to rational capacities rather than to the factual understanding of the participant, which was ostensibly the primary capacities evaluated by the Competency to Stand Trial Assessment Instrument (CAI), the CST evaluation instrument utilized during the data gathering phase of the research. However, rational capacities were not part of the evaluation protocol of the CAI and, as such the influence of the participant's rational capacities on the forensic assessment of the defendant's CST would be minimal.

As a result of these discoveries the focus of this research project transitioned from a study of a broad-spectrum of psychological dimensions of CST into a study specifically focused on identifying and defining dimensions of rational understanding. In addition, the researcher developed a new CST assessment tool explicitly designed to measure a defendant's capacity to rationally understand and participate in the adjudication process - the Cole Rationality Assessment Instrument (C-RAI).

Purpose

The purpose of this study became an effort to contribute to the body of knowledge concerning forensic assessments by qualitatively exploring and describing the rational dimensions of the psycholegal concept most commonly referred to as Competency to Stand Trial (CST). The study began with the hypothesis that outcomes of CST evaluations would be different if an adequate measure of rational capacity were included in the CST evaluation protocol. To explore this hypotheses the study asked the following question: What additional information does the field of forensic psychology need in order

to better clarify, define, and evaluate the rational domain of Competency to Stand Trial assessments? Other questions considered during the course of the research: Can rational competencies be clearly defined so that a standardized method of assessment can be developed? Can psychological dimensions and legal standards be coordinated in such a way that defendants with subtle psychological deficiencies can be identified and appropriately treated or educated and adjudicated? What methods of assessment are most effective in describing the rational dimensions of competency to stand trial?

To achieve an understanding of the factors that contribute to CST evaluations and psycholegal decisions, United States Supreme Court decisions and Washington State case law were reviewed. Also, a delineation of the Washington State legal themes relevant to CST was conducted in order to increase the understanding of current psychological and psycholegal conceptualizations of CST in Washington State. Washington State case law and legal themes were chosen for examination because research has demonstrated that there are significant differences between the states regarding the composition of forensic mental health evaluations, the characteristics of the defendants referred for evaluations and the psycholegal conclusions reached by evaluators (Warren, Rosenfeld, Fitch & Hawk, 1997; Roesch, Zapf, Golding & Skeem, 1999; Mumley, Tillbrook & Grisso, 2003). It was the opinion of the researcher that a review of only one state would yield better quality results than a study confused by diverse and divergent definitions and data from multiple states.

In addition, the study reviewed the CST evaluation instruments most often cited in the literature in order to understand how and what competencies are currently being evaluated using CST assessment instruments and to what extent and in what manner CST

tools define and assess the rational capabilities of defendants. The literature review also explored the conceptual models of CST currently under consideration by the foremost experts in the field of forensic psychology regarding competency to stand trial issues.

The researcher reviewed the literature for dimensions of rational understanding and consequently proposed the Cole Rationality Assessment Instrument (C-RAI). The C-RAI is a new tool designed to evaluate a defendant's rational capacity in light of the rational dimensions that emerged from the literature review for this study. A small pilot study was also conducted using the C-RAI and is reviewed in Appendix C.

Finally, the study explored rational dimensions of CST by utilizing qualitative research methods to examine the rational competencies of one defendant who was in the Washington State adjudication process at that time. No examples of a similar qualitative research approach to exploring psychological dimensions of CST were found during the review of the literature for this study.

Literature Review

CST is not an exclusively American idea. Its origins can be found in ancient texts such as the Babylonian Talmud and in ideas expressed in various ancient Judeo-Christian writings (Nussbaum, Hancock, Turner, Arrowood & Melodick, 2007). The concept first appeared in English common law somewhere between the 12th and 14th centuries (Otto, 2006). These early English Courts would not put a defendant on trial if the defendant was considered incompetent as a result of a mental disorder or mental defect. Later, the legal conception of insanity developed, which deemed that defendants without the capacity to intentionally form a guilty mind (*mens rea*) were not responsible for their actions. This idea was codified into English common law by what became known as the *M'Naughten*

Rule of insanity (1843). The *M'Naughten Rule*, named after the defendant in a case involving an attempt to murder the Prime Minister of England, excused defendants from responsibility who were unable to distinguish “good from evil” or “right from wrong” (Grisso, 2003; Rogers & Shuman, 2005). It became the accepted rule in both England and the United States. However, the *M'Naughten Rule* was altered in many jurisdictions and now commonly includes the idea that a defendant is presumed to be sane until proven otherwise (Barnard, 1997; Melton, Petrila, Poythress & Slobogin, 1997; Grisso, 2003). More recently the American Law Institute (ALI) produced the ALI standard (1952-1962). The ALI standard contained two general conditions mitigating the nature of an individual’s criminal acts; “conduct as a result of mental disease or defect” and lack of “substantial capacity to either appreciate criminality of conduct or to conform conduct to the requirements of the law” (Rogers & Shuman, 2005).

The logical progression of these legal concepts resulted in the development of the psycholegal concept Competency to Stand Trial (CST), which should not be confused with similar psycholegal concepts: Not guilty by reason of insanity (NGRI) and diminished capacity. In order to avoid confusion in the mind of the reader it may be useful to differentiate and define these two other inter-related and frequently confused psycholegal concepts.

The NGRI defense pertains to cases wherein the defendant responsible for the commission of a crime had suffered leading up to and during the commission of the crime a loss of contact with reality due to perceptual and cognitive functioning deficits, which significantly diminished the defendant’s ability to be influenced by the law or to distinguish right from wrong behavior. NGRI can only be due to mental disease or defect,

which has affected the defendant to such an extent that the she or he was unable to perceive the nature and quality of the act, or was unable to differentiate between right and wrong actions (Benjamin, Rosenwald, Overcast and Feldman, 1995; Rogers & Shuman, 2005).

There are several key elements of the NGRI defense. The defendant participates in a trial process in which CST is presumably not an issue. The defendant bears the burden of proving that they were insane at the time of the alleged crime. In order to rule on the validity of the NGRI defense the Court must decide whether the state has proven the defendant's guilt of the alleged crime beyond a reasonable doubt. If accomplished, the state must then also demonstrate to the Court whether the defendant is a danger to himself or others and/or that the defendant is likely to commit additional felonious acts in the future unless controlled and confined by the state. The Court must then determine whether the defendant should be detained in a mental hospital instead of placed in the community on Least Restrictive Alternative (LRA) status (Benjamin, Rosenwald, Overcast and Feldman, 1995; Grisso, 2003; Rogers & Shuman, 2005).

The legal concept known as Diminished Capacity is only effective in approximately 50% of the states (Melton, et al., 1997), including Washington State (Benjamin, et al, 1995). Diminished Capacity is a finding by the Court that the defendant's mental ability to form intent to commit the alleged crime was compromised. Diminished Capacity can be due to intoxication by drugs or alcohol or a mental condition not amounting to insanity, but cannot be the result of an intense emotional state of mind (e.g., jealousy, fear, hatred, anger). CST is not a factor under consideration at this point, but may become a factor if and when the defendant proceeds to trial.

The determination of Diminished Capacity can result in a finding of no guilt or a reduction of the legal charges related to the defendant's criminal offense, because Diminished Capacity negates the prosecution's ability to prove specific intent (*mens rea*). The state must prove beyond a reasonable doubt that the defendant was capable of forming a culpable state of mind (e.g., premeditation, intentionality, awareness, recklessness or criminal negligence) in order to prove the defendant guilty of the alleged offense (Benjamin, et al., 1995; Melton, et al., 1997).

Conversely, CST does not affect the eventual outcome of the charges, trial or penalties against the defendant, as do NGRI and Diminished Capacity. CST addresses specifically the notion that all defendants have the right to be mentally competent when defending themselves against charges brought by the state. If the defendant is determined to be not competent to stand trial, every effort must be made by the state to ensure that the defendant regains the ability to competently defend themselves against legal charges.

CST became codified in the United States legal system by the Supreme Court decision that created the Dusky standard (Barnard, 1997; Otto, 2006; Mueller & Wylie, 2007). The United States Supreme Court ruled in *Dusky v. United States* (1960) that a defendant must have the capacity to perform two functions during the legal process: "Sufficient present ability to consult with his lawyer with a reasonable degree of rational understanding...[and the defendant must possess a] rational as well as factual understanding of the proceedings against him..." (Jacobs, Ryba & Zapf, 2008). Since the Dusky decision, a majority of the states have either adopted the Dusky standard verbatim or have adopted similar standards with only minor modifications (Jacobs, Ryba & Zapf, 2008; Roesch, et al., 1999).

Unfortunately, the legal standards articulated in the Dusky standard reveal a complicated psycholegal conceptualization. Significantly, the Dusky standard did not provide a definitive set of psycholegal capabilities to define CST and by which to evaluate the defendant's CST capacities. In addition, "The abilities required to competently stand trial vary, depending on the functional context of the case (e.g., the defendant, the charges, the evidence, available trial strategies)" (Zapf, Skeem & Golding, 2005, p. 434), which further complicates the forensic evaluator's efforts to provide the Court with accurate information regarding the defendant's CST.

Otto (2006) further pointed out that the Dusky standard directs that the defendant must possess "factual" and "rational" abilities. It demands that the defendant exhibit more than a minimal command of the facts related to the case, but that she/he also possesses the capacity to participate in the legal process in a rational manner. However, the exact composition of rational capacities was also not clearly defined.

Grisso (2003) noted that the dimensions of CST have been assessed by evaluators in a non-standardized manner. In particular, the precise definitions of necessary rational competencies are fluid and rely heavily on the clinical judgment of the evaluator. Notably, research has demonstrated that clinical judgment is too often characterized by inconsistency and unreliability (Garb, 1998; 2005). Bagby, Nicholson, Rogers & Nussbaum (1992) and numerous other commentators on the current state of CST find that because the Dusky standard is not clearly defined forensic evaluators are put into the disconcerting position of evaluating defendants in regards to psycholegal constructs with minimal assistance from the Court as to the precise meaning of those constructs. "Indeed,

one can argue that CST will not be adequately elucidated until its components are clearly defined and distinguished” (Bagby, Nicholson, Rogers & Nussbaum, 1992, p. 505).

Publicly funded mental health services have declined considerably during the past several decades and coincidentally the number of mentally ill defendants in judicial and correctional settings has increased significantly. The number of defendant’s with psychiatric disorders in the U. S. prison system is at epidemic proportions (Baillargeon, Binswanger, Penn, Williams, & Murray, 2009) and numerous correctional facilities across the U. S. consider themselves to be mental health institutions as well as correctional facilities (Easley, 2009; Kinsler & Saxman, 2007). As a result, the number of mentally ill defendants involved in the adjudication process has significantly increased. “One study found that over 50% of incarcerated individuals reported mental health problems. Many offenders reported signs of a serious psychiatric disorder, with approximately 50% of prisoners and jail inmates endorsing symptoms of mania, approximately 25-30% of prisoners and jail inmates endorsing symptoms of major depressive disorder, and slightly fewer endorsing symptoms of a psychotic disorder (15-24%)” (McDermott & Sokolov, 2009, p. 754). Baillargeon, Penn, Thomas, Temple, Baillargeon & Murray (2009) and Kinsler & Saxman (2007) reported that there are more than two million incarcerated individuals in the U.S. and in excess of one million of those individuals have at least one serious psychiatric disorder. In addition, approximately 24% of those individuals experienced a major depressive disorder, bipolar disorder or schizophrenia.

CST assessments are the most common type of criminal forensic assessment conducted for the Court (Cruise & Rogers, 1998; Warren, Murrie, Stejskal, Colwell,

Morris & Chauhan, 2006; Rogers, Grandjean, Tillbrook, Vitacco & Sewell, 2001). More defendants are evaluated for CST and more money is spent on evaluation, adjudication and treatment than on any other forensic psychological endeavor (Zapf, Skeem & Golding, 2005). Estimates suggest that between 2% and 8% of all felony defendants are referred for competency evaluations, and of that number 30% are eventually found to be incompetent. Additionally, defense attorneys were found to have doubts as to whether their clients can competently assist in their own defense or participate in the adjudication process in 8% to 15% of felony cases (Bonnie, Hoge, Monahan, Poythress, Eisenberg & Feucht-Haviar, 1997; Roesch, et al., 1999). Bonnie, et al., (1997) strongly suggested that a significant percentage of evaluated defendants exhibit significantly impaired abilities to communicate effectively with their attorney, to make decisions competently and to rationally manipulate information pertinent to making significant trial-related decisions.

More than a decade ago Bonnie, Hoge, Monahan, Poythress, Eisenberg, & Feucht-Haviar (1997) observed, "Given the importance of assessments of adjudicative competence, it is surprising how little is known about relevant defendant capacities and, in particular, how little is known about the relationship of specific mental disorders to these abilities, or about ways in which given forms of psychopathology affect the competence-related abilities of defendants" (p. 330). Several years later Weiss (2004) expressed the opinion, "Unfortunately, CST clinical evaluations are still prone to chaos and influenced by teleological forces... one would like to see a less capricious system" (p. 225). More recently a similar notion was expressed by Warren, et al., (2006) when they said, "Given the frequency of CST evaluations, their weight in Court, and their consequences for defendants, it is important to examine how clinicians arrive at their

opinions” (p. 114). Rogers, Jackson, Sewell, Tillbrook & Martin (2003) indicated that research conducted over forty years has not answered the fundamental question of how the Dusky standard is best conceptualized as it applies to CST assessments. It is apparent that the field of forensic psychology needs to continue its work toward developing and implementing a better understanding of the psycholegal dimensions of CST assessments and the standardization of the CST evaluation process.

The lack of clarity related to the Dusky standard is reflected in the data on the use of CST assessment instruments by forensic evaluators. Although referrals for CST evaluations are the most common referral for forensic psychological services, between 50,000 and 60,000 are conducted annually, more than half of forensic evaluators either rarely or never use CST assessment tools in their evaluations of defendants (Rogers, Jackson, Sewell, Tillbrook & Martin, 2003).

The aim of the forensic evaluator is to provide the judge and jury with precise and accurate information regarding the defendant’s CST prior to the rendering a decision regarding the charges against the defendant (Vitacco, Rogers, Gabel & Munizza, 2007). The forensic evaluator attempts to accurately inform the court of the impairments and disabilities of the defendant so that the court can render a just decision. The prosecution or defense can challenge the forensic expert’s opinion but the judge remains the final decision-maker regarding the question of the defendant’s competency (Leong, 2004). Yet nearly forty years of research on competency measures has produced amazingly few definitive outcomes regarding the underlying dimensions of CST tools and their correspondence to the Dusky standard (Rogers, Jackson, Sewell, Tillbrook & Martin, 2003). The following sections reviewed U. S. Supreme Court decisions and Washington

State case law and legal statutes in order to gain a clear understanding of current legal standards regarding psychological dimensions of CST. Those sections were followed by an evaluation of current CST assessment tools in light of the legal decisions and statutes analyzed.

Significant United States Supreme Court Rulings

Supreme Court decisions have only partially defined standards of CST and the psycholegal conception of rational understanding. The landmark *Dusky v. US* (1960) decision set an ambiguous standard for future competency hearings. *Drope v. Missouri* (1975) specified the relevant factors in determining the need for a CST evaluation of the defendant (Roesch, et al., 1999). *Godinez v. Moran* (1993) expanded on the Dusky standard by specifically underscoring the necessity of the defendant's rational understanding for decisional competence (Weiss, 1997) and *Cooper v. Oklahoma* (1996) further emphasized the importance of the defendant's ability to make rational decisions. Those decisions will be examined in more detail in the following paragraphs followed by synopses of other notable Supreme Court decisions related to CST issues.

Dusky v. US (1960) is a briefly stated two-pronged standard that required that a defendant have the capacity to demonstrate certain capabilities in order to be considered competent to stand trial. The defendant must 1) be capable of consulting with the defense attorney and to participate in his or her own defense with a reasonable degree of rational understanding and 2) demonstrate factual and rational understanding of the proceedings against him or her (Barnard, 1997; Cruise & Rogers, 1998; Roesch, et al., 1999; Otto, 2006; Mueller & Wylie, 2007). The decision, commonly referred to as the Dusky standard, sparked decades of debate because the Court neglected to include a specific

definition of “rational understanding” in its ruling. Additional discussion of the debate regarding rationality issues will occur later in this paper.

Drope v. Missouri (1975) ruled that the defendant's irrational behavior, demeanor at trial, and prior medical opinions regarding the defendant's competence are all relevant in determining the need for a current CST evaluation (Roesch, et al., 1999). In addition, the Court held that competence at the beginning of a trial does not guarantee competence throughout the trial (Cruise & Rogers, 1998).

Godinez v. Moran (1993) held that the competence to stand trial contains within it the assumption that the defendant possesses decision-making competence. Although the ruling advanced the understanding of CST the Court did not comment on the specific dimensions or abilities that define decision-making competence (Poythress, Bonnie, Hoge, Monahan & Oberlander, 1994). In addition, the Court ruled that the right to due process does not require differing standards for competence to plead guilty and competency to stand trial. The Court held that the Dusky standard applies to all competencies, a ruling which has subsequently been criticized by legal scholars and lower Courts (Roesch, et al., 1999).

Cooper v. Oklahoma (1996) ruled that any state setting the burden of proof of incompetency as “clear and convincing evidence” has imposed a significant risk of an erroneous determination of the defendant's CST and such a burden of proof violates the 14th Amendment right of due process. It underscored the application of the Dusky Standard to the defendant's capacity to make decisions regarding waiving or asserting important rights (Cooper & Grisso, 1997). The Court also opined that the defendant's

right not to be tried when incompetent outweighed the state's interest in efficient operation of the criminal justice system (Cruise & Rogers, 1998).

The following are synopses of other Supreme Court decisions that made significant contributions to the legal understanding of CST, but that did not address the specific composition of the rational understanding of the defendant. *Pate v. Robinson* (1966) established that the 6th and 14th Amendments to the United States Constitution guarantee the defendant's right to due process and requires a judicial hearing to address any reasonable doubt regarding the defendant's competence to stand trial (Cruise & Rogers, 1998; Roesch, et al., 1999).

Wilson v. United States (1968) ruled on the relationship between rational competence and amnesia (Roesch, et al., 1999). The Court found that the defendant's lack of memory (amnesia) of an alleged crime does not automatically constitute incompetence (Cruise & Rogers, 1998). The Court held that six factors must be considered regarding the impact of the defendant's amnesia on the ability to stand trial. Does the defendant have the ability to 1) consult with or assist the defense, 2) testify on his/her own behalf, 3) reconstruct the evidence in light of the amnesia, 4) rebut the prosecution's evidence reconstruction, 5) rebut the state's case that negates any possibility of innocence, and 6) assist in identifying any other facts or circumstances that indicate whether the defendant received a fair trial (Roesch, et al., 1999)?

Jackson v. Indiana (1972) was notable because the Court spoke out regarding the treatment of defendants found incompetent to stand trial. The Court held that the right of due process required that the nature and duration of a defendant's commitment, based solely on incompetence, must be for a reasonable period of time and must be justified by

progress toward a return to competence (Cruise & Rogers, 1998; Mueller & Wylie, 2007). The Court did not specify as to the length of time considered reasonable (Roesch, et al., 1999).

In *Washington v. Harper* (1990) the Supreme Court ruled that the defendant has a constitutionally protected “liberty interest” in “avoiding the unwanted administration of anti-psychotic drugs.” The Court held that forced medication of mentally ill defendants could only be ordered if the defendant is a danger to himself or others, and when the medication is in the best interest of the defendant. Further, the Court ruled that consideration must first be given to "alternative, less intrusive means" of corrective treatments before the administration of psychotropic medication to the defendant without their consent (Mueller & Wylie, 2007). Regarding same topic, *Riggins v. Nevada* (1992) held that forced administration of antipsychotic medication without first determining necessity or reasonable alternatives violated the 6th Amendment and 14th Amendment right to due process (Cruise & Rogers, 1998). More recently, *Sell v. United States* (2003) imposed stringent limits on the forced administration of antipsychotic medication to criminal defendants for the sole purpose of making them competent to stand trial. The state’s interest must be “important” and must be reviewed on a case-by-case basis. In addition, the medication must demonstrably advance the state’s interest. The Court cited its earlier rulings in *Washington v. Harper* (1990) and *Riggins v. Nevada* (1992) as the applicable criteria in such cases (Mueller & Wylie, 2007).

Medina v. California (1992) ruled that states must provide procedures to adequately protect a defendant against being tried while incompetent, and also

determined that due process does not require that the state bear the burden of proof in establishing the defendant's incompetency (Cruise & Rogers, 1998).

The Supreme Court created the present federal standard for the admissibility of scientific evidence in *Daubert v. Merrell Dow Pharmaceuticals, Inc.* (1993). In deciding this case the Court held that it is the role of the Judge or jury to decide the "ultimate question" of competency, and limited the role of expert witnesses. The decision regarding the defendant's competency is ultimately a legal decision and is not based merely on a question of scientific fact (Frolik, 1999). This case also provided the Daubert standard by which the admissibility of scientific evidence is decided. The Daubert standard stipulated four general factors or questions: 1) can the validity of the scientific evidence be tested, 2) has the scientific evidence been subjected to peer review and publication, 3) can rate of error factors regarding techniques and procedures be determined, and 4) has the scientific evidence being offered received general acceptance within the relevant scientific community (Rogers & Shuman, 2005)?

Briefly stated, the decisions by the Supreme Court underscore the defendant's rights regarding competence while standing trial. Although the Dusky standard clearly states that defendants must be able to engage in their own defense and exhibit the capacity to understand the nature of the proceedings it did not specifically define rational capacities. Clearly, the breadth and depth of competency evaluations has improved since the Dusky decision was rendered, however there still remains a significant gap in the CST evaluation process. As a result, an important debate persists within the field of forensic psychology regarding competency evaluations and, in particular, the precise nature of a defendant's rational abilities.

Washington State Case Law and Mental Competencies

Washington State case law was reviewed to identify those ruling that are not only relevant to the issue of competency to stand trial but that also contribute specificity to the definition of rational competence. *State v. Gwaltney* (1970) was an appeals case based on alleged abuse of discretion by the Court. The Appeals Court decided that it was improper for the Court to base the assessment of competency to stand trial on the defendant's inappropriate facial grins and grimaces. The Dusky statute was noted and the Court further stated that the defendant's inability to adequately express emotions in a verbal or physical manner was not sufficient to conclude incompetence.

State v. Eldridge (1977) ruled that the competency to stand trial standard is a fundamental requirement of criminal justice. It further ruled that the CST of the defendant is at the discretion of the Court and that the Court's decision regarding the defendant's competency cannot be overturned without evidence that there had been abuse of discretion.

State v. Israel (1978) cited the Dusky standard and underscored earlier rulings that the Court was required to do to competency evaluations when in doubt of the defendant's competency to stand trial. This Court also reasserted that the defense attorney's opinion of the defendant's competency to stand trial must be considered with great weight. The ruling put a significant measure of the responsibility of determining the defendant's rational capacity to participate with the defense on defense counsel, but offered no definitions or guidelines regarding rational competencies.

State v. O'Neal (1979) ruled that strict signs or specific behaviors which signal or require a competency evaluation do not exist. However, the Court further ruled that the

trial Judge must use discretion to assess the defendant's mental competence by observing the defendant's appearance, demeanor and conduct in Court, personal and family history, medical evidence and psychiatric evaluations and statements made by defense counsel.

State v. O'Neal (1979) ruled that the defendant had a right to due process as guaranteed by the 14th Amendment to the United States Constitution. The Court also reiterated that Judges are required to order two competency evaluations when doubt exists as to the competency of the defendant. One evaluation is to be conducted by an evaluator chosen by the state and the other by an evaluator chosen by the defense.

State v. Swanson (1981) ruled that amnesia alone or merely a lack of memory is irrelevant to the defendant's competency to stand trial if the defendant is otherwise competent in light of the Dusky standard. The Court further ruled that a defendant who cannot remember the facts of the alleged crime but who is otherwise free from mental disease or defect is competent to stand trial, especially when facts of the crime can be constructed through other sources.

State v. Jones (1983) cited the Dusky standard and reiterated that the Court was required to conduct competency evaluations when there are doubts as to the competency of the defendant. The Court suggested that another prong or element be added to the Dusky standard, the ability to discuss strategy with the defense.

State v. Gordon (1985) ruled that a motion by the defense for a competency hearing must be supported by factual evidence that the defendant is potentially incompetent to stand trial and that the Court is the verifier of those facts. The Court must inquire into the following areas; the defendant's apparent understanding of the charge and consequences of conviction, the defendant's understanding of the facts that gave rise to

the charge, and the ability of the defendant to relate to the defense attorney and to help prepare a vigorous defense. The Court held that significant weight should be given to the defense attorney's opinion as to the competency of the defendant, but that it is also appropriate for the Court to deny the defense motion when there are no accompanying attorney affidavits supporting incompetence. The phrase "reason to doubt" used in the Court's decision as related to a defendant's competence was not definitive, and the matter of the defendant's rational understanding was not addressed.

State v. Hahn (1985) ruled that the determination of competency to stand trial was within the discretion of the Judge and the trial Judge's decision can only be reversed as a result of judicial abuse of discretion. The Court decided that a defendant is capable of assisting in his or her own defense despite experiencing a delusional system.

State v. Hicks (1985) concluded that a defendant cannot be tried if he or she is not competent, nor can they be convicted or sentenced. The Court ruled that this would be a violation of the 6th Amendment and cited the Dusky standard by which to assess a defendant's competency. The Court stated that deference was to be given to the trial Court because of the Court's opportunity to observe the defendant's behavior and demeanor. The defendant's anger with his attorney and refusal to work with the attorney on defense strategies did not necessarily establish that the defendant was incompetent. The opinion of the defense attorney carries significant weight, but final discretion as to the defendant's competency to stand trial is up to the Court by taking into account additional relevant factors and statements by psychologists. The Court must order a competency evaluation when doubt exists as to the competency of the defendant. This

ruling was determined by the Court's interpretation of the 14th Amendment's due process statutes.

In *State v. Ortiz* (1985) the state Supreme Court ruled that the trial Judge has wide discretion regarding the defendant's competency to stand trial. The Supreme Court further cited the Dusky standard for determining competency to stand trial but the Court made no further suggestions regarding the definition of rational understanding. The defense had argued that Jones (1983) added a third prong to the Dusky standard, which requires that the defendant has the ability to engage in discussions regarding defense strategies with counsel. The Supreme Court disagreed and ruled that the inability of the defendant to discuss or consider strategy with defense counsel was not evidence of incompetence.

State v. Smith (1988) dealt in large part with *pro se* issues. The Court ruled in this case that mentally ill defendants can waive the right to counsel, provided that they are competent to stand trial and that they knowingly and intelligently waived their right to be represented by counsel. The Court further opined that each determination of competency should be made on a case-by-case, or *ad hoc*, basis. The Court's opinion was that trial Judges have wide discretion regarding the determination of CST.

State v. Minnix (1991) ruled that a developmental disability is not reason enough to establish incompetence to stand trial. The same standard applies regarding the defendant's ability to plead to charges filed against the defendant.

State v. Benn (1993) underscored previous rulings as to the definition of competency to stand trial by saying that a defendant was competent if she/he is able to appreciate the nature of the proceedings against her or him and to assist in the defense.

However, in contrast to *State v. Jones* (1983) it further stated that it is not a requirement for CST that the defendant be able to choose or suggest trial strategy.

State v. Adams (1995) was characterized by the Court's refusal to pay for the psychological evaluation requested by an indigent defendant. The Court ruled that the defendant could be administered psychotropic medication against his wishes in order to render the defendant competent to stand trial and that authorizing enforced medications to render the defendant competent to stand trial did not violate the defendant's constitutional rights (Constitutional Amendments 5, 6 and 14). The Court further opined that there is a balancing act between the defendants' right to be free of mind-controlling drugs and the state's interest in a fair trial by enforcing medically appropriate involuntary treatment with psychotropic medications. The Court outlined the elements that must exist in order to impose medical treatment against the defendants will. First, the treatment must be appropriate and necessary to attain competency. Second, no less-intrusive method to achieve competency of the defendant could be used. The Court further opined that the decision as to whether to grant a motion for expert services fell within the discretion of the Court. In addition, the Court ruled that the defendant must demonstrate a need for expert services to be able to assist in an adequate defense.

State v. Helme (1997) ruled that retrograde amnesia is not enough by itself to warrant incompetence to stand trial. However, when assessing the relative effect of retrograde amnesia on the case being considered the Court ruled that the following factors, known as the Wilson Examination, should be considered: 1) the extent of effect of the amnesia on the defendant's ability to consult and assist the defense, 2) the extent of the effect on the defendant's ability to testify on his own behalf, 3) the extent that the

evidence of the alleged crime can be reconstructed without the recollections of the defendant, including evidence related to the crime and the defendant's alibi, 4) the extent to which the state can assist reconstruction of the crime, 5) the strength of the prosecution's case and whether the charges were indefensible, and 6) any other facts and circumstances that would indicate whether the client received a fair trial.

State v. Singh (1997) cited the Dusky standard by which to assess the defendant's competency to stand trial. The Court ruled that a Judge must base the assessment of the defendant's mental competency on the defendant's appearance, demeanor and conduct in Court, personal and family history, medical evidence and psychiatric evaluations and statements by counsel. However, no standards were specified regarding the precise dimensions making up the rational competencies required by the Dusky standard.

State v. Erickson (1998) ruled that the defendant's inability to remember details of their offense is not sufficient evidence to require a competency evaluation. However, the rational competencies required by the Dusky standard were not discussed nor was the impact of memory deficits on the defendant's ability to rationally participate in their own defense.

State v. Fleming (2001) quoted the 14th Amendment right of due process under the law and reiterated that the defendant must be competent in order to assure due process. It further prohibited the conviction of any person not competent to stand trial and asserted that standards for competency to enter a plea and competency to stand trial are the same. This Court further stated that competency hearings should take place before entering a plea and that competency evaluations are at the discretion of the Court. The Court took into account factors presented by the defendant: appearance, conduct,

demeanor, personal and family history, medical and psychiatric reports, and statements of the attorneys involved.

State v. Marshall (2001) reasserted the requirement of the Court to convene a competency hearing if doubt exists regarding the defendant's competency to stand trial. The Dusky standard was cited, as was the requirement that the Court order a competency evaluation if there was a question as to the defendant's competency. The procedures of competency to stand trial evaluations were again pointed out to be mandatory, not merely used as a guideline and the 14th Amendment was cited by the Court to justify that no defendant be tried while not competent to stand trial. The Court also ruled that any person who was not competent to stand trial was also incompetent to be sentenced or punished. The Court further ruled that the standard that applied to competency issues also applied to the defendants pleading guilty. The Court further stated that if the defendant was determined to be incompetent to stand trial, they were also incompetent to make a plea. Any such plea by an incompetent defendant must be allowed to be withdrawn and a formal competency hearing convened.

State v. Nelson (2001) case cited the 14th Amendment right to due process and the Dusky standard. The Court further opined that prior pleas of not guilty by reason of insanity create doubt as to the current competence of the defendant to stand trial. The Court asserted its right to decide whether to order a competency exam. The Court also declared its broad discretion regarding the defendant's competency. The judgment of mental competency was to be based on the defendant's appearance, demeanor and conduct in Court, personal and family history, medical evidence and psychiatric

evaluations and statements made by defense counsel regarding the defendant's ability to participate in the defense.

In *State v. Riofta* (2003) the defense attempted to petition the Court to have a post trial competency evaluation conducted on the defendant. However, the Court ruled that it was impossible to evaluate a defendant's CST after the trial was completed. The Court examined the trial, in light of the 14th Amendment and RCW 10.77.050 and found that there existed no evidence of incompetence by which to order a competency evaluation. The Court ruled that there are no fixed signs of incompetence, but reiterated the discretion of the Judge to determine the mental competency of the defendant based on the defendant's appearance, demeanor and conduct in Court, personal and family history, medical and psychiatric evidence and statements made by defense counsel.

In *State v. Froehlich* (2004) the defendant claimed that he was not competent to stand trial because of delusional and paranoid symptoms. Two psychiatric evaluations determined that he was competent to stand trial and the Court ruled that the existence of a thought disorder does not necessarily mean that a defendant is incompetent to stand trial.

State v. Price (2004) cited the defendant's right to due process under the 14th Amendment and determination of CST using the Dusky standard. The Court ruled that the procedures of competency to stand trial are mandatory, not merely directory, and that the trial Judge has wide discretion regarding competency issues. The Court reiterated that the Judge has discretion to determine the defendant's mental competency and bases judgment on the defendant's appearance, demeanor and conduct in Court, personal and family history, medical evidence and psychiatric evaluations and statements made by

defense counsel. The Court further underscored that the defense attorney's opinion of the defendant's competency to stand trial carries significant weight.

State v. Gallegos (2006) mandated that the procedures of the competency statute (RCW 10.77) are mandatory and not merely permissive. It listed previously identified relevant factors for the Judge to observe as exhibited by the defendant. This Court also suggested that the defendant's behavior should be contrasted against other defendants previously assessed as not competent to stand trial.

In *State v. Hernandez-Ramirez* (2005) the defense asserted that the defendant had the right to avoid unwanted antipsychotic medications, according to the 14th Amendment, in that such compulsory medication would interfere with his right to privacy, ideas and a fair trial. However, the Court reaffirmed that the state has the right to administer unwanted medications to a mentally ill defendant accused of a serious crime. The Court determined that the state's right to administer psychotropic medications involuntarily exists under the following conditions: 1) important government interests are at stake, 2) medications are likely to render the defendant competent to stand trial and will not cause unfair side effects, 3) involuntary medications are necessary to further the State's interest in public safety, and 4) the medications are medically appropriate for the defendant's mental health disability. The state must meet the burden of proof that the above limits are in place and that no less-intrusive treatment is available. An additional consideration in this case was that it was ruled acceptable for the state to render the defendant non-dangerous to self and others through the use of tranquilizing medication.

State v. Martin (2006) cited the 14th Amendment due process provisions and the Dusky standard as the measuring tool for determining competency of the defendant. The Court also ruled that a medicated defendant can be determined competent to stand trial if the medications prescribed actually result in the defendant's competency.

The following section explored the Revised Code of Washington to determine the effect that the case history previously discussed may have had on the legal statutes related to CST. The review again focused on an exploration for issues related to capacities of rational understanding.

The Revised Code of Washington

The Revised Code of Washington (RCW) is an assemblage of the permanent laws currently in force in the state of Washington. The laws are enacted by the state legislature, and are signed into law by the Governor. The statutes that address competency to stand trial (CST) are found in chapter 10, section 77 (RCW 10.77). The judiciary interprets some statutory law through Court rulings, and these rulings affect the implementation of particular sections of the statutes. The following annotated subsections contain the items within that section that are most relevant to evaluators of a defendant's CST, especially in relation to the defendant's rational competency.

RCW 10.77.020 specifies that the defendant must demonstrate an understanding of the following: 1) the nature of the charges, 2) the statutory offenses included within them, 3) the range of allowable punishments there under, 4) possible defenses to the charges and circumstances in mitigation thereof, and 5) all other facts essential to a broad understanding of the whole matter. However, the specific contents of broad understanding and rational competency are not identified or addressed.

RCW 10.77.050 states that no person determined to be incompetent can be tried, convicted, or sentenced for the commission of an offense as long as they remain incompetent.

RCW 10.77.060 asserts that if a defendant pleads not guilty by reason of insanity, or if competence is in doubt, any party can request and the Court can appoint at least two qualified professional persons, one of whom is approved by the prosecuting attorney and the other the defense attorney, to evaluate and report on the mental capacity of the defendant. Further, the Court may order that the defendant be hospitalized or secured in a suitable public or private facility in order to complete the CST evaluation in a timely manner. However, the time allowed for completing such evaluations is not to exceed fifteen days from the date of admission to the facility. If appropriate, the CST evaluation can be conducted in a detention facility. The Court can delay granting the defendant bail until completion of the CST evaluation, and subsequent appearance before the Court. In addition, the defendant has the right to have his own professional evaluator observe the state's CST evaluation and to have access to any subsequent information obtained by the state.

RCW 10.77.060 also defined what CST evaluations and reports should contain:

1) a description of the nature of the examination, 2) a diagnosis of the mental condition of the defendant, 3) a notation as to whether the defendant suffers from a mental disease or defect, or is developmentally disabled, 4) an opinion as to the defendant's competency to stand trial, 5) an opinion as to the defendant's sanity at the time of the alleged crime, if the defendant has indicated his or her intention to assert the defense of insanity pursuant to RCW 10.77.030, 6) when directed by the Court, an opinion as to the capacity of the

defendant to have a particular state of mind that is an element of the offence charged, 7) an opinion as to whether the defendant should be evaluated by a designated mental health professional under RCW 71.05, and 8) an opinion as to whether the defendant is a substantial danger to other persons, or presents a substantial likelihood of committing criminal acts jeopardizing public safety or security, unless kept under further control by the Court or other persons or institutions.

RCW 10.77.065. Mental condition evaluations. Reports and recommendations required. This code establishes the manner in which reports and recommendations are to be distributed to the parties. Such CST evaluations are to be provided to the mental health professional designated by the Court, the prosecuting attorney, the defense attorney and to the designated party at the facility where the defendant is being held during the evaluation. The report is to be distributed no later than 24 hours before the defendant is transferred back to the relevant county correctional facility. All information must be shared with all interested parties in a timely manner, generally within 24 hours preceding the transfer of the defendant to the correctional facility in the county in which the criminal proceeding is pending.

RCW 10.77.070 details the examination rights of defendant's expert or professional person. This code emphasized that when the defendant desires to be evaluated by a professional person of his or her own choice, such an evaluator must be permitted reasonable access to the defendant in order to complete the evaluation, and that the evaluator shall have access to all relevant medical and psychological records and reports.

RCW 10.77.090 details the various procedures relevant to the CST evaluation process. It mandates that if a defendant is evaluated and determined to be incompetent to stand trial that any legal proceedings must be delayed until the defendant attains competency. The defendant remains in custody and is placed in an appropriate facility if accused of a felony or has a history of one or more violent acts. A subsequent evaluation and treatment is to commence for no longer than 90 days to determine if the defendant has regained competency. Upon restoration of competency, at any time during the 90 day period, the stay will be lifted and the defendant is returned to the Court for a CST hearing. If competency is not regained, and it is deemed unlikely to be restored, the proceedings can be dismissed by the Court, and the defendant can be reevaluated by the designated mental health professional pursuant to RCW 71.05 for involuntary hospitalization under the civil code. However, if the defendant is determined to be incompetent to stand trial, and is charged with a felony, the Court has the option of ordering a second ninety-day evaluation and treatment period in an attempt to restore the defendant's CST. If competency is not restored before the end of the second ninety-day period, then the charges are dismissed without prejudice and civil commitment proceedings commence.

RCW 10.77.092 pertains to the involuntary administration of psychotropic medication to mentally ill defendants. The Court has the right to order that involuntary medication be administered to a defendant in order to restore competency if any one of the following conditions are present: 1) any violent offense, sex offense, serious traffic offense, and most serious offenses, 2) any offense, except non-felony counterfeiting offenses, 3) any offense involving firearms and dangerous weapons), 4) any offense

listed as domestic violence, 5) any offense listed as a harassment offense, 6) any Class B felony, or 7) any city or county ordinance or statute that is equivalent to an offense referenced above.

In addition, the Court has discretion in any particular case to deem the pending charge a serious offense within the context of competency restoration treatment. The factors that determines such a Court decision pertain to the actual infliction or perception of physical or emotional harm to another person, public safety concerns, the number and nature of related charges, the potential length of confinement if the defendant is convicted, and the number of potential and actual victims impacted by the defendant's alleged acts.

In summary, the review of the various interpretations of competency to stand trial, as cited in multiple examples of U. S. Supreme Court rulings and Washington State cases, revealed that the Court has established the Dusky standard, which requires that a defendant must possess sufficient rational capacity in order to competently stand trial. However, the U. S. Supreme Court and Washington State case law has not established a sufficiently detailed definition of a defendant's rational understanding so that it can be assessed in terms of CST, which, as demonstrated above, is reflected by the lack of specific legal statutes in the RCW regarding a defendant's rational capacity.

Nevertheless, the following section reviews and evaluates the assessment tools most frequently utilized by forensic evaluators of CST. The various instruments are reviewed for their overall content and effectiveness, but they are especially evaluated from the perspective of their ability to assess a defendant's capacity for rational understanding.

Competency to Stand Trial Assessment Instruments

The evaluation of CST with assessment instruments has a relatively short history. Louis McGarry conducted the first substantial research into CST issues (Laboratory of Community Psychiatry, 1973) and the first book devoted entirely to CST wasn't written until the publication of *Competency to Stand Trial* by Roesch & Golding (1980). Grisso, (2003) noted that the standardization of assessment tools or CST evaluations did not exist throughout the 1980's and no textbooks on the subject existed until the publication of *Evaluating Competencies: Forensic Assessments and Instruments* (Grisso, 1986).

Since the early work of McGarry (1973), concise screening instruments of CST have been developed to identify defendants likely to be incompetent and those that are malingering, or feigning, symptoms of mental illness. The strength of these screening tools is brevity, typically needing only ten to 15 minutes to administer. Screening tools have been an important addition to the process of CST evaluation because they frequently assist the Court to avoid the relatively high cost of conducting more comprehensive CST evaluations (Zapf & Viljoen, 2003).

The CST screening and malingering tools most frequently cited were the Competence Screening Test (CST), the Georgia Court Competency Test – Mississippi State Hospital (GCCT–MSH), the Miller Forensic Assessment of Symptoms Test (M-FAST), the Structured Interview of Malingered Symptomatology (SIMS) and the Structured Interview of Reported Symptoms (SIRS).

Competence Screening Test (CST)

The Competence Screening Test (CST) was developed as a companion screening tool to the more extensive Competence to Stand Trial Assessment Instrument (CAI)

described later in this paper (Lipsett, Lelos, & McGarry, 1971). The CST was designed to determine whether the more extensive CAI was ultimately needed (Ackerman, 1999). It contains 22 partial sentences, which the examinee is asked to complete (Grisso, 2003):

The Competence Screening Test (CST)
(Lipsett, Lelos, & McGarry, 1971)

- The lawyer told Bill that...
 - When I go to Court the lawyer will...
 - Jack helped the Judge...
 - When Phil was accused of the crime, he...
 - When I prepare to go to Court with my lawyer...
 - If the jury finds me guilty, I...
 - The way a Court trial is decided...
 - When the evidence in George's case was presented to the jury...
 - When the lawyer questioned his client in Court, the client said...
 - If Jack has to try his own case, he...
 - Each time the D.A. asks me a question, I...
 - While listening to the witnesses testify against me, I...
 - When the witness testifying against Harry gave incorrect evidence, he...
 - When Bob disagreed with his lawyer on his defense, he...
 - When I was formerly accused of the crime, I thought to myself...
 - If Ed's lawyer suggests that he plead guilty, he...
 - What concerns Fred most about his lawyer...
 - When they say a man is innocent until proven guilty...
 - When I think of being sent to prison, I...
 - When Phil thinks of what he is accused of, he...
 - When the jury hears my case, they will...
 - If I had a chance to speak to the Judge, I...
-

The CST was designed to be a psychometric tool and so contains a standardized method for assigning points to each response, thereby attempting to obtain useful numeric data (Lipsitt, Lelos & McGarry, 1971; Zapf & Viljoen, 2003). Early research reported excellent inter-rater reliability (Nicholson, Robertson, Johnson & Jensen, 1988), but no data were published regarding test/retest outcomes, and no norms were established. Melton, et al. (1997) reported that their research indicated that the CST produced mixed results and exhibited the lowest predictive validity index of all screening

tools evaluated during their research. It also resulted in the highest number of false positives, perhaps because of the vague and questionable scoring criteria for evaluators. Grisso (2003) raised questions about the relevance of the content of the tool's questions. Roesch, et al. (1999) criticized the CST scoring method due to what they considered to be an idealized notion of the criminal justice system. "Certain responses may actually reflect a sense of powerlessness and controlling one's outcome of the legal system and may be based on past experiences with the legal system." (Roesch, et al., 1999)

Melton, et al. (1997) described the tool as having "poor face value and content validity." The term "face value" was defined as an assessment containing impressive legal content which results in a high rate of acceptance by attorneys and judges (Melton, et al., 1997). The CST was also described by Rogers, et al. (2001) as being unreliable in obtaining clinically or legally relevant information.

Finally, the CST does not address the concept of rational understanding specified by the Dusky standard. Although a few of the incomplete sentences may produce responses that could conceivably shed light on the rational capabilities of the defendant, the scoring and analysis of the resulting data do not address rational understanding in a definitive or meaningful manner.

Georgia Court Competency Test – Mississippi State Hospital (GCCT–MSH)

The original version of the Georgia Court Competency Test (GCCT) was the result of work done by Wildman, Batchelor, Thompson, Nelson, Moore, Patterson & deLaosa (1978). It proved to be difficult to locate an actual copy of the GCCT test and no manual was located by accessing the most common sources of psychological assessments. A copy of the GCCT-MSH, which contained the original 17 questions of the

GCCT, was located as an Appendix to the article by Nicholson, Briggs, & Robertson (1988). Wildman (2003) expressed the opinion that the GCCT, when used in combination with other forensic evaluation tools, can be useful for a better understanding of the defendant's strengths and weaknesses in specific psycholegal domains. He advocated its use as a screening device, as part of a general assessment and as a comparison tool (pre and post return to competency treatment assessments). However, Wildman (2003) warned against over-reliance on any one forensic assessment instrument as a definitive measure of a defendant's competency to stand trial and recommended that all competency measures be used in concert with other evaluation strategies, such as thorough psychosocial interviews and the collection of collateral information.

Results of research on the reliability of the GCCT demonstrated that defendants with experience in the criminal justice system are able to alter their responses to the GCCT without difficulty to an extent that they are likely to be incorrectly categorized as incompetent. However, truly incompetent defendants may also present as grossly impaired. As a result, significantly low GCCT scores alone are only appropriately used as a preliminary screening criterion (Gothard, Rogers & Sewell, 1995).

Early findings of research by Nicholson, et al. (1988) and Bagby, et al. (1992) indicated that the GCCT produced unstable outcomes; however, Rogers, Ustad, Sewell & Reinhardt (1996) found that the GCCT did not demonstrate stable outcome measures and that the factors measured by the GCCT do not adequately correspond to the Dusky standard. Rogers, Jackson, Sewell, Tillbrook & Martin (2003) more recently added that the consult-with-attorney prong of the Dusky standard is poorly represented in all of the GCCT's factor solutions.

The Georgia Court Competency Test – Mississippi State Hospital (GCCT–MSH) is the result of several revisions of the GCCT and now includes items designed to measure malingering (Rogers, Grandjean, Tillbrook, Vitacco and Sewell, 2001; Roesch, Zapf, Golding & Skeem, 1999). The current instrument consists of 21 questions and responses grouped into six categories: 1) Picture of Court, consisting of seven questions regarding the examinees conception of the location of participants in the courtroom; 2) Functions, consisting of seven questions regarding the functions of the various participants, i.e., Judge, jury, prosecuting attorney, etc.; 3) Charge, consisting of two questions about the nature of the charge against the defendant; 4) Helping the Lawyer, consisting of three questions regarding how the examinees plans to assist the defense attorney; 5) Alleged Crime, consisting of one question asking the examinee to describe their alleged crime; and 6) Consequences, consisting of one question about likely outcomes if the defendant is found guilty (Ackerman, 1999; Grisso, 2003).

Georgia Court Competency Test –
Mississippi State Hospital Revision (GCCT-MSH)

1. Where does the judge sit?
2. Where does the jury sit?
3. Where will you sit?
4. Where will your lawyer sit?
5. Where will the District Attorney (Prosecutor) sit?
6. Where will the witness set to testify?
7. Where do the people watching the trial sit?
8. What does the judge do during the trial?
9. What does the jury do?
10. What will your lawyer do?
11. What will the District Attorney (Prosecutor) do?
12. What do the witnesses do?
13. What do the people watching the trial do?*
14. What will you do during the trial?*
15. What is your attorney's name?*
16. How can you contact him/her?*
17. How can you help your lawyer defend you?
18. What are you charged with?

19. What does that mean?
 20. If the jury finds you guilty of this charge, what might they do to you?
 21. You do not have to answer this question. But if you choose to, I would like you to tell me as much as you can about the events that led to your arrest.
-

* These questions were added to the original version of the test. (Nicholson, Briggs & Robertson, 1988).

Analysis of scale reliability and item homogeneity of the GCCT-MSH exhibited good internal consistency (Ustad, Rogers, Sewell, & Guarnaccia, 1996). In addition, research by Bagby, Nicholson, Rogers & Nussbaum (1992) reported that the GCCT-MSH produced consistent and stable results, but found that the competencies evaluated do not clearly and unambiguously correspond to the Dusky standard criteria. The tool only effectively measures the defendant's "General Knowledge" of the roles of various participants and courtroom layout. Items that conceptually measure the defendant's ability to consult with and assist the defense do not produce consistently reliable and useful information regarding the defendant's domains of relevant psycholegal abilities.

Research by Gothard, Viglione, Meloy & Sherman (1995) suggested that the GCCT-MSH should be subject to cross-validation with other malingering measures. However, their study found that the GCCT-MSH was useful in differentiating suspected malingerers from incompetent respondents, even though it did not include a formal faking component. Their research demonstrated that very low scores on the GCCT-MSH can be an indication of false responses and such results warrant further examination for malingering.

Although other researchers have reported excellent inter-rater reliability (Nicholson, Robertson, Johnson & Jensen, 1988), Melton, et al. (1997) described the GCCT-MSH as placing excessive emphasis on "trial versus plea" issues. They indicated that more than a third of the evaluation questions focus on superficial elements of little or

no relevance to assessing a defendant's competence to stand trial. Rogers, et al. (2001) suggested that the GCCT-MSH can be a useful CST screen, but the limitations of its subscales indicate that it would be used best as a composite screen. Little or no reliance should be placed on any individual scale. Roesch, et al. (1999) suggested and Zapf & Viljoen (2003) echoed that the major deficiency of the GCCT-MSH is that it focuses on fundamental factual knowledge competencies and relatively ignores the more important decisional competencies of rational understanding.

Rogers, et al. (2001) suggested that the GCCT-MSH "does not appear to be stable when applied to incompetent patients or disordered detainees." However, Grisso (2003) noted that only two studies of inter-rater reliability were conducted on the GCCT-MSH, but that outcomes of those studies indicated high inter-rater reliability. In addition, Grisso went on to report that there have been no test/retest studies and no published norms; therefore it is difficult to determine the GCCT-MSH's effectiveness. Another caution noted by Grisso was that the GCCT-MSH appeared to rely too heavily on the evaluator's clinical judgment. The result of evaluations wherein the clinical judgment of an evaluator was the primary mode of assessment has demonstrated poor validity (Garb, 1989; Nicholson & Kugler, 1991; Garb, 2005).

The GCCT-MSH and its predecessor the GCCT focus almost exclusively on the factual knowledge of the examinee and do not endeavor to evaluate the defendant's rational and decision-making capacities. Therefore, it would be a poor choice for an evaluator conducting a CST evaluation that closely follows the requirements of the Dusky standard.

Miller Forensic Assessment of Symptoms Test (M-FAST)

Research by Rogers, Sewell, Grandjean & Vitacco (2002) reported that CST measures are frequently vulnerable to feigning and moderately effective screens have been designed specifically to detect malingering. Research has shown that 15% to 18% of defendants feign mental illness in forensic evaluations making the detection of feigning an important component of forensic assessments (Boccaccini, Murrie & Duncan, 2006; Colwell, Colwell, Perry, Wasielski & Billings, 2008).

Appearing frequently throughout the literature on screening instruments was the caution that no single screening tool should be interpreted as conclusive evidence of feigning and evidence of malingering does not rule out the possibility that the feigning defendant also has an authentic mental disorder (Miller, 2001; Jackson, Rogers, & Sewell, 2005; Guy, Kwartner & Miller, 2006).

The Miller Forensic Assessment of Symptoms Test (M-FAST) is a tool designed primarily for detecting malingering or feigned symptoms of incompetence to stand trial (Miller, 2005; Jackson, Rogers & Sewell, 2005). The M-FAST contains a brief structured interview that was specifically designed to address the higher incidence of illiteracy in forensic populations and to detect false reporting of symptoms of Axis I disorders (Miller, 2004).

The brief interview format is composed of 25 items grouped into seven subscales. The items include true/false questions, multiple-choice questions and one suggestion question. The subscales endeavor to operationalize response styles and interview strategies that have been demonstrated to successfully identify defendants who are attempting to feign mental illness (Miller, 2001; Miller, 2004) The seven subscales are

reported vs. observed (symptoms) (RO), extreme symptomatology (ES), rare combinations (RC), unusual hallucinations (UH), unusual symptom course (USC), negative image (NI), and suggestibility (ES).

Jackson, et al. (2005) reported that the M-FAST contains three strengths: brevity, subscales that are based on well-established detection strategies, and an interview format providing standardization which avoids the most common problems of self-report formats. Research findings suggested that the M-FAST is a valid screening instrument for malingering and was found to be useful in detecting defendants feigning schizophrenia, bipolar spectrum disorder, major depressive disorder and posttraumatic stress disorder (Guy, et al., 2006). Research suggested that the M-FAST produced significantly higher sensitivity ratings than either psychologists or psychiatrists relying solely on clinical judgment (Miller, 2005). The M-FAST total score was found to be useful for clinical decision-making; however, caution was expressed concerning the interpretation of individual scales (Guy, et al., 2006).

Structured Interview of Malingered Symptomatology (SIMS)

The SIMS was designed to screen for psychiatric symptoms and cognitive impairments. It is composed of 75 self-reported true/false questions that constitute five scales: psychosis, neurological impairment, affective disorder, amnesic disorders, and low intelligence (Vitacco, Rogers, Gabel & Munizza, 2007). A primary advantage of the SIMS is that its scales are designed to assess different aspects of feigned psychopathology and cognitive impairment. The scales potentially provide forensic evaluators useful information into the potential domains of a defendant's feigning behaviors (Vitacco, Rogers, Gabel & Munizza, 2007). However, a major limitation of

the SIMS is that it has not been systematically validated in forensic settings, which is significant because defendants have significant external incentives to feign psychiatric symptoms (Lewis, Simcox & Berry, 2002).

Merckelbach & Smith (2003) found that the SIMS produced a significant number of false positives and that individuals with genuine symptoms of psychosis were at risk for being misidentified as malingerers. Lewis, Simcox & Berry (2002) emphasized that feigning does not rule out the possibility that the defendant has a genuine psychiatric disability and therefore, due to the potentially devastating effect of being identified as a malingerer on a defendant's adjudication, corroborating data in addition to the SIMS should be included in the evaluator's conclusion regarding malingering.

As with the previously described screening instruments (CST and GCCT-MSH), outcomes of the M-FAST and the SIMS that suggest significant malingering symptomatology require the administration of a more extensive measure. The most commonly recognized and respected evaluation tool of malingering behavior is the Structured Interview of Reported Symptoms (Lewis, Simcox & Berry, 2002; McDermott & Sokolov, 2009).

Structured Interview of Reported Symptoms (SIRS)

The SIRS is a 172-item structured interview specifically designed to assess for malingering and related response styles of psychotic symptoms and has been validated for use in in-patient, out-patient and forensic settings. The SIRS consists of eight primary scales: rare symptoms, improbable and absurd symptoms, symptom combinations, blatant symptoms, subtle symptoms, symptom selectivity and reported vs. observed symptoms. Each scale provides four classifications: honest, indeterminate, probable faking and definite faking. Research and rigorous validation of the SIRS has produced excellent

psychometric properties related to internal consistency and interrater reliability (Vitacco, Rogers, Gabel & Munizza, 2007).

The SIRS, and conceivably the recently released SIRS-2, has been generally accepted by forensic evaluators as the most effective measure of malingering (Lewis, Simcox & Berry, 2002; McDermott & Sokolov, 2009). Recent research found that the SIRS demonstrated valid and reliable detection of malingering outcomes while producing very low false-positive rates (Lewis, Simcox & Berry, 2002; McDermott & Sokolov, 2009). Research by Gothard, Viglione, Meloy & Sherman (1995) and Rogers, Gillis, Dickens, & Bagby (1991) supported the SIRS as an effective tool for discriminating suspected malingerers from incompetent defendants, but suggested that the most effective use of the SIRS is in combination with other malingering measures to test for corroboration of findings.

The comprehensive CST assessment instruments most frequently noted in the literature were the Competence to Stand Trial Assessment Instrument (CAI), Competence Assessment for Standing Trial – Mental Retardation (CAST-MR), the MacArthur Competence Assessment Tool – Criminal Adjudication (MacCAT–CA), the Fitness Interview – Revised (FIT-R), and the Evaluation for Competency to Stand Trial – Revised (ECST-R).

Competence to Stand Trial Assessment Instrument (CAI)

The Competence to Stand Trial Assessment Instrument (CAI) is the earliest and most-utilized CST assessment tool. It was developed out of the work done by McGarry (1973) and provided CST evaluators with specific, standardized conceptual guidelines concerning the evaluation of certain functional abilities of the defendant (Poythress,

Nicholson, Otto, Edens, Bonnie, Monahan & Hoge, 1999). The CAI describes 13 functions associated with the examinee's ability to engage in the trial process and assesses those functions through a semi-structured interview procedure (Ackerman, 1999; Grisso, 2003).

Competence to Stand Trial Assessment Instrument (CAI)
(McGarry, 1973)

- Appraisal of available legal defenses. Assesses the examinee's awareness of potential legal defenses and how they relate to the examinee circumstances.
- Unmanageable behavior. An assessment of the appropriateness of the examinees current motor and verbal behavior and how that behavior might disrupt trial processes.
- Quality of relating to attorney. Assesses the examinee's capacity for interpersonal relationship with the average attorney.
- Planning of legal strategy including guilty pleas to lesser charges where pertinent. Assesses the extent to which the examinee can understand, participate, and cooperate with the defense in planning defense strategies which are consistent with the defendant's legal circumstances.
- Appraisal of role. Assesses the examinee's ability to understand the roles of the defense counsel, prosecuting attorney, Judge, jury, defendant and witnesses.
- Understanding of Court procedure. Assesses the examinee's understanding of basic Court procedures and the significance of those procedures.
- Appreciation of charges. Assesses the examinee's understanding of the nature and seriousness of the charges.
- Appreciation of range and nature of possible penalties. Assesses the examinee's specific understanding and appreciation of the consequences, conditions and restrictions that could be imposed if found guilty.
- Appraisal of likely outcome. Assesses the accuracy of the examinee's perceptions regarding the likely outcome of the trial and to what extent impaired understanding may affect the quality of the examinees ability to participate in defense strategies.

- Capacity to disclose to attorney available pertinent facts surrounding the offense. Assesses the examinee's ability to provide basic consistent, rational and relevant accounts of motivational behaviors and facts associated with the alleged offense.
 - Capacity to realistically challenge prosecution witnesses. Assesses the examinee's capacity to distinguish distortions in prosecution testimony.
 - Capacity to testify relevantly. Assesses the examinee's ability to present testimony with coherence, relevance, and independence of judgment.
 - Self-defeating versus self-serving motivation (legal sense). Assesses the examinee's ability and motivation to adequately self-protect and to employ legal safeguards.
-

Grisso (2003) reported that all other CST assessment tools are essentially based upon the CAI. He described the CAI as an assessment of the defendant's ability to cope with the rigors of a trial, but also his ability to be protective of self. Grisso (2003) further described the tool as consistent and reliable within the scope of the information derived from the semi-structured interview questions. However, he cautioned that the numerical data associated with the tool is frequently inconsistent and is not gathered by evaluators consistently. The result of Grisso's research on the CAI indicated that it provides "little data on consistency of outcomes or construct validity" (Grisso, 2003).

Melton, et al. (1997) concurred with Grisso saying that it was inadvisable to use CAI scales to reach conclusions regarding the defendants CST. However, they also agreed that the most useful aspect of the CAI is the semi-structured interview portion. Ackerman (1999) and Rogers, et al. (2001) also indicated that reliance on numeric data derived from the CAI to determine a defendant's CST should be de-emphasized due to issues of unreliability.

Like the CST, its companion screening device, the CAI does not specifically address the concept of rational understanding specified by the Dusky standard and the

psychometrics of the CAI are evidently unreliable and characterized by poor inter-rater reliability. Nevertheless, the CAI does explore some areas of rational competency that could conceivably shed light on the rational capabilities of the defendant. Unfortunately, like the CST, the scoring and analysis of the resulting data do not address rational understanding as implied by the Dusky standard in a definitive or meaningful way.

Competence Assessment for Standing Trial – Mental Retardation (CAST-MR)

The Competence Assessment for Standing Trial – Mental Retardation (CAST-MR) is an assessment tool designed to assess the CST of defendants who are developmentally disabled (Ackerman, 1999). Nussbaum, et al., (2007) reported that the CAST-MR is the only assessment instrument that has been designed and validated specifically for evaluating developmentally disabled defendants for competency to stand trial. The primary reason for this is because developmentally disabled people comprise a minimal percentage of the criminal population.

The CAST-MR is comprised of 50 simplified questions organized into three sections:

- Section I (basic legal concepts): 25 multiple-choice questions assessing the examinee's depth of knowledge regarding courtroom procedure, the role of key participants and the meaning of common terminology used in the criminal justice process.
- Section II (skills to assist defense): 15 multiple-choice questions assessing the examinee's awareness and understanding of the client-attorney relationship, inside and outside of the courtroom.
- Section III (understanding case events): Ten brief open-ended questions assessing the examinee's ability to discuss elements and facts of the case in a coherent manner and the ability to understand the relationship between the alleged facts of the situation that subsequently resulted in arrest and the filing of charges.

Grisso (2003) reported that the CAST-MR was developed for the specific needs of defendants with mental retardation. Everington & Dunn (1995) reported that research at that time indicated that the CAST-MR appeared to provide reliable scores, discriminate between groups and classify defendants with an acceptable level of accuracy. However, Grisso (2003) described the research on the CAST-MR as producing disappointing validity and reliability assessment results. Melton, et al. (1997) suggested that studies have supported the use of this tool with defendants who are mentally retarded; however, they warned that the CAST-MR did not assess the defendant's competence beyond their ability to understand. A measure of rational understanding as directed by the Dusky standard is not included in the CAST-MR.

MacArthur Competence Assessment Tool - Criminal Adjudication (MacCAT-CA).

The MacArthur Competence Assessment Tool – Criminal Adjudication (MacCAT-CA) was originally designed to be a research tool but was eventually reconfigured and published as a CST assessment tool (Rogers, Jackson, Sewell, Tillbrook & Martin, 2003). It is highly structured and contains a standardized interview format, consisting of 22 items, that evaluates three discrete competence related abilities: Understanding (understanding of general information pertaining to the law and adjudication proceedings), Reasoning (discernment regarding the legal relevance of information and the ability to process options appropriately during decision-making during the adjudication process) and Appreciation (rational awareness of the meaning and consequences of the adjudication proceedings). The defendant is asked questions about a hypothetical legal scenario to determine their levels of Understanding (eight questions) and Reasoning (eight questions). To measure levels of Appreciation the defendant is

asked six questions about his or her own specific case (Otto, et al., 1998; Mumley, et al., 2003). The purpose of the MacCAT-CA is to assess the defendant's capability to assist the defense, competently make decisions and to cope with the circumstances of his or her legal situation. The instrument uses a vignette format and objectively scored questions to measure the three competence-related abilities mentioned above (Roesch, Zapf, Golding & Skeem, 1999; Zapf, Skeem & Golding, 2005).

Understanding items assess the examinees comprehension of eight courtroom related elements:

- Roles of defense and prosecution attorneys.
- Elements of an offense with which the defendant could be charged.
- Elements of a lesser included offense.
- Role of the jury.
- Role of the judge at trial.
- Consequences of conviction.
- Consequences of pleading guilty.
- Rights waived when one pleads guilty.

Reasoning items assess the examinee's decision-making processes regarding:

- Self-defense.
- Mitigating the prosecution's evidence of intent.
- Possible provocation.
- Fear as a motivator for one's behavior.
- Possible mitigating effects of intoxication.
- Seeking information: A defendant's ability to identify information that might inform choice.
- Weighing consequences: A defendant's ability to infer or think through implications of a chosen course of action.
- Making comparisons: A defendant's ability to verbalize features (advantages/disadvantages) of a chosen option in contrast or comparison to features of the other option.

The Reasoning section of the MacCAT-CA contains eight items separated into two types. Five items provide two sets of facts about the vignette and asks the examinee to distinguish which set of facts would be most important to tell defense counsel. The

other three items endeavor to assess the examinees decision-making process regarding a description of two pleading options: pleading guilty and accepting the conditions of a plea agreement with the prosecutor, and going to trial after pleading not guilty.

The MacCAT-CA's Appreciation scale asks the examinee to provide an opinion as to the defendant's expectation of treatment during their own legal proceedings. The six Appreciation items are:

- Likelihood of being treated fairly in the legal process.
- Likelihood of being assisted by defense counsel.
- Likelihood of fully disclosing case information to his or her defense attorney.
- Likelihood of being found guilty.
- Likelihood of punishment if convicted.
- Likelihood of pleading guilty.

The MacCAT-CA assesses rational understanding by utilizing the six items on the Appreciation scale, which examines the defendant's understanding of their own legal dilemma and relies on the clinical judgment of the evaluator to determine the plausibility of the defendant's answers to those six items (Poythress, et al., 1999). The Appreciation items are not based on the vignette used to assess Understanding and Reasoning. Instead, they focus on the examinee's own legal situation. The examinee is asked to compare his or her legal situation to the legal situation of other people in order to ascertain the level of insight the defendant possesses regarding the significance and potential outcomes of their individual adjudication process.

Following its release, numerous notable CST researchers expressed positive opinions regarding the MacCAT-CA. Nussbaum, et al., (2007) described the MacCAT-CA as innovative, comprehensive and realistically objective. Grisso (2003) praised the MacCAT-CA for being rooted in both legal and psycholegal concepts. Research by

Otto, et al. (1998) indicated that the MacCAT-CA produced results reflecting good inter-rater reliability and strong internal consistency. They further indicated that its psychometric properties compared favorably to other CST assessment tools, such as the CST and the GCCT-MSH. The MacCAT-CA represents a more systematic and differentiated analysis of a defendant's psycholegal capacities than previous assessment tools, such as the CAI, and when part of a comprehensive evaluation should increase the quality of assessments of CST (Otto, Poythress, Nicholson, Edens, Monahan, Bonnie, Hoge & Eisenberg, 1998). Mumley, et al. (2003) reported that the highly structured design of the MacCAT-CA produces more reliable measures than previous CST instruments and is likely to contribute significantly to future empirical research on issues relevant to CST evaluations. Zapf, Skeem & Golding (2005) asserted that the MacCAT-CA's standardized questions regarding hypothetical case vignettes result in "nomothetic data and criterion-based scores that can be compared with normative data" (p. 434).

Melton, et al. (1997) indicated that the MacCAT-CA was notable for the broad scope of competencies evaluated and that it efficiently focused on competence of the defendant to effectively participate in the adjudication process, as opposed to merely being competent to stand trial as defined by the Dusky standard. The MacCAT-CA effectively assesses the defendant's appreciation of his or her circumstances and the rational thinking necessary to effectively understand the consequences of his or her legal situation, as well as the understanding and recognition of relevant information in order to assist in their own defense (Zapf & Viljoen, 2003).

Rogers, et al. (2001) concurred with the above assertions by suggesting that the "the real strength of the MacCAT-CA appears to be its assessment of rational

understanding.” However, they further suggested that “a heuristic analysis of the MacCAT-CA suggests a poor match with the Dusky standard” (Rogers, et al., 2001, p. 509). Its use of hypothetical case situations appears to conflict with the Dusky standard directive to focus specifically on the defendant’s actual pending case (Rogers, Jackson, Sewell, Tillbrook & Martin, 2003). Grisso (2003) also suggested that the MacCAT-CA can be used as an excellent research tool, but criticized inadequate test/retest studies and the fact that the current research on the MacCAT-CA does not contain enough data on female defendants.

Other criticisms of the MacCAT-CA are that there remain questions as to the conceptual model that best fits the MacCAT-CA. The MacCAT-CA may have a two-factor structure as originally conceptualized, a three-factor structure as reflected by its three-scale design, or a modified three-factor structure that encompasses aspects of both models as indicated by research (Jacobs, Ryba & Zapf, 2008; Zapf, Skeem & Golding, 2005). Research has suggested that examinees respond with different response styles when asked questions regarding hypothetical vignettes than they do when asked questions about their own legal case, which may dilute the focus of assessment of the defendant’s particular case and competency (Zapf, Skeem & Golding, 2005). In addition, Zapf, et al. (2005) warned that the MacCAT-CA’s primary weakness is its relative inability to link normative scores to the defendant’s contextually determined psycholegal decisions and that caution should be taken when using the MacCAT-CA to assess a defendant’s CST. They recommended against evaluators relying exclusively on MacCAT-CA scores, “which may be quite compelling when considered alongside less scientific-looking idiographic considerations. Just as the presence of mental illness is

only a starting point in assessing competency, a high or low score on the MacCAT-Ca does not resolve the issue” (Zapf, et al, 2005, p. 443).

The MacCAT-CA is a comprehensive evaluation tool that attempts to address both factual and rational competencies, as directed by the Dusky standard. However, the measure does not effectively define the rational dimensions that it seeks to assess. The authors of the MacCAT-CA (Poythress, et al., 1999) noted that the theoretical framework of the MacCAT-CA was based on the measures of three conceptualizations that they believe constitute the Dusky standard: a factual understanding of the legal proceedings, competency to assist counsel in a reasonable way, and a rational understanding of the adjudication proceedings (Poythress, et al., 1999). However, dimensions of rational understanding are not defined or explored in the MacCAT-CA professional manual (Poythress, et al., 1999) and the measure relies exclusively on the evaluator’s clinical judgment to determine the level of rationality of the responses by the defendant to possible hypothetical outcomes of the defendant’s own adjudicative process. Assessing the defendant’s opinions regarding the likelihood of potential outcomes may produce some useful evaluative information, but the dimensions of rational competency are significantly more complex and extensive than those dimensions represented by the few items included in the MacCAT-CA. Although the MacCAT-CA represented significant advances toward compliance with the requirements of the Dusky standard over earlier CST tools it does not provide the thorough evaluation of the defendant’s capabilities in regards to the dimensions of rational understanding implied by Dusky.

Fitness Interview – Revised (FIT-R)

The Fitness Interview – Revised (FIT-R) was based on the CAI and has been extensively revised since its original form. The FIT-R is a structured interview designed to obtain information on critical aspects of fitness to stand trial and is designed to assess the examinee's current competency status rather than to predict future competency status (Ackerman, 1999). The interview starts with four background questions (e.g., Do you have a lawyer?), and is followed by 70 questions grouped according to 16 items that are clustered into three sections (Mumley, et al., 2003; Grisso, 2003).

Section I: Understanding the nature or object of the proceedings (factual knowledge):

- Understanding of arrest process.
- Understanding of the nature and severity of current charges.
- Understanding of the role of key participants.
- Understanding of the legal process.
- Understanding of pleas.
- Understanding of Court procedure.

Section II: Understanding the possible consequences of the proceedings: (appreciation of personal involvement in and importance of the proceedings):

- Appreciation of the range and nature of possible penalties.
- Appraisal of available legal defenses.
- Appraisal of likely outcomes.

Section III: Communicate with Counsel (ability to participate in defense):

- Capacity to communicate facts to lawyer.
- Capacity to relate to lawyer.
- Capacity to plan legal strategy.
- Capacity to engage in own defense.
- Capacity to challenge prosecution witnesses.
- Capacity to testify relevantly.
- Capacity to manage courtroom behavior.

An advantage of the FIT-R is its flexibility. It can be used as a brief screening device or as a method of structuring a more-comprehensive competency evaluation (Zapf & Viljoen, 2003). Grisso (2003) and Zapf & Roach (2005) reported that the FIT-R has adequate psychometric properties and generally produces satisfactory rates of inter-rater reliability. Although Grisso (2003) reported that the rates produced by the FIT-R were notably lower than those produced by the MacCAT-CA, Zapf & Roesch (2005) found a reasonably high agreement between the two instruments.

Although research by Bagby, Nicholson, Rogers & Nussbaum (1992) indicated that the early versions of the FIT produced unstable results, Nussbaum, et al. (2007) reported that the FIT-R possesses many positive qualities and recommended its use. However, they also warned that the FIT-R's significant thoroughness may be too rigorous for defendants experiencing acute psychotic episodes. Mumley (2003) reported that the FIT-R is very effective at identifying defendants who are fit to stand trial, but Grisso (2003) noted that there have been no norms established for FIT-R assessments. Significantly, the FIT-R relies on clinical judgment for arriving at an assessment of the defendant's CST (Grisso, 2003) and clinical judgment has been demonstrated to be an unreliable method for obtaining consistently valid assessments of clients (Garb, 1989; Nicholson & Kugler, 1991; Garb, 2005).

Grisso (2003) reported that the FIT-R directs the evaluator to ask the "ultimate legal question" whether the defendant is legally incompetent to stand trial. It is argued that this question is not an appropriate question to be answered by the evaluator, but rather by the judge presiding over the case. The purpose of the CST evaluation is to provide the judge with the information needed to make an informed decision as to the

ultimate legal question. However, Grisso (2003) acknowledged that Courts frequently request the evaluator's opinion regarding the ultimate legal question, and future developments regarding this issue may lead in the direction of the evaluator playing a more significant role in the determination of that question.

The FIT-R focuses primarily on the concrete factual knowledge of the defendant as generally outlined by the CAI and endeavors to address rational understanding by assessing the defendant for irrational beliefs regarding likely outcomes of the adjudicative process, evaluating the defendant's ability to cooperate and accurately communicate with the defense attorney and effectively engage in various courtroom-related activities and behaviors. It does not address dimensions of rational understanding and does not appear to rely primarily on the Dusky standard for its conceptual framework. Although it represents progress toward a more comprehensive evaluation of CST than earlier measures, its evaluation of the rational abilities of the defendant is inadequate in relation to the Dusky standard.

Evaluation for Competency to Stand Trial – Revised (ECST-R)

The Evaluation for Competency to Stand Trial – Revised (ECST-R) was designed as a standardized (semi-structured) interview for evaluating the underlying dimensions of CST as related to the Dusky standard (Nussbaum, et al., 2007). It consists of four main sections. Three competency scales explore key elements of the Dusky standard: Consult-with-Counsel scale, Factual understanding, and Rational understanding. A fourth element is designed to screen for malingering: Atypical Presentation. In addition, a small set of background questions are provided (Rogers & Shuman, 2005).

The Consult-with-Counsel scale contains six items to evaluate the defendant/attorney relationship:

- Perceptions of the defense counsel.
- The defendant's expectations of the defense attorney.
- The defendant's knowledge of defense attorney expectations.
- Level of agreement and disagreement with defense attorney.
- Resolving disagreements.
- Special means of communicating with the attorney.

The Factual Understanding of Courtroom Proceedings scale consists of six items addressing the role of key courtroom participants:

- Role and responsibilities of the judge.
- Role and responsibilities of defense counsel.
- Role and responsibilities of the prosecuting attorney.
- Knowledge of the criminal charges against the defendant.
- Role and responsibilities of the jury.
- Implications of talking to the prosecution.

The Rational Understanding scale is comprised of seven items designed to assess the capacity of examinees to make relatively sound decisions regarding their adjudication issues that are not grossly impaired by mental disorders:

- Level of self-defeating motivation.
- Ability to testify effectively in self-defense.
- Understanding of implications of a plea bargain offer.
- Understanding of the potential best and worst outcomes of the trial.
- Speculation as to the likely outcome of the trial.
- Thoughts and emotions experiences while in the courtroom.
- Inappropriate behaviors exhibited while in courtroom settings.

One of the notable elements of the ECST-R is that it is the only comprehensive CST assessment tool that includes a systematic screen for malingering. Rogers & Shuman (2005) reported that a unique feature of the ECST-R is that it contains a subset of items designed specifically to detect the possibility of malingered incompetence to stand trial. The malingering screen, the Atypical Presentation (ATP) scale, is a structured

interview composed of 28 items designed to evaluate for the potential of malingering. The ATP scale is organized into four subscales: Rational, Psychotic, Non-psychotic, and Impairment subscales (Vitacco, Rogers, Gabel & Munizza, 2007).

The advantage of ECST-R over other CST measures is its use of items that are strongly representative of the Dusky standard and that it was developed specifically for the assessment of a defendant's CST as mandated by Dusky (Rogers, Jackson, Sewell & Harrison, 2004). Rogers, et al. (2001) reported that the ECST-R is a reliable method for assessing a defendant's ability to factually and rationally understand the consequences of his or her legal situation and the ability of the defendant to engage effectively with their attorney. It was "explicitly designed to address competency evaluations via the Dusky standard" (Rogers, et al. 2003).

In addition to assessing for the Dusky standard, the ECST-R also measures for underlying efforts by the defendant to feign incompetence, as noted above. In a study specifically examining the effectiveness of the ECST-R, Rogers, et al. (2004) found that the ATP scale of the ECST-R is very effective for screening forensic populations (jail detainees and forensic inpatients) for the possibility of feigned incompetency. Nussbaum, et al. (2007) suggested that as a whole the ECST-R possesses strong internal reliability, but opined that the Consult-With- Counsel (CWC) scale may not adequately measure that singular dimension of CST.

In a review of the ECST-R, Grisso (2003) found that the tool demonstrated impressive and encouraging results. However, at the time of his review the ECST-R manual was in the process of development and needed additional work before Grisso (2003) could recommend it for general use. The professional manual accompanying the

ECST-R was subsequently completed and presented therein were validation samples, ancillary studies and reliability analyses that reported impressive results (Rogers, Tillbrook & Sewell, 2004). The professional manual of the ECST-R explores the three major models of the Dusky standard, as mentioned earlier in this paper, and relies on the model of decisional competence proposed by Bonnie (1992, 1993) to explicate the Dusky standard.

The ECST-R represents another significant step in the development toward closer alignment of CST evaluations with the requirements of the Dusky standard. A review of the research literature has indicated that the ECST-R produces the most valid and reliable outcomes of the evaluation of a defendant's CST. However, the evaluation of Dusky's rational understanding prong by the ECST-R is less than adequate. The ECST-R utilizes evaluator clinical judgment to assess the defendant's rational ability in the context of several courtroom proceedings. It then combines those results with results for the Consult-With-Counsel scale to produce an overall rational ability score, but the process lacks specific descriptions and focus on the psychological dimensions of rational understanding implied by the Dusky standard.

Although the ECST-R professional manual represents the most extensive examination by a CST assessment tool of the psycholegal concept of rational understanding as required by the Dusky standard it does not define dimensions of rational understanding nor does the ECST-R assessment tool adequately explore the psychological dimensions of the defendant's rational understanding. Despite its focused attempt to evaluate a defendant's rational capabilities via the Dusky standard, the ECST-

R does so without extensively or specifically evaluating the dimensions that comprise rational capabilities and understanding.

In summary, a steady progression in the focus of CST evaluations on the psycholegal concepts of competency as required by the Dusky standard has culminated in the ECST-R. Screens for ruling out competent and malingering defendants have been demonstrated to be important steps in the CST evaluation process and rational competencies must be a focus of CST evaluation, not merely the factual knowledge of the defendant about courtroom related participants and procedures. Of the CST evaluation instruments developed to this point, the ECST-R appears to be the most thorough evaluation instrument for the evaluation of a defendant's CST. However, as is evident in all other previously developed measures, the ECST-R's examination of the defendant's rational capabilities to participate in the adjudication process is less than adequate. The next step in the process of developing CST evaluation tools should focus on the development of tools that more definitively identify and evaluate the specific psychological dimensions that comprise rational understanding as required by the Dusky standard.

The result of the overall review of the literature for this study substantiated the hypothesis that the psychological dimensions of rational competency, as directed by the Dusky standard, have not been adequately explored or defined. The most progressive evaluation tools reviewed in this paper (MacCAT-CA and ECST-R) address the concept of rational understanding and include measures of rational competence; however, their endeavors to assess the defendant's rational understanding capabilities are ultimately

nebulous and inadequate regarding a precise understanding of a defendant's capacity for rational understanding.

Conceptual Models of Competency to Stand Trial

The American Bar Association (1989) offered the opinion that the Dusky standard articulates three distinct criteria for CST: the ability to consult with defense counsel, the ability to otherwise assist defense counsel and, most notably, from the perspective of this study, the ability to both factually and rationally understand the legal proceedings in which they are involved. However, the ABA (1989) did not address the psychological dimensions of the individual capacities expressed in the Dusky standard - factual and rational understanding.

Rogers, et al. (2003) proposed two models of rational capacity to the Dusky standard to assess a defendant's CST: *explicit* and *extrapolated* conceptualizations. *Explicit* models use the precise language of the Dusky standard in constructing the framework for CST assessments. *Explicit* models include the (a) Domains, (b) Discrete Abilities, and (c) Cognitive Complexity models.

The Domains model focuses on the two specifically described prongs of the Dusky standard and emphasizes the hyphen employed by the Court to separate the two prongs. The two prongs identified by this model are 1) the rational ability to participate in the defendant's defense and 2) the rational and factual understanding of the legal proceeding in which the defendant is involved (Melton, et al., 1997).

The Discrete Abilities model conceptualizes CST assessments by using the specific language of the Dusky standard and conceptualizes three separate prongs, rather than the two prongs identified above: 1) rational ability to consult with the defense

attorney, 2) factual understanding of the legal proceeding in which the defendant is involved, and 3) rational understanding of the legal proceedings. (Grisso, 2003; Otto, 1998; Rogers, et al., 2001).

The Cognitive Complexity model focuses assessment on two components of cognitive abilities designated by the Dusky standard. This model proposes that these two components are necessary for a defendant to be competent to stand trial. The model focuses on the defendant's factual understanding (the ability to recall basic facts) and rational abilities. It proposes that rational ability requires complex cognitive abilities that include the analysis and integration of new information and complicated decision-making (Bonnie, 1992.)

In contrast, *extrapolated* models transcend the specific language of the Dusky standard. They address extralegal concepts that extend beyond the explicit language of the Dusky standard. For example, Bonnie (1992) suggested that CST be divided into two related but separable domains: 1) foundational competency and 2) decisional competency. He defined foundational competency as the "competence to assist counsel ...the minimum conditions required for participating in one's own defense" (p. 297). He described decisional competency as involving the defendant's ability to conduct various cognitive tasks, which include the ability to understand and select from diverse potential courses of action (Bonnie, 1992). Two other extrapolated models follow.

A construct proposed by Miller (2003) transcended the Dusky standard by proposing that competency evaluations should measure a defendant's volitional abilities. He described volitional abilities as the ability to exploit information appropriately in defense strategies and the capacity to function effectively in a legal environment. Abrams

(2002) proposed a competency domain not specifically addressed by the Dusky standard, but which he maintained is fundamental to CST - communication ability. He asserted that the defendant should demonstrate the capacity to communicate successfully with the defense attorney and be able to provide convincing and believable testimony on his or her own behalf.

This study focused on the rational domain denoted above, but not specifically described by the Dusky standard. Regardless of whether a particular assessment model was *explicit* or *extrapolated* in nature, each proposed the necessity of the defendant's rationality for competent participation in legal proceedings. However, as previously stated, there exists minimal consensus as to how to define the Dusky standard's perspective of rational competency.

Psycholegal Dimensions of Rational Capacity

Further exploration of the literature on psycholegal dimensions of rational understanding resulted in the discovery that scholars in the field of law, not psychology, have extensively explored the concept of rational understanding as it applies to the Dusky standard and have made efforts to delineate the psychological dimensions pertaining to rational understanding. Rational dimensions proposed by these individuals generally fell into one of the two overall dimensions described by the Dusky standard: the ability to *assist the defense* and *decisional competency*. Louis Schlesinger (2003) noted the significance of the U. S. Supreme Court's Drope (1975) decision that specified the importance of the defendant's ability to assist in preparing his or her own defense. He also cited the opinion rendered by the U.S. Supreme Court in the Godinez (1993)

decision as being the pivotal case requiring the inclusion of decision-making competence as an essential element of the Dusky standard of competency to stand trial.

Richard Bonnie (1992) proposed *motivational capacity* as a significant dimension of a defendant's rational capability. He described it as the willingness of the defendant to cooperate with defense counsel and to strenuously participate in his or her own defense.

Marcia Weiss (1997) focused on the defendant's *volitional* abilities to function in the courtroom setting and the ability to utilize information as critical elements of rational capacity. She defined courtroom functioning as the defendant's ability to function appropriately and effectively during courtroom proceedings. She defined information utilization as the defendant's ability to accurately understand and effectively utilize information (facts and details) regarding the alleged offense. In addition, she drew a distinction between passive involvement (rational understanding) and active involvement (rational choice) (Weiss, 1997).

Jan Brakel (2003) opined that rationality is the key concept when determining CST and emphasized the importance of the defendant's ability to properly interpret the meaning of events. He suggested that most defendants are factually competent. Those defendants that are factually deficient are easily educated as to the facts related to the adjudication process or they are unquestionably incompetent. It is the defendant's rational capacity that requires deft and accurate evaluation because of the unquestionably negative impact that the lack of rational competence has on the defendant's decisional competency and ability to consult with the defense. An interesting opinion proposed by Brakel (2003) was his explanation for the lack of focus on the "rationality" component of the Dusky standard in research and in assessment instruments. Brakel (2003) suggested

that there exists an attitude of negation by professionals in the field of the concept of rational capacity because the Dusky standard was a *per curiam* decision (briefly stated and representing the entire court without dissent). Indeed, the entire decision is more concise than the Gettysburg Address.

Schlesinger (2003) wrote about the dimensions of the defendant's ability to assist the defense and identified the abilities of *accurate recall* (the defendant's ability to accurately recall the facts and details of the alleged offense) and *communication ability* (the ability to effectively assist in the preparation of the defense by accurately and effectively communicating opinions, thoughts and ideas to the defense).

Terry Maroney (2006) addressed the entwined natures of the ability to consult with counsel and decisional competence. She proposed a concept referred to as "baseline rationality" and described the concept as being comprised of flexible reasoning and emotional competence. Flexible reasoning requires fluid intelligence - the ability to use inductive and deductive reasoning and the incorporation of background goals, knowledge and learning. Emotional competence is comprised of feelings, mood and affect and rational decision-making is disrupted by dysfunctional emotions. She described the components of emotions in detail: feelings (fear, anger, happiness, sadness, surprise and disgust), affect (the positive or negative quality of the feeling state, the externalization of internal feelings), and mood (transient and diffuse feeling states [e.g., anxiety, depression] that are less attributable to a particular source). Emotional dysregulation has a significant influence on the individual's perception and processing of information. Contextually effected emotions (fear, hate, hope, etc.) guide the decision-making process and influence choice, and the inability to pay attention to pertinent stimuli can

significantly affect the accuracy of perception and recall (e.g., shadows become evil perpetrators).

Maroney (2006) suggested that the following dimensions are components of rational understanding: self-protective capacity, decisional competence, emotional regulation and functionality, and reasoned choice (logical reasoning and relevant thoughts). She proposed that decisional competence is at the core of rational understanding and defined the decision-making process: 1) accurate perceptions, 2) valid understanding of perceptions, 3) goal-related reasoning, 4) logical conclusions and the ability to express those conclusions to others, and 5) the ability to formulate and execute actions related to items one through four. In addition, emotion is implicated at each stage of the decision-making process. Appraisal and appreciation are also interdependent aspects of the decision-making process. Appraisal is the ability to make quick judgments with attached emotions and appreciation is the specific understanding of likely outcomes (Maroney, 2006).

The resulting dimensions of rational competency that the researcher gleaned from the literature fell into the two categories specified by the Drope (1975) and Godinez (1993) decisions; ability to assist the defense and decisional competence. The dimensions that emerged comprising the ability to consult with the defense are as follows:

- Motivational capacity to cooperate with the defense.
- Effective utilization of information.
- Ability to accurately recall details of the alleged offense.
- Ability to effectively communicate with the defense.
- Effective courtroom functioning.

The dimensions that emerged which comprise decisional competence are:

- Emotional stability.
- Ability to effectively self-protect.

- Accuracy of perceptions.
- Appreciation of perceptions.
- Flexible reasoning.
- Goal oriented reasoning.
- Strategic decision-making.
- Logical conclusions.
- Ability to express conclusions.
- Ability to execute decisions.

In addition, the literature suggested that the defendant's rational ability is disturbed by emotional instability resulting from a mood disorder; major depressive disorder or bipolar spectrum disorder. Specific behaviors and feelings could indicate a mood disorder and should be part of an evaluation of a defendant's rational capacity. A CST evaluation of the defendant should include inquiries regarding the following:

- Sleep disturbances.
- Psychomotor agitation or retardation.
- Feelings of worthlessness.
- Diminished cognitive abilities.
- Suicidal ideation or preoccupation with thoughts of death.
- Grandiosity.
- Pressured speech.
- Racing thoughts.
- Distractibility.
- Increased or excessive goal-directed activity.
- Excessive involvement in pleasurable, but risky, behavior.

The Cole Rationality Assessment Instrument (C-RAI) was designed to evaluate defendants for the dimensions of rational capacity mentioned above, and which are missing from current CST evaluation instruments. A small pilot study of the C-RAI was conducted for this study to explore its potential for effective assessment of a defendant's rational capacities (see Appendix C).

Background

The purpose of a CST evaluation is to assess the capability of a defendant to adequately participate in his or her own defense against legal charges in an adjudicative setting. The forensic evaluator is attempting to provide the Court with enough useful information to justly determine the defendant's competence to stand trial.

Maroney (2006) suggested that "psychosis is an automatic ruling of incompetence, (because) it disrupts the decisional process." Although symptoms of psychosis are often assumed to diminish the defendant's capabilities to stand trial psychotic symptoms alone are not enough to determine incompetency. Cognitive disabilities and mental disorders are not sufficient in and of themselves to determine a defendant's CST. Psychiatric symptoms are only relevant to competency issues when they are related to impairments in the defendant's abilities to understand legal proceedings and to participate in their own defense (Zapf, Skeem & Golding, 2005). Although it is clear that psychosis is likely to affect a defendant's CST, evaluators need to consider the defendant's capabilities regarding understanding, reasoning and appreciation - not just the defendant's factual understanding. These areas of rational understanding are highly influenced by a wide array of psychiatric symptoms (Jacobs, Ryba & Zapf, 2008).

Grisso (2003) noted that the dimensions of competency to stand trial have been assessed by evaluators in a non-standardized manner, and the definitions of necessary competencies are fluid and rely heavily on the clinical judgment of the evaluator. Garb (1998, 2005) has shown that clinical judgment is inconsistent and unreliable, especially when clinical judgment is based on non-standardized measures. Therefore, the reliance

on clinical judgment to determine competency without the provision of precise definitions of the rational dimensions of competency and standardized measures is a questionable strategy. It is the purpose of this study to systematically explore and describe the rational dimensions of the competencies necessary for a defendant to competently stand trial in order to more fully inform the clinical judgment of evaluators.

Grisso (2003) recommended the following steps to achieve the goal of capturing meaningful empirical data regarding competencies: 1) a systematic observation of trials to arrive at empirical dimensions of the capabilities necessary to competently stand trial, 2) establishment of operational definitions for the dimensions/concepts, 3) collection of data on each dimension from a number of trials in order to arrive at normative descriptions to which individual trials can be compared, and 4) development of standardized methods for collecting information on each dimension for a given trial in conjunction with the defendant's assessment by the CST evaluator.

Applying Grisso's recommended approach, this study examined the experience of one defendant involved in the Washington State judicial process. The researcher hoped to collect qualitative data on each dimension of CST, focusing especially on dimensions of rationality, and thereby contribute useful information toward the establishment of operational definitions and normative descriptions of CST competencies.

Methods

Data Collection Strategies

The research was designed to be a qualitative case study focusing on the experience of one defendant involved in the judicial process. The qualitative research process followed the procedures delineated in the work of Creswell (2003). A qualitative case study research design was selected as the method of inquiry for several reasons.

Attempts to develop a quantitative study of multiple defendants in the adjudication process proved to be untenable due to legal barriers designed to protect the defendant's information. Cases featuring defendants with mental health issues are sealed from the public and as such the data cannot be accessed without authorization from state corrections officials.

A phenomenological qualitative study was considered, which would have produced rich textual data, but such a research design would have required the involvement of several defendants entangled in the unpredictable time table of the legal system. Such a situation would make it very difficult to predict the long term status of the defendants and the researcher's access to those defendants. Therefore, such a design would have made it unlikely that the necessary contact with all involved participants could be maintained throughout the course of the research.

Alternatively, a qualitative case study of a single defendant was chosen because it offered the researcher the advantages of a qualitative research design, such as the ability to be physically present during the research process, and allowed the researcher to complete the study within a reasonable and manageable timeframe. The qualitative case study research design was ultimately chosen because it offered the researcher the best opportunity to maintain access to the research participant for the entire length of the study.

The researcher consulted with the mental health coordinator at the Benton County jail to discuss the necessary requirements for a participant in this study. It was determined the participant would demonstrate questionable competency to stand trial and was likely to be ordered by the Court to undergo a CST evaluation. The defendant was identified as

an appropriate participant by the mental health coordinator, because the defendant had demonstrated symptoms of psychosis (isolative behavior, paranoia and odd speech in response to inner stimuli). An evaluation of the defendant's CST was ordered by the court and he was waiting to be transferred to Eastern State Hospital for evaluation during the course of the researcher's seven one-hour interviews with him.

Each interview was recorded with a digital audio recorder. The researcher conducted the seven face-to-face interviews with the participant primarily using open-ended questions focusing on key research questions. The framework of the questions was provided by the Competence to Stand Trial Assessment Instrument (CAI) (McGarry, 1973). The CAI, as described earlier in this paper, remains the most commonly used CST evaluation instrument and was the source material used for the development of the majority of the subsequent comprehensive CST evaluation tools reviewed above. Therefore, the researcher presumed that data gathered using a CAI framework would produce an adequate representation of the data produced by the other comprehensive CST assessment tools discussed earlier (e.g., CAST-MR, ECST-R, FIT-R, and MacCAT-CA).

Collateral informants, whom the participant and attorney agreed could be interviewed, were interviewed by telephone, also using open-ended questions. During this phase of the research, the researcher reviewed the relevant case documentation. The researcher took unstructured field notes during interviews, recording demographic information regarding the time, place and date of the setting, the behavior and activities of the defendant being observed and reflections of the researcher's impressions. The ongoing process of data analyses occurred throughout the study and used the qualitative

research software Atlas.ti (Muh, 2010) to organize the data focusing on content areas and issues relating to the subject's rational competencies.

Verification Procedure

To ensure internal validity of the study the following strategies were employed.

Researcher bias was examined and articulated prior to the commencement of the research. Data were collected from multiple sources that included interviews with the participant and collaterals, observations and document analysis. Internal validity was supported by the numerous on-site interviews conducted. The qualitative research verification strategy known as "member checking" was employed. The analysis of the data was taken back to the participant for verification of accuracy and authenticity of thought. However, the participant had been transferred to a prison shortly after completing the interviews with the researcher. After being transferred between a state mental hospital and several temporary holding locations he was eventually transferred to Stafford Creek Corrections Center (SCCC), several hours away from the Benton County Jail. The researcher arranged a professional visit to SCCC and conducted the member checking procedure with the participant in the Visitation Center at SCCC. Finally, throughout the course of the research peer consultation and input were utilized.

Researcher Bias

The qualitative researcher must systematically reflect on personal bias and how it shapes the study. "This introspection and acknowledgment of biases, values, and interests (or *reflexivity*) typifies qualitative research today" (Creswell, 2003, p. 182).

There are several past experiences that have affected the understanding of the researcher and have therefore influenced the study. The researcher has been a licensed mental health counselor for more than 15 years. In that time he has worked with or been

exposed to numerous adolescents and adults involved with the criminal justice system. It was the impression of the researcher that the mental health illnesses of defendants often go unidentified and the effect of mental illness on the defendant's criminal behavior has been underestimated by the criminal justice system. The researcher is aware of the tremendous burden endured by the criminal justice system as a result of the deinstitutionalization of mental hospitals and the decreased services available to mentally ill defendants in contemporary society. Unfortunately, the criminal justice system has been forced to interact with many mentally ill defendants while being inadequately trained and under-prepared to effectively and correctively address their mental health affected legal issues in a manner that guarantees fairness. This dilemma places a severe burden upon the criminal justice system to conduct the adjudication of defendants with due process as mandated and for which it was designed.

Description of Settings

The research data collection took place in Washington State at the Benton County Jail, within the living quarters, or "pod," that the participant shared with more than 60 other inmates. Detention officers cooperatively directed the researcher and participant to various private rooms within the pod or nearby areas within the jail. Interviews were conducted in privacy and interruptions were rare and inconsequential. The quality of sound recordings was excellent.

The 561 bed-capacity Benton County Jail opened to inmates on April 1, 2003. It was attached to the previous jail facility and both facilities combined accommodate a total of 740 inmates. Fourteen first-level supervisors and a line staff of 150 officers supervise the day-to-day custody operations.

The data verification procedure was conducted at Stafford Creek Corrections Center (SCCC). SCCC is a 1,936-bed multi-custody facility on a 210-acre site located near Aberdeen, WA. There are seven living units for medium and minimum long-term custody offenders and an intensive management unit for maximum-custody offenders. SCCC employs 304 custody staff and 212 non-custody staff.

Description of Participant

The researcher observed the experiences of one participant as he proceeded through the adult judicial system. There were no predetermined age, gender or race requirements regarding the defendant selected for participation in this study. Selection of the participant was made in conjunction with the advice and direction of forensic psychologist Philip Barnard, PhD, in cooperation with mental health professionals at the Benton County Jail and the defendant's attorney. The defendant was identified as possessing questionable competence to stand trial and was Court ordered to undergo a CST evaluation. Due to the significant possibility of false starts with any particular participant, the researcher endeavored to enlist two or three possible participants in order to increase the likelihood of complete data gathering involving one participant from start to finish. However, only one participant was identified.

John was a single, 30-year-old, African-American, unemployed male. He grew up in southern California where he lived with his parents and four siblings. His neighborhood was characterized by gang activity, high levels of crime and widespread drug and alcohol abuse. John performed poorly academically and was placed in special education classes, primarily for reading deficits. Behaviorally, John was frequently

suspended from school for fighting with peers. He dropped out of high school in the 10th grade due to a lack of interest in attending school on a daily basis.

John worked primarily as a dishwasher at various restaurants in California and Washington. He was also a construction worker. Most recently John was receiving disability payments based on a psychiatric diagnosis.

John had a history of alcohol, marijuana and methamphetamine use. He began drinking around age 16 and began using methamphetamine when he was 18 years old. John also smoked marijuana frequently. John reported that on one occasion he was in outpatient treatment for drug and alcohol abuse. John denied that he used methamphetamine chronically, but rather experimented with it as a teenager and did not like it. However, records from the community Detox Center where he received outpatient treatment indicated that John was hospitalized three times between 2006 and 2007 for detoxification from methamphetamines after relapses while participating in the program. John reported that he experienced chronic auditory hallucinations, a minimum frequency of twice per day, since adolescence. The only records available regarding John's mental health history indicated that his first treatment for mental health problems was in November 2005 when he reported auditory hallucinations and suicidal ideation. John also reported hearing voices commanding him to harm himself on several occasions in 2006 and 2007. He was described by mental health as paranoid and severely depressed. John was hospitalized for nine days in October 2008 after being evaluated by a Designated Mental Health Professional (DMHP) due to paranoid behavior and auditory hallucinations commanding him to hurt himself. John had a history of noncompliance with his prescribed medication program.

John's legal history included arrests for possession of drugs, disorderly conduct, failure to appear, probation violations and vandalism. Around 2005 John developed a romantic relationship with a single woman with six children. Their relationship was characterized by conflict and domestic violence. John was twice arrested for domestic violence in 2006 and 2007 and restraining orders were filed disallowing him from contacting her. However, upon his release from jail, John made contact with the woman, apparently with her cooperation. Each time she eventually became angry with John and called the police to report his violation of the no-contact order. In late 2008 John again violated a Court order by contacting the woman. He reported that she initiated contact and requested his company. John was again arrested for violation of a no-contact order. At prior arrests John was charged with a misdemeanor, but on this occasion he was charged with a felony due to the accumulated number of violations.

The mental health worker at the county jail where John was taken reported that he was generally quiet and cooperative, both in Courtroom settings and on his "pod" in the jail. She reported that John had been identified as a defendant with mental health problems, because he seemed very suspicious of others, isolated himself and was observed responding to inner stimuli. Eventually, it was recommended that John's competency to stand trial be evaluated. The evaluation was ordered, but because of the overburdened schedule at the state hospital it took more than four months for the CST evaluation to be conducted.

The mental health worker at the jail reported that John was fearful of going to the state hospital to be evaluated. Due to high anxiety he began yelling at himself. She reported that interventions by mental health workers and other supportive defendants

eventually calmed John's fears and he ultimately saw going to the state hospital in a positive light. She also reported that during his wait to be evaluated John's mental stability worsened. He perseverated on the events and motives of others that led to his arrest. His account of being manipulated became exaggerated the more he thought about it. However, the mental health worker suggested that there may have been elements of truth to John's story, because she suspected that his Protective Payee may have manipulated John at the times he received his monthly disability check.

John's CST was eventually evaluated by a psychologist at a state psychiatric hospital. The doctor reported that John's presentation and demeanor were characterized by detachment and apathy. While at the hospital John interacted minimally in social settings, but was pleasant and cooperative when engaged by others. John reported hearing voices commanding him to hurt himself.

Results of the evaluation by the state psychologist found that John was competent to stand trial and, in accordance with state requirements, generated the following opinions: John did not have a mental disease. He had the capacity to understand Court proceedings and to participate in his own defense. John was legally sane at the time of the alleged event and had the capacity to form the particular state of mind necessary to commit the crime. John was found to be a substantial danger to others and presented a significant likelihood of committing additional criminal acts if he was not kept under further control by the state, and finally, John did not appear to require evaluation by a designated health professional (DMHP). In addition, the doctor suggested that the cause of John's paranoia and auditory command hallucinations could have been John's use of methamphetamines during 2005 to 2008.

John was returned from the state hospital to the Benton County Jail. He pled guilty to the alleged crime of felony violation of a no-contact order and was given a sentence of 13 months in prison. He was sent to the corrections center at Shelton, WA, where he stayed for two months. He was then sent to the Airway Heights correctional facility near Spokane, WA, for several weeks. He was then returned to Shelton for two weeks before finally being transferred to Stafford Creek Correctional Center.

When released, John will not be allowed to return to New City because of the likelihood that he will again violate the 60 month no-contact order. Instead, John will be paroled to live in his California hometown under the supervision of his brother and sister.

Results

The results of any qualitative study cannot be generalized to an entire population. However, even though this study cannot be generalized to all defendants undergoing CST evaluations, it serves as a snapshot of one individual being evaluated for CST, which may provide illustrations of the elusive and complex dimensions of CST. The study was originally intended to contain only one phase of data analysis, but for reasons explained below data analysis was conducted in two phases.

Phase One

Phase one of data analysis focused on the detection of content areas provided by the CAI and additional psychological dimensions that were expected to emerge by means of grounded theory data analysis techniques. As noted earlier, the CAI remains the most commonly used CST evaluation instrument and was the source material for the development of the majority of the subsequent comprehensive CST evaluation tools.

Initial data analysis organized the interviews with the participant using the 13 categories of the CAI assessment instrument (Table 1). A brief description of the content areas and psychological dimensions can be found in Appendix B.

Table 1

Items from the Competence to Stand Trial Assessment Instrument – CAI.

- Appraisal of available legal defenses.
- Unmanageable behavior.
- Quality of relating to attorney.
- Planning of legal strategy.
- Appraisal of roles.
- Understanding of Court procedure.
- Appreciation of charges.
- Appreciation of range and nature of possible penalties.
- Appraisal of likely outcome.
- Capacity to disclose to attorney.
- Capacity to realistically challenge prosecution witnesses.
- Capacity to testify relevantly.
- Self-defeating versus self-serving motivation (legal sense).

Content areas were defined as those psycholegal concepts that were specifically identified for assessment by the CAI. All content areas were included in the analysis despite the relatively few occurrences of several of the content areas.

Table 2 lists the frequency of which content areas occurred during interviews with the participant. The analysis of the 13 content areas of the CAI was followed by an examination of the additional dimensions that also emerged from the data. The resulting contrast and comparison of the two types of data ultimately led to another phase of data analysis and an exploration of the possible benefits of developing a tool to specifically measure dimensions of rationality.

Table 2

Total Occurrences of 13 Content Areas in Participant Interviews.

Content Areas	Total Occurrences
Role of courtroom participants	35
Communicate with counsel	29
Factual knowledge of courtroom procedures	24
Motivation to self-protect	24
Courtroom behaviors	15
Strategic decision-making	14
Anticipated outcomes	13
Awareness of legal charges	13
Testify relevantly	9
Challenge witnesses	8
Disclosures	6
Knowledge of penalties	6
Knowledge of possible defenses	6

As expected, several of the content areas assessed by the CAI emerged repeatedly (24 – 35 times) and were generally fact-based and relatively easy to identify; knowledge of the role of courtroom participants, ability to communicate with counsel, factual knowledge of courtroom procedures and motivation to self-protect. However, other factual content areas appeared much less frequently (six - nine times) despite also being a focus of the CAI; ability to testify relevantly, ability to challenge witnesses, ability to make disclosures, knowledge of penalties and knowledge of possible defenses. It is likely that the participant lacked command of those factual content areas and would have benefited from additional instruction in those areas.

An additional 26 psychological dimensions were identified during data analysis. The dimensions were defined as psychological factors that are likely to have a significant impact on a defendant's rational capacity. However, only five of those 26 dimensions emerged prominently from data analysis and were included in further evaluation of the

data (see Table 3). The other dimensions appeared less than 20 times and, as a result, were not included in the discussion of the data.

Table 3

Total Occurrences of Prominent Dimensions in Participant Interviews.

Dimensions	Total Occurrences
Suspiciousness	81
Judgment	57
Insight	49
Attachment	45
Memory	20

Table 3 clearly demonstrated the significant outcome of the analysis of the participant's interviews. Several dimensions of rational understanding appeared prominently that were not specifically addressed by the CAI. Notably, the dimensions that emerged most frequently also have a significant affect on a defendant's rational capacity. Their occurrences were significantly more frequent than the occurrences of the 13 content areas that are the focus of the CAI.

The most frequent psychological dimension demonstrated by the participant was suspiciousness. Skepticism of the motivations of others, combined with the inability to form trusting relationships with the defense attorney, will have a considerably negative effect on the defendant's ability to work effectively with the defense. The ability to make good decisions based on accurate insights and good judgment and to accurately remember events and details associated with the alleged crime will also have a major impact on the defendant's ability to participate in his or her own defense. Each of these dimensions of rational capacity (Table 3) appeared with much more frequency during the

interviews than did the factual knowledge factors assessed by the CAI (Table 2), with the exception of issues related to the participant's memory.

The emergence of the additional dimensions took this research project in a different direction. Data analysis revealed that significant gaps exist in evaluations of CST using current evaluation instruments. The factual knowledge of defendants appeared to be adequately assessed by current CST assessment tools, such as the CAI; however, the rational capabilities of the defendant are almost entirely disregarded. The participant in this study was evaluated and ultimately assessed to be competent to stand trial. Results from *Phase One* of this study would most definitely support that determination. However, it was less clear that the participant would be considered competent if an assessment of his rational capabilities was also taken into consideration.

As a result, *Phase Two* of this study set out to identify the psychological components of rational understanding and the development of an assessment tool that could provide quantifiable data of a defendant's rational capacities for use in forensic assessments of CST.

Phase Two

Phase Two analyzed the data using a framework based on the psychological dimensions that emerged from the review of the literature on rational capacities. A list of the dimensions of rational capacity appears on Table 3. The table is broken down into the two spheres of rational capabilities that were specified by the Dusky standard: the ability to assist the defense and decisional competency.

Table 4

Dimensions of Rational Capacity.

Ability to Assist the Defense

- Accurate Recall.
- Communication Ability.
- Courtroom Functioning.
- Information Utilization.
- Motivational Capacity.

Decisional Competencies

- Effective Self-Protection.
 - Emotional Stability.
 - Perception Accuracy.
 - Perception Appreciation.
 - Flexible Reasoning.
 - Goal-Oriented Reasoning.
 - Logical Conclusions.
 - Expressible Conclusions.
 - Strategic Decision-Making.
 - Decision Execution.
-

In the following section each dimension of the spheres of rational competency designated by the Dusky standard are illustrated by one or more quotations from the interviews done with the participant and discussed to explore his command, or lack thereof, of the individual dimensions that make up rational competency.

Ability to Assist the Defense

Accurate Recall

Accurate Recall is the defendant's ability to correctly recall the facts and details of the alleged offense so that the defense can best formulate an effective defense strategy to the charges being brought by the state. The ability to recall facts and details contributes to the defendant's ability to rationally engage in formulating defense strategies. The

participant demonstrated that he possessed relatively good recall of the events leading up to the alleged incident and details of the incident itself.

What are the things that they say you did?

“That I broke a no-contact order. I never reported to DOC. I didn't show DOC proof of address and phone number so that they can contact me. I didn't do a urine test. I didn't report in when I first got out. My case manager got messages from my DOC officer telling me to report, but he never gave me those messages. That's why I had a DOC warrant for my arrest. And what made matters worse was that my girlfriend came and got me, took me her place and I already had a warrant by DOC. Somebody called DOC on me. They came and picked me up. I don't know who called DOC, but I would like to know. I'm not happy about whoever called DOC, because DOC told me that there was an anonymous call. It makes you wonder, ‘Did she call DOC?’”

“Like when I was at my ex-girlfriend's house somebody called on me and yet I shouldn't have been there. Yeah, I shouldn't have gotten in the car with her, but I was on my way to do something positive, you know? I wasn't there just to be there or to mess around. I was just hanging out with them and the kids and stuff and that was it. And I shouldn't have been there, granted that. I'm guilty for that. I was caught by DOC. I was guilty for that and I'm not... well, I was guilty. However much time I get I will do that. You do the crime, you do the time.”

It appeared that the participant exhibited a tendency to exaggerate the intensity and complexity of situations. It's also possible that he engaged in confabulation, filling in the missing elements of a story with details that he thought the interviewer wanted to hear. In such a situation an interviewer would need to obtain additional confirmation from collateral sources regarding seemingly remarkable elements of a participant's recall of past events.

Have you ever been shot?

“No, I've never been shot, but I've heard bullets whizzing by my head. Ziiiing!”

What did that feel like?

“Scary as scary...scary like when somebody is sitting in front of you and points a gun at you and saying, ‘I should kill you right now.’ Because of a woman. It

wasn't me, you know? 'I should kill you right now' and I said, 'Man, do what you gotta do. If you want to pull the trigger then pull it.'"

You're not afraid to die? You're not afraid to get shot?

"Okay, I aint gonna lie. I was afraid, yeah. I was afraid, because if he would have pulled the trigger I would have been dead. But I was just saying, you know, do what you gotta do if you're gonna to kill me. I was talking to him saying, 'Man, she wanted me. I'm sorry, you know what I'm saying, but she wanted me.' He was jealous... and his pride... he started crying. He put the gun down, so I said 'Now look. You don't want it to be like this.'"

"She said, 'your daughter needs, uh... clothes and shoes and stuff like that.' So what I did was I got into her car. Well, I went with my representative payee to Burlington Coat Factory and to Ross'. After I did all that, I took the clothes to her place. Granted that I shouldn't have been there, I know that. I was wrong for being there. Any time they give me I'll do that, because I shouldn't have got into that car, you know? Granted that but... I drank some beers while I was there and I took some Darvocets because my legs were hurting. They prescribed me Darvocets when I went to the hospital. I laid down and went to sleep. Early in the morning she got up out of the bed with me and called DOC on me. They called DOC on me and I'm standing there in my boxers at seven o'clock in the morning handcuffed. After that they brought me to jail. My DOC officer, he said, 'Have you been using drugs or anything?' I said, "No, not drugs," but I was straight up that I was drinking. He said, "Well, there's a warrant out for your arrest and you're under arrest for breaking the no-contact order." I said, "Okay, but man, all I did was buy my daughter some clothes or some shoes or whatever she needed.' So, when I get to jail, I thought about me having money in an account. Social Security had say, \$7000 in an account."

Communication Ability

Communication ability is the individual's capacity to accurately and effectively communicate the comprehension of opinions, thoughts and ideas to the defense attorney. The inability to trust the motives or predict the behavior of individuals that are critical to one's future are additional factors that diminish communication between defendant and defense attorney.

"It's frustrating. It's hard to trust people nowadays, you know. It's hard to trust."

The participant apparently believed that the best time or only time he had to speak with his attorney was at Court hearings, which clearly would limit his ability to consult with his attorney to discuss details of the case or to consider alternative defense strategies.

How often do you think you should meet with your attorney?

“I know, you know, that he's got other things to do, and I need to meet with him to know the basics of my case. Like the things that need to be going on right now, because I don't have a Court date. I don't know where I'm going. I don't know anything right now and I don't know why.”

In terms of going to Court and stuff like that, have you guys discussed what you can do?

“No, because I haven't been going to Court.”

Language barriers and cultural differences can play a part in decreasing a defendant's ability to communicate effectively with the defense. The participant appeared to be able to verbally communicate adequately with the defense, however, cognitive limitations apparently diminished full comprehension of his discussions with his attorney.

Sometimes attorneys use language that's hard to understand? Do you think that he's trying to do his best for you?

“Yeah, I guess. I don't really know.”

Have you been able to tell your attorney how you feel about her? Does he listen to you?

“I never expressed to him the way I feel about her, the way I am now with you. I love her, she's sweet, I mean, she's a beautiful girl. She's outgoing, she's funny. Everything about her is beautiful, but her ways are ugly. The things that she does, the way she manipulates people into doing what she wants them to do. That's not right.”

The participant clearly demonstrated the ability to use descriptive language to communicate with his attorney and others his thoughts and feelings about the details of his case and the state of his legal situation.

“Yeah, I was scared! Yeah, but I was like, ‘Hey man, let me talk to you for a minute’ and he was like, ‘I don't want to talk’ and he started arguing with me. And I said, ‘Look man, killing me aint gonna make one bit of difference, because if you kill me she's gonna just go on to the next dude, to the next dude and to the next dude. There's a million men and women out here man and if she wants to mess around she's gonna do that. You need to talk to her about her messing around on you, doing mean things to you.’ He was like, ‘I know, I know.’ I said, ‘Man, there's a million women out there. You can go talk to her and there's women out there that won't be like that. They'll care for you and do something for you instead of go against you.’ He said he was sorry and just started crying. I said, ‘You don't have to be sorry. It's all right.’”

“First I would let her know that what she is saying is wrong and that I love those kids, you know? And that I would go out of my way for those kids. I would bend over backward for those kids. You know, those kids love me to death. I would tell her you can bring all those kids in here right now and I'll stand right in front of those kids. You can put their fathers in front of them and put me in front of them and we'll see who they go to first. Me. They would run up to me with handcuffs on and everything and hug me. All of them.”

However, the participant apparently needed several sessions to begin to trust the interviewer and to begin speaking with depth and breadth of detail and descriptiveness. Unfortunately, defense attorneys and forensic evaluators generally do not possess the temporal luxury to meet with defendants to the extent that the interviewer met with this participant.

“At first I felt a little uncomfortable, but then I started to get more and more comfortable the more you came. You know, I got comfortable with you the more you explained things about things that you understand what I was explaining to you and stuff, about how it feels to be locked up. Last year I did like eight months and I was only out for a couple of weeks and then I came right back for breaking a no-contact order.”

Courtroom Functioning

Courtroom functioning describes the defendant's ability to function appropriately and effectively during courtroom proceedings. Knowledge of the roles of various Court participants and Court procedures significantly enhance a defendant's ability to effectively assist in his or her own defense. Although the participant exhibited knowledge of some aspects of courtroom protocol and procedure, he also expressed a very limited notion of the roles of the Judge, prosecuting attorney, defense attorney and of his role own as well.

Does the judge have discretion? Can the Judge give you six months or give you five years if they feel like it?

"Yeah, the judge can do whatever. But usually he goes with the recommendation of the prosecuting attorney and my defense attorney."

Okay, but if you were in the courtroom sitting before the judge, like you did at your hearing, what are you supposed to do?

"Listening to what the prosecuting attorney is saying, how much time here she wants to give me and then look at the time that my attorney is fighting to get me. I'm supposed to agree to the agreement that they come together with."

Can you disagree?

"I can disagree and then they'll postpone the Court date. I don't have to agree to the, you know, what their agreement is or how much time they're going to give me. I don't have to agree to that. What I have to do is feel comfortable with what the agreement is when they come together with it."

The participant's apparent lack of knowledge regarding appropriate courtroom behavior was somewhat surprising, although his thoughts regarding the uniqueness of every adjudicative process and the individuals involved were insightful.

Does it matter how you say it? Like if you're screaming at the judge or speaking politely or whether you're using a lot of foul language or whether you're speaking very properly. Does any of that stuff matter?

“I can’t really say anything about that because there are all kind of different cases and it depends on who you are and what you done and what you're trying to do to make it better or if you’re trying to make it worser or if you're trying to change at all. Some people change, some people stay the same.”

As noted above, the participant demonstrated some knowledge of the courtroom.

Despite never having participated in a jury trial, the participant exhibited a mostly accurate idea of how a jury functions, his role in challenging witnesses and his right to speak on his own behalf.

“A jury is like, I mean, like I said you gotta see stuff from my point of view and I would have to see it from your point of view and it comes down to a mutual agreement. I mean some type of understanding on both ends. I can just see it from my end and not yours. I mean, and that’s what it boils down to, that’s what the jury is. They have to see it from both sides and, you know, come to some type of agreement together. That’s how I see it. That’s what I think a jury is.”

But what would you do if there were jurors in the jury box and you were on trial? What would you do if the prosecution put a witness on the stand that was telling lies about you?

“There's not much I can do, except, you know, tell the truth. If people are saying wrong things about me I would just tell the truth. That's wrong. I don't go lying on people.”

What role will you play when you go into Court and plead guilty? Will you do all of the talking or sit there and be quiet?

“They'll ask me, after I plead guilty, whether I want to say anything. I'll try to speak on my behalf.”

However, he also exhibited a naïve notion of the potential interactions between himself and the prosecuting attorney, which would likely diminish his ability to effectively defend himself against charges made by the prosecution.

Do you think the prosecuting attorney would ask you questions designed to trip you up?

“She can’t really... anything she asks I would try to explain to the best of my ability. If she asked difficult questions I would answer them the best way I could, let her know that I'm not going to cause trouble.”

Information Utilization

Information utilization is the defendant's ability to accurately understand and effectively utilize information and facts and details of the alleged offense. As noted above, the ability to trust others has a profound effect on the defendant's ability to effectively participate in his or her own defense. The inability to trust what others are saying negatively affects how an individual assimilates and uses information.

Did she say anything to you when the police showed up?

"She said, 'I don't know who set you up. I don't know who called DOC.'"

So you don't know what to believe at this point?

"I don't know what to believe. I don't know who to believe. I really don't believe anybody. It's hard to trust anybody as it is."

In addition, the ability to understand the communications of the defense attorney is critical to the assimilation of accurate information by the defendant.

Do you usually understand what he's saying when he goes over things with you?

"Not all of the time."

The participant demonstrated a general understanding of his charges but a limited understanding of the magnitude and potential consequences of his own behavior and focused much of his attention on the behavior of others. Diverting attention to irrelevant or unproductive aspects of a legal situation diminishes the defendant's ability to participant in an effective defense strategy.

Is what they say you did a crime?

"What I did? What do you mean?"

The violation of the no-contact order.

“Because they're not looking at what she did to me, they're looking at me being at that house when I'm not supposed to be there. That's all they're looking at.”

“They're like that. Yeah, they're like that. Why else would she set me up? You know, why else would she set me up? That's fraud... that's theft in the first degree. The crime carries up to 15 years in prison.”

The participant appeared to be susceptible to the comments and suggestions of peers in the jail. He reported that correction officers offered advice as well. The participant's thinking was clearly influenced by the comments of others even though he had no way of knowing whether their interpretation of the events of his legal situation was accurate or whether their resulting advice was sound. Following the unsound advice of peers is likely to contribute to unfounded assumptions and an increase of behaviors that are detrimental to the defendant's defense.

Was anybody giving you advice in jail?

“They were telling me, ‘That was a set up, man, the way you're explaining it.’ Everybody in this pod I've talked to about my case and they all say that that was a set up, man.”

Motivational Capacity

Motivational capacity describes the defendant's willingness to cooperate with defense counsel and to strenuously participate in his or her own defense. The participant appeared motivated to express to the interviewer his feelings about this case. He was assured in his mind that he had broken the no-contact order with the best of intentions and presumably believed that his good intentions should have a mitigating effect on the plea-bargaining process.

“Like me breaking the no-contact order. I did it for right reasons because my girl, she has kids and I help her with them. It gets overwhelming when you've got six kids and you try to take care of them and watch them all the time. It's overwhelming and it's hard.”

“She asks me to come over to talk to her and keep her company, help her watch the kids, help her take care of them, help her feed them, talk to them, read to them, discipline them and show them what's right and what's wrong. That's all I do. I don't go over there to try to do anything because I love them and I want to be there with them, but I can't. And that's something I have to accept for right now.

“Granted I knew that I should not be going to her place, because we had a no-contact order and I knew I shouldn't have got into that car. But I was just trying to help out a little baby, you know? The little baby didn't have any clothes or shoes, diapers or whatnot...”

However, he was also resigned to his belief that he would be found guilty if his case went to trial. He had the expectation that his attorney would make a plea bargain with the prosecution, which would result in some amount of time served in the county jail or in prison. Therefore, his general level of motivation and expectation to participate in his own defense was minimal.

“Yeah, I'm guilty. There's no way around it.”

Decisional Competencies

Effective Self-Protection

Effective self-protection involves the defendant's self-protective capacity and the ability to make strategic decisions reflecting an understanding of self-interest. Self-protection involves guarding against threats posed by others. It has already been established that the defendant is generally distrustful of others and that he felt betrayed by those whom he thought he could trust. These experiences resulted in the participant possessing a high level of suspiciousness, as demonstrated by the analysis of dimensions previously reported in this paper.

Were you more trusting of other people in the past?

“I used to trust my girl, but I don't trust her anymore. If I have a girl...I probably don't even have one.”

What would it take for you to trust people?

“It's hard to trust people nowadays. You never know what they're gonna say or what they're gonna do or how they're going to do it. It's just hard. The best way is not to trust anybody at all.”

The participant apparently came to the conclusion that the only people that he could trust were his siblings. However, the participant has had little contact with his siblings over the past ten years and the dynamics of a relationship with each of them was uncertain at best.

Who do you believe that you can trust?

“All my brothers and sisters. They'll back me up for sure. Definitely.”

So you can definitely trust them?

“Oh yeah, but just anyone randomly on the street? No.”

Although he was clearly wary of the interviewer at the first interview the participant demonstrated a gradual willingness to let down his guard and to make use of the beneficial aspects that the interviews provided to him. So although his instinct was to protect himself from others, he maintained the ability to allow positive individuals into his experience, and to also make accommodations for uncomfortable aspects of those relationships.

You've only met with me a couple of times. Do you feel that I am trustworthy?

“A little bit. I feel like, you know, I can trust you a little bit because I barely know you.”

I understand. I would feel the same way if I were in your shoes. How about my recording our conversations?

“Yeah, that bothers me a little.”

Sorry about that.

“It's okay.”

The participant suggested that he was not bothered by the words of others and understood the necessity of protecting himself psychologically against the negative verbalizations of others and added that he is willing to protect himself physically if necessary.

“It don't bother me. They're just words. It don't bother me at all. I mean it's nothing physical. The only way that I feel violated is like when somebody tries to put their hands on me. Then I feel violated. Then I feel obligated to protect myself. Other than that, I mean, the words are nothing.”

However, the participant appeared to misunderstand the lengths to which he does discuss his legal situation with fellow inmates. He appeared to understand the potential negative ramifications of discussing his legal situation with peers but seemed unaware of the extent to which he actually does in fact do that, as has been discussed earlier in this paper.

So you guys don't sit around talking about each other's cases?

“I don't talk to nobody. I don't talk about mine.”

The participant exhibited the ability to employ strategies for coping with the stress of being in jail and going through the adjudication process. He appeared optimistic about his ability to self-protect despite being exposed to significant levels of stress, which could exacerbate his mental health issues.

Do you think your mental health problems make it difficult for you to get a fair trial and to maneuver through the legal system like other people do?

“I don't know. I just roll with the punches. I think the Judge is just going to look at what I did wrong. He's gonna look at that he gave me a Court order to follow. He's gonna be looking at that.”

Do you think your mental health problems have gotten worse since you've been in jail?

“No. I read the Bible and I just try stay focused and positive, you know? And try to leave the negative thoughts behind me.”

Emotional Stability

Emotional regulation and functionality affects a defendant's ability to make rational decisions. It is not a measurement of cognitive abilities but rather a measure of feelings, mood and affect. Emotional stability is implicated in each stage of the decision-making process and has not been adequately investigated or understood as a significant factor in the ability to competently make adjudication-related decisions.

Reportedly, the participant had been diagnosed with Schizophrenia, paranoid-type, when he was approximately 21 years old. During interviews he did not exhibit significant symptoms of thought disorder, except that he appeared on a few occasions to respond to inner stimuli. He reported that he heard voices in his head commanding him to injure himself.

Are you not feeling like talking about this today?

“Yeah I'm just... hearing voices right now.”

What's that?

“I'm just hearing voices really bad.”

What are they saying?

“For me to hurt myself. That my life is not worth it. That I shouldn't be living right now.”

As discussed previously, symptoms of psychosis do not automatically constitute a defendant's incompetence to stand trial. Although in this case the participant convincingly reported auditory command hallucinations, the effect of those symptoms did not render him unable to participate meaningfully in the interview. In fact, the

intensity of the hallucinations appeared to decrease as a result of diverting his focus of attention onto other things.

The last time we talked you were hearing voices, but it seemed like the more we talked the less you were distracted by them. You started to relax a little bit and to laugh a little bit. We were having a good conversation.

“Because he wasn't bothering me. I couldn't hear his voice.”

Maybe us talking together will drown out his voice for a little while. Maybe?

“I guess...he's just making noise, f***ing with me.”

The participant exhibited emotional confusion and ambivalence concerning his relationship with the woman who was his girlfriend and purportedly the mother of his child. He was Court-ordered not to contact her, but he did so apparently at her request. However, he suspected that it was she who called the police to report that he was in violation of the no-contact order. The participant was emotionally upset as a result of the events that led up to his arrest. He was further disturbed over events he imagined were happening after his arrest.

(Tearfully) “I hurt because she was using me and I didn't want to accept that. I told her, I said ‘Look, I love you but I love you good enough to let you go, because you don't love me. You just want to use me and that's not worth it.’”

“I mean, I never did anything wrong here, you know what I mean? I always loved her. I always helped her. I was always right there by her and I always gave her my heart, you know what I'm saying? For whatever it was worth or whatever you want to call it, she's out there and she used me and I was like, ‘Wow.’ I knew that in some way she was using me, but I didn't want to accept the truth. I didn't want to accept what people were telling me, that ‘Look man she's using you. She don't love you and there's somebody else in her life. And what she was trying to do was get you out of the picture so that she could be with that somebody.’ Does that make sense?”

“She manipulated me and took all my money. I would get money, you know, Social Security and she would say, ‘Can I have that money? I need that money.’ You know, when she had money and she was taking my money, she was giving it to another dude. (Tearfully) That's not right.”

The participant became increasingly focused on her perceived actions and her possible motives as the interviews progressed. The interviewer questioned whether the participant would have persevered on the issue if the interviews hadn't taken place.

How often do you think about this situation?

“A lot.”

Like all day long?

“Yeah, I think about it all day.”

The participant reported feeling abandoned and alone. He imagined that no one cared about him. In fact, he did have very few visitors and as a result looked forward with anticipation to the meetings with this interviewer. It is highly probable that his emotional stability was diminished due to his feelings of loneliness, betrayal and abandonment.

“I feel like I'm being violated. No one is trying to pay attention to me and no one cares if I get out or if I have a release date or whatever.”

The participant expressed the ability to respond positively to others and reported, perhaps somewhat exaggeratedly, that he was highly encouraged by the frequent meetings with the interviewer.

“I just appreciate you coming by and talking to me because, not every day do people like you... coming by and talking to you on what things are bothering 'em and understanding their problems. Just sitting here listening to their problems. I appreciate you doing that.”

Wow, I'm glad it helped you out that way. I was worried about being a pain in your butt to be honest with you.

“No, no... at first, yeah. At first it was like that. I'm not going to lie to you. But the more you came to see me the more I got comfortable with you. You know what I'm saying?”

How long did it take for you to get comfortable with me?

“Every day you came.”

A little more each time?

“A little bit more each time you talked to me. And you gave me more reason to live. You know what I'm saying? It gave me a confidence, more stamina, more get up and go, man.”

Perception Accuracy

Perception Accuracy describes the defendant’s ability to formulate accurate assessments, interpretations and conclusions regarding evolving situations. This dimension underscores the importance of the accuracy for decisional competence of a defendant’s perceptions of constantly changing situations and events, and the actions of others.

Multiple sources of information may be required to determine the accuracy, or lack thereof, of the defendant’s perceptions. For example, despite his doubts, the participant was convinced by fellow inmates that his girlfriend was conspiring with others against him in order to gain access to his bank account and then steal his money. Collateral confirmation would be required to determine the accuracy of this version of events. It is clear that the participant was significantly influenced by the thoughts and opinions of the other men on his pod.

“I knew it, but I didn't want to accept it. I felt comfortable with her using me because I loved her and she didn't love me. She was doing whatever she wanted to do to me and when I came in here there were so many dudes... they were talking to me and they were like, ‘Man, look, it hurts... it hurts bad dude but you gotta understand that she's using you. She don't want to be with you. She's using you to get what she wants, when she wants it, how she wants it.’ Yeah, they were like, ‘Man, she's getting your money out there; you know what I'm saying? And she's with some other dude. She doesn't love you and she's telling you to do things that the judge told you not to do and to break that order. Man, she's manipulating you. She does not love you, she’s just using you to her advantage and that's not right. She needs to leave you alone.’”

The participant exhibited a somewhat cynical understanding of the powers possessed by the prosecution, which was probably based generally on real experiences.

“I think the prosecuting attorney is like they can do what they want. They could see just how we see it, but they have more authority over us, you know what I’m saying? So they can push the issue because they’re just trying to get us out of the way and get paid. And the power trip is ‘give him as much time as I want’ or ‘Your honor, give him as much time as I want and get him outta my way so I can get paid and get on with my life. And if he continues to break the order or whatever, I’ll just give him more time, I’ll continue to get paid, he’ll continue to go to prison and I’ll move on with my life.’ That’s how they see it.”

Perception Appreciation

Perception Appreciation describes the defendant’s ability to formulate an accurate understanding of information and developing situations and then to predict and appreciate possible outcomes. Assuming the defendant’s perceptions are accurate, the next phase of the decision-making process is to accurately conceptualize possible outcomes and ramifications of the perceived information. In this study the participant had heard information from other defendants about the supposed racist attitudes of the county judiciary. He was apparently able to consider the information and to compare that information with his own experiences. He properly interpreted that it was his experience that the county judiciary does not have a record of biased decisions against defendants that are members of racial minorities. He also exhibited an understanding that every Court case is a unique situation that is a complex combination of many factors.

“You know like they say out here that New City judges are racist. A lot of judges are racist, they say a lot of things like that, but everybody has a right to a fair trial. I’ve heard that New City judges are racist, but I’ve never heard a judge say anything racist, but sometimes you can get a harsh sentence, you can get a messed up sentence, but it depends on who you go in front of and if the judge wants to hear what you’re talking about. It depends on what you’re talking about, if it’s positive or negative. It depends on a lot of things.”

The participant continued to echo his less-than-enthusiastic opinion of attorneys

in general. He expressed a skeptical attitude as to the attitudes and motivations of attorneys in their work with defendants. His cynical attitude, however, did not accurately reflect the professional commitment of the majority of attorneys. It was likely that defendants possessing similarly disdainful attitudes would have a negative effect on the effectiveness of their participation in the defense, diminish their willingness to trust the advice of attorneys and negatively affect their ability to make appropriate decisions during the adjudication process.

“I don’t know. I mean, they’re against us, not for us. You know, it’s like our attorneys are for us and a lot of attorneys are lazy. They don’t care really. They’re just trying to get you out of the way so they can get paid. They really only worry about getting paid. That’s how the system works, but it’s just money, you know? The world revolves around money, you know. Money is the root of all evil. If it aint about money it aint about nothin’, you know?”

Flexible Reasoning

Flexible reasoning requires that the defendant possess fluid intelligence - the ability to use deductive and inductive reasoning and the ability to incorporate background knowledge and personal goals for the future. The participant exhibited a tendency toward rigid thinking and somewhat-limited cognitive abilities. Even though the following question is poorly formulated, the participant should have been able to interpret the meaning of the question based on its context.

Do you think people should get in trouble for what you did?

“What I did?”

Yeah.

“Should people get into trouble for what I did?”

Yeah, what they accused you of doing.

“Why would you ask that? Should somebody else get in trouble for my actions?”

Specifically, if anyone did what you did, should that be against the law? Should somebody get in trouble for...

“...breaking a no-contact order? Yeah, if it's on them, then yeah, I guess.”

The participant also exhibited a predisposition to be content with an extremely limited range of possible defense strategies and a vague understanding of Court procedure.

“I would try to look at what is good and what is bad, but I would have no way to prove what is good. They're just looking at what I did that was bad, which was breaking the no-contact order. It's a Court order and I broke that order. And that's all they're looking at and that's all the prosecuting attorney is looking at, but my attorney is probably going to try and argue with the prosecuting attorney and to talk to the judge and say, ‘He tried to help out a little baby. He bought her baby clothes. He was doing what was right for a child.’ But that doesn't mean the judge has to listen to that.”

The participant verbalized a willingness to consider multiple perspectives and differing interpretations of interpersonal and social situations. However, his ability to implement that kind of cognitive flexibility appeared acutely limited.

“It depends on what judge you go in front of. It depends on what your case is about and it depends on if you try to cause problems, or if you try to better yourself. It all depends on what's going on at that point in time and what went on when you were in trouble. You know? It depends. There's different scenarios, you know?”

“I mean it's all angles. I mean you can look at things from different angles. You could see it from my point of view or I could see it from your point of view or we could just totally disagree about it, you know what I'm saying? I mean it's always a mutual agreement about something. I mean you have to see it as someone else sees it. Sometimes they don't see it as we see it, but we're all human, you know?”

Instead of exhibiting flexible reasoning he appeared to perseverate only on a distressing interpretation of events that was formulated using his own imagination and the poorly informed opinions of others, and which may or may not have actually taken place.

“I had been to her house before she had set me up and it was nothing like it is right now. It was nothing. She wasn't trying to set me up. I guess the dude that she was with went to talking to her then or maybe he wasn't. I don't know. The only thing I do know is that one night her and her mom came and got me. She wasn't sitting close to me. She wasn't talking to me, she just looked at me with this guilty-ass look on her face. Like, 'I'm doing something to you. I want to tell you. I love you, but I can't tell you. I love you to a point where I want to have you locked up so that I can be with someone else. I care about you but I'm in love with somebody else.' Do you know what I'm saying? Does that make sense? I care about you but I'm in love with somebody else. I want to be with somebody else and in order for me to be with that person I have to set you up. I have to have you locked up. I'm sorry, but this is what it is.”

Nevertheless, the participant responded quickly and hopefully to the suggestion that his interpretation of events may not be the only way to evaluate events. His strong positive response indicated that his ability to reason flexibly was dependant in large measure on the kind and quality of the counsel he received from others.

Is it possible that your girlfriend didn't make the call to DOC since you were there helping her? Why would she call...

“...if I'm there to help her? Exactly! I was thinking that too. I was like 'Damn, what if she didn't call!' I wonder who this anonymous caller is. I want that person to stand up and be a man or a woman and let me know that they called on me. And I want to know why they called on me. Are they jealous of me or what? Do they want my girl? Or are they just trying to get me out of the picture to have my girl? It's all kind of twisted and turns.”

Goal-Oriented Reasoning

Goal-oriented reasoning is the defendant's ability to process interpretations and conclusions using a reasoning process influenced by personally relevant goals. The participant reported that he had reached the conclusion that participating in programs at the jail would enhance his goal of convincing the judge to see him in a favorable light and therefore dispense a more compassionate sentence.

“It helps if you complete programs in jail. That shows the judge that you're trying to do something positive with yourself instead just laying around and not doing nothing at all. But if you try to complete the program and you take that

completion in front of the judge who is looking at that and he's thinking about not giving you a lesser sentence or giving you time served and letting you go home, you know or something like that. It depends on what you're trying to do to better yourself or if you're not trying to better yourself well.”

In addition, he demonstrated insight that indicated that his goal of staying out of prison was dependant on his willingness and ability to resist the impulse to again make contact with his girlfriend.

“I know I gotta leave her alone and when I get out of here I'm going to go back to California where my brothers and sisters are at. That's the only way that I'm going to forget about her and move on with my life. I gotta move on with my life.”

“I aint never done this much time in my life. Last year I just did eight months and I was only off for thirty days. And s***, I'm tired of doing time, you know? I don't want to leave my daughter's mother because I love her and everything, but I'm tired of doing time, so I gotta move on in my life. I can't just put my life on hold and be in here, you know?”

Logical Conclusions

This category describes the defendant's ability to arrive at logical conclusions using deductive and inductive reasoning. Data analysis revealed that the participant's ability to reach logical conclusions was severely limited.

“My girlfriend came and got me and we went back to her place. Then somebody called DOC on me. I don't know if she called or if her mom called. I don't know if her sister called, but somebody called DOC. I don't know if she had someone call DOC on me or if she called DOC. I just know that I was set up. I felt set up.”

“My representative payee gave them my bank card and my pin number and they went down there and withdrew all of my money out of my account.”

How do you know that? Did somebody tell you that?

“Why else would I be in jail? They said it was an anonymous caller. The anonymous caller was my ex-girlfriend. What other reasons would she want me in jail besides my money?”

The participant frequently expressed poorly conceived conclusions that were based on limited or no information and revealed the impact of suspiciousness on his frequently confused and conflicted reasoning process.

“I’m gonna go back home and see my brothers and sisters who care about me. She didn't care, because if she did she wouldn't take me to her place and set me up the way she did. I don't think in my heart, I don't want to believe that she did that to me, but I think in my heart that she did that. And then again I'm thinking that she didn't.”

“Don't set me up and take away my freedom and don't use me for my money! That's wrong too. So that's what I'm thinking that she's doin' right now, you understand? What I'm thinking is that she set me up, took me back to her place, called DOC on me and DOC took me to jail. Her and her sister drained my bank account because her sister is my payee. They drained my bank account. I had about \$2000 in my bank account. They left me in jail so that they could go and get married, buy wedding rings and go get married. They wanted me to stay in jail for the rest of my life, but I haven't done anything!”

However, despite his tendency to amplify the malevolent motives of others during the reasoning process, the participant demonstrated that he is able to formulate answers to questions posed by the prosecution that reflect benevolent motives and thoughtful actions. The ability to display such qualities would reflect well on a defendant during the adjudication process.

What kind of questions do you think the prosecuting attorney would be asking?

“She probably would ask me why so many times I was breaking the order. Why aren't I paying attention to the Court order? Stuff like that. And I would tell her that my ex-girlfriend has kids and they miss me and I go take them money when I have money. If they're low on money or low on food or food stamps or whatever, and I have food stamps I take my card over there to get some milk or cereal or whatever they want with those food stamps. To help, not to cause problems. And that's what I would explain to the prosecuting attorney.”

Expressible Conclusions

This facet of rational capacity describes the defendant's ability to effectively express and communicate thoughts, ideas, opinions and conclusions regarding information relevant to the adjudication process. The participant was willing and able to formulate conclusions regarding the behavior of other and to clearly express those ideas and opinions. However, he also appeared to doubt his ability to communicate clearly and frequently asked the interviewer for confirmation that his statements were clearly understood

“I think people know the difference between right and wrong, it's just that they don't care. Some people feel like they can do wrong to others, but when it's being done to them, that's what they don't want to look at. They only look what they can do to inflict pain on someone else. They don't think, ‘What if that was being done to me, I don't like that.’ If you don't like it, why do it to somebody else? Does that make sense?”

Another example follows of the participant's lack of confidence in his ability to express his thoughts clearly and that they were understood accurately by the interviewer.

Who knows? Maybe it didn't actually go down that way.

“Maybe it didn't, you know, but it's what I'm feeling. And it's not what I want to feel. I don't believe that she did me like this, but... I want her to be a woman and sit with me just like you're sitting with me and tell me, ‘Look, I did set you up. I'm sorry. Okay? I did use you. Everything you're saying is right to a certain extent,’ or whatever. Does that kind of make sense?”

Without doubt the participant reached the conclusion that he was guilty of violating a no-contact order. He concluded that he was set up for the crime and that a conspiracy to have him arrested should be made known in Court. He demonstrated the ability to express those thoughts and opinions within the confines of a reasonably comfortable interview situation.

What would you say to the judge to convince him that you are innocent?

“What would I say to a judge? That girl that I was with... that she knew that we had a no-contact order. She knew how to manipulate me. She knew how to talk to me into doing things that she knew wasn't right and I knew wasn't right. She knew how to break me down. She knew how to talk to me and that's not right, you know, to manipulate people. You don't just use people like that. You don't take kindness for weakness. You don't step on people like that.”

However, it is not clearly evident that the participant would respond to questions in an actual courtroom situation in a similarly reasoned and effective manner.

Have you thought about what you might say in Court?

“I don't know what I'm gonna say to tell you the truth.”

Just wing it? Say whatever comes to mind at the time?

“Yeah. I'll tell them that I was set up.”

Strategic Decision-Making

Strategic decision-making is the ability of a defendant to formulate and develop appropriately strategic decisions based on accurate perception, valid understanding of perceptions, goal related reasoning and logical expressible conclusions. The participant did not exhibit the ability to make sound strategic decisions, due in large part to his belief of his unalterable guilt and his focused intention to plead guilty.

Say when you and your attorney go into the Court before the judge. What do you think would be the best strategy for you? It sounds like you already decided what you're going to do. I just want to hear you talk a little bit about what your plan is for when you go before the judge.

“I don't know what my next Court date is. I don't know how much time I'm looking at. I'm just going to plead guilty, that's all.”

Why plead guilty and not innocent?

“Because I was caught red-handed there breaking the no-contact order. There was no denying it. He was standing right there looking at me.”

The participant did appear to understand the strategic benefit of omitting negative information about his relationship with his girlfriend that would probably work against him if he were to go to trial. He clearly realized that a better strategy would be to focus on the positive aspects of his more recent behavior.

Is there anything that your attorney will not tell the judge about you?

“There was one time when we got into it. It was a domestic dispute and we were fighting. That was because we were drinking and stuff. Me, myself, I don't want to drink any more alcohol or do any more drugs because it causes conflict and pain and more problems. I just want to be there to try to better myself and better the situation by not drinking alcohol and doing wrong things.”

The participant's ultimate strategy was to plead guilty and then be sent to Eastern State Hospital to serve out the remainder of his time there. However, as noted earlier in this paper, the participant was sentenced to serve his time in prison, not at the psychiatric hospital setting for which he had irrationally hoped.

Why do you want to go to Eastern State Hospital?

“I want to go somewhere where I can communicate with different people that have some of the same problems I have. I would like to go and communicate with people, talk about my problems and stuff like that.”

Decision Execution

The measure of a defendant's ability to execute decisions is based on his or her quantity of accurate perceptions, the valid understanding of those perceptions, goal-related reasoning and logical, expressible conclusions. The participant was clearly deficient in several of the preceding dimensions of rational decision-making. Primarily, he demonstrated deficiencies in his ability to arrive at and execute sound decisions. Accounts of past experiences clearly revealed that the participant's decision-making ability had been insufficient for a long time. It is likely that his history would reveal a

pattern of being easily manipulated and influenced by others to make decisions that are not in his best interest.

Were you thinking about that stuff at all before you got into the car?

“Yes, I told her that I was not supposed to be at her place. I told her that. But she was like, ‘Nah, just come kick back with me. Come hang out with me. I’m by myself and I don’t have anybody.’ But all the while she had a dude. She was just trying to get me out of the picture... I don’t want to talk about what I wanted to because what I want to do is wrong; you know what I’m saying? If I do that, I’ll end up in here for the rest of my life.”

The participant reported that he experienced impulses to commit self-destructive and anti-social acts as a result of his feelings of exploitation and betrayal, but that he also possessed sufficient insight to avoid acting on those impulses.

“If I were to do anything about it, you know, all she’s going to do is call the police on me. If I do anything to her she’s going to sit there and call the police on me and give you trouble so the best thing to do for me is to go on and live my life.”

The analysis of the data suggested that the participant’s decision-making process was hampered by rigid thinking, over-reliance on poor advice and a sense of futility about the adjudication process.

“There’s all kinds of different situations and different scenarios, you know? You got the bad side of it and you have the good side of it. Everybody has a chance to plead their case, but that doesn’t mean the judge or the prosecuting attorney will listen to that, you know? It depends on what you did, how you did it and where you did it at and who you did it to.”

Although the decisions of the participant were frequently based on an inadequate decision-making process, he demonstrated a resolve to execute his selected defense strategy. He also exhibited an ability to learn from poor decisions and stated his intention to apply the difficult lessons learned to future decisions.

When the Judge says, "John, you have been accused of violating a no-contact order. How do you plead?" What are you going to say?

“Guilty.”

What have you learned from this experience?

“I learned that I can't go around them when there's an order. No matter how bad I want to go around them that I can't go around them because I would continue to get in trouble and continue to be in jail. So, in order for me to not get into trouble I got to go back home. Because, not that I want to break the order, it's just that I miss them and I wanted to be with them and I can't.”

In summary, both phases of the qualitative analysis of the data from the seven interviews with the participant (CAI content areas and dimensions of rational competency) demonstrated that the participant was deficient in several areas of rational capacity. The data provided sufficient information regarding most of the dimensions of rational capacity. However, insight into the participant's capacity in several of the dimensions would have benefited from a more focused line of questioning than was provided by the CAI. Additional lines of questioning focusing on the dimensions of rational understanding should be added to the evaluator's psychosocial interview or CST assessment instrument to assure adequate acquisition of information regarding the defendant's ability to assist the defense and their decisional competence.

Although the participant demonstrated deficiencies in several areas of rational capacity, the level of his deficiencies may not have reduced him below the level of “reasonable” rational capacity mandated by the Dusky standard. The Dusky standard requires that the defendant possess reasonable levels of factual and rational capacity. A characterization of the term “reasonable levels of rational understanding” was not established as a result of the literature review for this study and the concept was not otherwise definitively addressed by this study.

Nevertheless, interesting and useful information emerged from this study simply using the CAI framework. The content areas that were the framework for the interviewer's questions were able to shed significant light on the dimensions of the participant's rational competency. However, it became evident to the researcher during the course of data analysis that additional lines of questioning need to be developed to more adequately explore the complex dimensions of a defendant's rational capacity.

Discussion

This research project initially set out to explore and define psychological dimensions of CST, but transitioned into a study of the subtle factors that specifically constitute rational dimensions of CST. The study addressed multiple components of rational understanding by asking research questions designed to explore and elaborate on rational aspects of CST previously overlooked by United States Supreme Court decisions and Washington State case law and legal statutes. The study examined the CST evaluation instruments most often cited in the literature, researched conceptual models of CST and explored the literature for descriptions and definitions of various facets of rational capacity. Finally, the study explored for rational dimensions of CST by using qualitative research methods to examine the components of the CST of one individual currently in the Washington state adjudication process, eventually focusing exclusively on the rational elements of CST.

Supreme Court rulings and Washington State case law clearly identified the constitutional right of all individuals to receive a fair trial or due process as guaranteed by the 14th Amendment to the U. S. Constitution. Both Courts have made numerous rulings on a defendant's right to be competent when adjudicated and identified, in general, the

psycholegal capabilities of CST established by the Dusky standard. Additional rulings were primarily logistical in nature, defining when and how competency evaluations should be implemented and the rights of the defendant surrounding those logistical factors such as the following: 1) a speedy trial, 2) the process of the return to competency, 3) the right to refuse forced medications and 4) the admissibility of evidence and expert witness testimony.

Washington State Courts have attempted to be more specific regarding competencies than those specified by the Dusky standard and have defined the necessary components of an acceptable evaluation report. Court rulings indicated that all defendants involved in the process of adjudication must be aware of the defendant's potential incompetency, and a CST evaluation of the defendant must be completed if competency is doubted at any time during the adjudication process. However, Washington State Courts have also not defined or described the dimensions that constitute a defendant's rational capacity.

Washington State has decided that the Court has wide discretion to determine competency, but the definitions of competency from legal and psychological perspectives can be very different. For example, RCW 71.05.020 legally defines a mental disorder as "any organic, mental, or emotional impairment which has substantial adverse effects on a person's cognitive or volitional functions," and further specifies that a mentally ill person is any person suffering from psychosis or other disease impairing mental health, exhibiting symptoms that are of a suicidal or homicidal nature, or is dangerous to himself or the lives or property of others. The legal definition of mental illness would be considered accurate, in part, from a psychological standpoint. However, the

psychological definition of mental illness is broader and more inclusive. Mental illness negatively affects an individual's life in a much more comprehensive manner than that suggested by the legal definition. Several state Courts have ruled that individual symptoms and conditions, such as delusions and paranoia, are not solely sufficient to establish incompetence (*State v. Hahn*, 1985; *State v. Froehlich*, 2004) and held that competency to stand trial does not require establishment beyond a reasonable doubt (*State v. Smith*, 1973; *State v. Walker*, 1975). An individual's decisions regarding personal, relational, social, academic and vocational issues, as well as legal issues, are all negatively affected by mental illness to some degree. The effect of mental illness on personal decisions may have legal implications, but mental illness will not necessarily be legally relevant in terms of CST. Mental illness does become pertinent to the determination of CST when it obstructs the defendant's ability to cooperate with the defense or impedes the defendant's decision-making abilities.

The Dusky standard provided Washington State with the framework by which CST is evaluated. It specified that the defendant must be able to comprehend legal proceedings and be able to participate in his or her own defense. Dusky further delineated CST to include two subcategories - the ability to *factually* and *rationally* understand Court proceedings. The Washington State Supreme Court's approach to the Dusky standard was reflected in *State v. Gordon* (1985) where the Court ruled that when considering a defendant's competency to stand trial the Court must consider the defendant's apparent understanding of the charges and consequences leveled against him or her, the defendant's understanding of facts giving rise to the charges, and the ability of the defendant to relate to the defense attorney and to help prepare a vigorous defense.

Factual understanding of Court proceedings is relatively simple to determine. The defendant either knows the facts or he or she doesn't. Each evaluation instrument reviewed for this study focused their questioning primarily on the defendant's factual knowledge of Court proceedings and the roles carried out by the various participants involved. This straightforward information is efficiently quantified and not difficult to assess for evaluation purposes. However, the ability of the defendant to rationally understand Court proceedings is less clear and much more difficult to measure and describe quantitatively. As a result, the non-standardized CST evaluation protocols currently utilized by forensic evaluators include minimal or no measures of a defendant's rational capacity to effectively engage in his or her own adjudication.

The difficulty in reconciling the differences between psychological dimensions and legal standards and of operationalizing the resulting psycholegal concepts in a standardized manner is reflected in many of the Court's decisions. Domains of competency have been clearly identified, but the dimensions that make up those competencies have not been defined unambiguously. Many defendants possess subtle deficiencies in their rational capacities that are difficult to identify, and, as previously noted, the lack of clarity regarding CST dimensions has contributed to non-standardized methods of CST assessment. Therefore, it is very difficult to guarantee that a rationally incompetent defendant will be appropriately and fairly adjudicated when relying solely on current CST evaluation instruments. It is evident that the addition of rationality measures would be the most effective approach to increasing the accuracy and thoroughness of CST evaluations.

It was for the reasons stated previously that the author conducted a preliminary study of an assessment instrument that he designed specifically to measure a defendant's rational competency. The Cole Rationality Assessment Instrument (C-RAI) is a measure of rational competencies specifically designed to assess for the affect of mood disorders. A description of the pilot study of the C-RAI can be found in Appendix C and a copy of the C-RAI tool in Appendix D.

Levels of intelligence can be determined through intelligence testing and personality characteristics can be identified through personality inventories, but these factors do not entirely ascertain a defendant's competency to stand trial. Current CST assessment tools effectively delineate the various dimensions of the defendant's factual understanding of adjudication proceedings and can be used to generate hypotheses about the defendant's abilities (Grisso, 2003). However, to assess the defendant's level of rational understanding the evaluator must rely upon multiple measure corroboration (American Psychological Association, 1991) and clinical judgment until a more thorough measure of rational capacities is developed. A reliable and standardized method of assessing the defendant's rational capabilities would be a significant contribution to the on-going development of CST assessment instruments and evaluation protocols.

The increased sophistication of screening instruments identifying defendants who feign incompetence has been a useful contribution to the CST evaluation process (e.g., M-FAST, SIMS and SIRS) but they further underscore the difficulty of determining incompetency. The review of these instruments suggested that it is easier to identify defendants who are feigning incompetence than to identify the subtle rational incompetence of defendants. However, the use of screening tools to detect malingering

and to thereby eliminate unnecessary comprehensive CST evaluations is a positive development and should be implemented whenever appropriate.

The review of the comprehensive CST assessment instruments revealed that recently developed evaluation instruments (e.g., MacCAT-CA, FIT-R and ECST-R) are an improvement over earlier instruments (GCCT-MSH, CAI, CST and CAST-MR). The newer instruments were somewhat more thorough in their assessment of the defendant's rational capability. They were therefore more effective and inclusive in describing the psychological dimensions of competency to stand trial. However, it was evident that additional efforts to standardize and clearly identify the subtle dimensions that make up rational competency are necessary to assure due process for all participants in the adjudication process. Of the CST evaluation instruments reviewed for this study the ECST-R appeared to be the most thorough evaluation instrument for the assessment of a defendant's CST. Uniquely, it contains a small measure of rationality and a scale that measures malingering. However, as is evident in all other CST measures, the ECST-R's examination of the defendant's rational capabilities to participate in the adjudication process is less than adequate and there is a need for the development of additional measures of rational capacity, such as the C-RAI.

Results of the literature review revealed several themes, concepts and dimensions that contribute insight and understanding of the subtle dimensions of rational competency. Suspicion was the most commonly identified dimension using the CAI framework for analysis in *Phase One* of the qualitative case study, despite the fact that suspicion is not normally a dimension assessed when using an instrument like the CAI. Suspicion is likely to have a significant influence on the defendant's ability to effectively

cooperate with the defense attorney and the ability to make sound decisions. It negatively affects the defendant's ability to make good decisions regarding plea agreements and interpretations of the roles of the various courtroom participants. The manner in which the defendant perceives the intentions of the courtroom participants could seriously affect the defendant's behavior in the courtroom toward those individuals. Such behavior could easily have a negative influence on whether the defendant is determined to be guilty or innocent and, if found guilty, the length of sentence that the defendant could receive. Suspicious individuals often lack insight into how their behavior affects others and are likely to misinterpret the corrective actions of others as personal attacks and unwarranted persecution.

The research participant had a basic understanding of the functions of the primary participants in courtroom situations, but very limited understanding of the functions of other role players. His deficiencies of factual understanding could be remedied through education and instruction and should therefore not be considered a barrier to due process; however, a lack of rational capacities in conjunction with feelings of suspiciousness are likely to contribute to the possibility that a defendant could receive a different level of justice than defendants with the ability to act with rational adroitness.

Defendants are often childhood victims of chronic physical, sexual or emotional abuse and often develop a sense of resignation, powerlessness, detachment or learned helplessness. They sometimes lack the capacity to speak out on their own behalf and resignedly accept outcomes with little question or protest. Decision-making ability, such as selecting a defense attorney and accepting or rejecting plea agreements, is likely to be hampered by inadequate levels of rational capacity. It was for such reasons that the

Dusky Court understood that a defendant must have a reasonable level of rational capacity, as well as factual understanding of Court procedures, to receive due process and justice.

The primary research question for this study was, “What additional information does the field of forensic psychology need in order to better understand and standardize evaluations of competency to stand trial?” The outcomes of the study demonstrated that CST evaluations need to be more proficient at gathering and assessing data regarding a defendant’s rational capacity.

The study also provided insight into the other questions proposed for the study in the Purpose section of the paper. “Can rational competencies be clearly defined so that a standardized method of assessment can be developed?” The research for this study identified several dimensions of rational capacity. Further scholarly work is likely to result in the identification of additional elements of rationality and it is highly likely that a standardized assessment tool could be developed to measure those rational capacities. “What methods of assessment are most effective in describing the rational dimensions of competency to stand trial?” The methods currently in use to collect data concerning a defendant’s CST (i.e., multiple measures including intelligence tests, personality inventories, self-report measures, direct observations, collateral contacts, and screening instruments for malingering) are an effective approach to collecting meaningful and interpretable data regarding the defendant’s rational capabilities. However, additional measures specifically assessing dimensions of rationality, such as the C-RAI, should be included in future methodology. “Can psychological dimensions and legal standards be coordinated in such a way that defendant’s with subtle or less-than-obvious psychological

deficiencies can be identified and appropriately treated or educated and adjudicated?”

The study further indicated that the development of a standardized method by which to assess a defendant's levels of rational capacity and to impart that information with the Court would contribute to a more complete understanding of the defendant's competency to stand trial and therefore would provide a greater likelihood of due process for the defendant.

The U. S. Supreme Court and Washington State Courts have made efforts to define CST, but many of the psychological dimensions of those competencies remain excessively vague. Dimensions of a defendant's factual understanding of the adjudication process are adequately defined by the Court and well understood by forensic evaluators; however, the dimensions of rational understanding are poorly comprehended by forensic evaluators.

In conclusion, in order to attain the ideal inherent within the idea of social justice, that is the protection and promotion of the human rights and personal dignity of disabled and powerless individuals, the adjudication process must account for all aspects of a defendant's competency. As demonstrated above, the necessary rational capacities for an effective participation in the adjudication process are not sufficiently defined or assessed and current CST assessment instruments do not adequately evaluate dimensions of rational capacity. Therefore, forensic psychology must pursue the development of additional assessment tools, such as the C-RAI, and implement standardized CST assessment protocols to better assess the defendant's rational dimensions of competency to stand trial and to thereby meet the standards of due process mandated by the Dusky standard.

Recommendations for Future Study

Forensic psychologists must continue to conduct research into this extremely important aspect of the adjudication process. The question should be answered as to whether current CST assessment protocols actually meet the Dusky standard. Can prevailing practices of CST assessment be tested and validated by scientific evidence? Has the scientific evidence produced by current CST evaluation protocols been subjected to peer review and publication? Have rate of error factors been determined regarding CST assessment tools and data gathering procedures? And finally, do current CST evaluation protocols produce credible outcomes that are worthy of general acceptance within the forensic psychology community?

Another seemingly simple topic worthy of additional exploration is the question of what the Dusky Court meant by the mandate for “reasonable levels of factual and rational understanding.” What does the term “reasonable” mean precisely and how can it be measured?

It was evident, based on the limited amount on literature available on the psychological dimensions that comprise rational understanding, that additional research needs to be done to further the understanding of the relationship between rational understanding and CST. A study focusing on the philosophical grounding of rational understanding would contribute toward a more standardized understanding of the concept of rational capacities and could contribute toward the establishment of a standardized vocabulary regarding the rational dimensions of CST.

The pilot study of the C-RAI conducted for this study was severely limited in scope, but the outcomes produced by the diverse group of participants indicated that the

C-RAI may be a useful adjunct instrument to current CST assessment tools. Additional research should replicate the pilot study to see what data can be extracted for assessing reliability and for norming test results.

One outcome of the qualitative research for this study was the awareness that the participant's level of trust and willingness to interact in the interview process increased over the course of the seven interviews. A study could focus on the average amount of time spent by forensic evaluators to conduct face-to-face CST evaluations and the benefits and detriments of increasing the amount of time devoted to the CST assessment process.

Cultural competency issues should also be studied. Various personality inventories commonly used in forensic evaluations have shown that cultural factors often make a significant impact on the assessment of personality. For example, one scale of the MMPI-2 will often indicate elevated psychotic thinking if an individual's cultural belief system includes supernatural elements. Studies should focus on the potential impact of various cultural factors and belief systems on an individual's assessment of CST.

The specific effects of Attention Deficit Hyperactivity Disorder (ADHD) and Bipolar Disorder on the dimensions CST should be the focus of future research. Key behaviors associated with both disorders (i.e., impulsivity, poor judgment and diminished insight) have a profoundly negative impact on a defendant's ability to act rationally during the adjudication process. A study of ADHD and Bipolar Spectrum Disorders should focus on defendants with a diagnosis of ADHD and/or Bipolar Disorder and the qualities of their progress through the adjudication process. A related study should test the hypothesis that impulse-control disorders and mood disorders are amenable to

psychotherapeutic interventions and such treatment is likely to restore competency, while treatments for personality disorders, which theoretically are not organic disorders and therefore less likely to respond to psychopharmaceutical treatment, are less likely to return a defendant to competence. It could address the question of why personality disorders are rarely included in CST assessments and examine the possible connection between personality disorders and rational aspects of CST.

Finally, the C-RAI was designed to be a measure of rational competencies and was intended, in part, to assess for the affect of mood disorders on rational capacity. It does not measure for the presence of personality disorders. A study could focus on the potential benefits of including direct genotypic testing of defendant's for mutations of methyltetrahydrofolate reductase (MTHFR) genes. Researchers have suggested that mutations of the MTHFR genes are likely indicators of personality disorders and chronic mental illness (D. M. Dye, October 22, 2008). The inclusion of a screen for MTHFR genetic polymorphism in CST evaluation protocols could provide useful information regarding a defendant's potential for chronic psychiatric illnesses, possible personality disorders and the probability of positive response to corrective treatment for CST deficiencies.

References

- Abrams, A. (2002). Assessing competency in criminal proceedings. In B. Van Dorsten (Ed.), *Forensic psychology from classroom to courtroom* (pp. 105-141). New York, NY: Kluwer Academic.
- Ackerman, M. (1999). *Essentials of forensic psychological assessment*. New York, NY: JohnWiley & Sons.
- American Bar Association (1989). *ABA criminal justice mental health standards*. Washington, D.C.: American Bar Association.
- American Psychological Association. (1991). Specialty guidelines for forensic Psychologists. *Law and Human Behavior*, 6, 655-665.
- Bagby, R., Nicholson, R., Rogers, R., and Nussbaum, D. (1992). Domains of competency to stand trial. *Law and Human Behavior*, 16, 49 -507.
- Baillargeon, J., Binswanger, I., Penn, J., Williams, B., and Murray, O. (2009). Psychiatric disorders and repeat incarcerations: The revolving prison door. *American Journal of Psychiatry*, 166, 103-109.
- Baillargeon, J., Penn, J., Thomas, C., Temple, J., Baillargeon, G., and Murray, O. (2009). Psychiatric disorders and suicide in the nation's largest state prison system. *Journal Of The American Academy Of Psychiatry And The Law*, 37, 188-193.
- Barnard, P. (1997). The psychologist as an expert witness in determining mental competency and insanity as a defense. *American Journal of Forensic Psychology*, 15, 19-36.
- Benjamin, G., Rosenwald, L., Overcast, T., and Feldman, S. (1998). *Supplement – law and mental health professionals: Washington*. Washington, D.C.: American Association Press.
- Boccaccini, M., Murrie, D., and Duncan, S. (2006). Screening for malingering in a criminal-forensic sample with the personality assessment inventory. *Psychological Assessment*, 18, 415-423.
- Bonnie, R. (1992). The competence of criminal defendants: A theoretical reformulation. *Behavioral Sciences & the Law*, 10, 291-316.
- Bonnie, R. (1993). The competence of criminal defendants: Beyond Dusky and Drope. *Miami Law Review*, 47, 539-601.
- Bonnie, R., Hoge, S., Monahan, J., Poythress, N., Eisenberg, M., and Feucht-Haviar, T. (1997). The MacArthur adjudicative competence study: A comparison of criteria

for assessing the competence of criminal defendants. *Journal of the American Academy of Psychiatry and the Law*, 25, 249-259.

- Bonnie, R., Hoge, S., Monahan, J., Poythress, N., Eisenberg, M., and Feucht-Haviar, T. (1997). The MacArthur adjudicative competence study: Diagnosis, psychopathology, and competence-related abilities. *Behavioral Sciences and the Law*, 15, 329-345.
- Brakel, J. (2003). Competency to stand trial: rationalism, "contextualism" and other modest theories. *Behavioral Sciences & the Law*, 21, 285 - 295.
- Colwell, K., Colwell, L., Perry, A., Wasieleski, D., and Billings, T. (2008). The test of malingered incompetence (TOMI): a forced-choice instrument for assessing cognitive malingering in competence to stand trial evaluations. *American Journal of Forensic Psychology*, 28, 17-42.
- Cooper, D. & Grisso, T. (1997). Five year research update (1991-1995): Evaluations for competence to stand trial. *Behavioral Sciences & the Law*, 15, 347-364.
- Creswell, J. (2003). *Research design: Qualitative, quantitative, and mixed methods approaches* (2nd ed.). Thousand Oaks, CA: Sage Publications.
- Cruise, K. & Rogers, R. (1998). An analysis of competency to stand trial: An integration of case law and clinical knowledge. *Behavioral Sciences & the Law*, 16, 35-50.
- Easley, C. (2009). The incarcerated mentally ill: An invisible, vulnerable population. *Nation's Health*, 39, 3-3.
- Everington, C. & Dunn, C. (1995). A second validation study of the Competence Assessment for Standing Trial for Defendants with Mental Retardation (CAST-MR). *Criminal Justice and Behavior*, 22, 44-59.
- Fishman, J., & Galguera, T. (2003). *Introduction to test construction in the social and behavioral sciences*. Lanham, MD: Rowman & Littlefield Publishers, Inc.
- Frolik, L. (1999). Science, common sense, and the determination of mental capacity. *Psychology, Public Policy, and Law*, 5, 41-58.
- Garb, H. (2005). Clinical judgment and decision making. *Annual Review of Clinical Psychology*, 1, 67-89.
- Garb, H. (1989). Clinical judgment, clinical training, and professional experience. *Psychological Bulletin*, 105, 387-396.
- Gothard, S., Rogers, R., and Sewell, K. (1995). Feigning incompetency to stand trial. *Law and Human Behavior*, 19, 363-373.

- Gothard, S., Viglione, D. Meloy, J., & Sherman, M. (1995). Detection of malingering in competency to stand trial evaluations. *Law and Human Behavior, 19*, 493-505.
- Grisso, T. (1986). *Evaluating competencies: Forensic assessments and instruments*. New York, NY: Plenum.
- Grisso, T. (2003). *Evaluating competencies: Forensic assessments and instruments (2nd ed.)*. New York, NY: Kluwer Academic/Plenum Publishers.
- Guy, L., Kwartner, P., and Miller, H. (2006). Investigating the M-FAST: Psychometric properties and utility to detect diagnostic specific malingering. *Behavioral Sciences & the Law, 24*, 687-702.
- Hoge, S., Bonnie, R., Poythress, N., Monahan, J., Eisenberg, M., and Feucht-Haviar, T. (1997). The MacArthur adjudicative competence study: Development and validation of a research instrument. *Law and Human Behavior, 21*, 141-179.
- Hoge, S., Poythress, N., Bonnie, R., Monahan, J., Eisenberg, M., and Feucht-Haviar, T. (1997). The MacArthur adjudicative competence study: Diagnosis, psychopathology, and competence-related abilities. *Behavioral Sciences & the Law, 15*, 329-345.
- Jackson, R., Rogers, R., and Sewell, K. (2005). Forensic applications of the Miller forensic assessment of symptoms test (MFAST): Screening for feigned disorders in competency to stand trial evaluations. *Law and Human Behavior, 29*, 199-210.
- Jacobs, M., Ryba, N., and Zapf, P. (2008). Competence-related abilities and psychiatric symptoms: An analysis of the underlying structure and correlates of the MacCAT-CA and BPRS. *Law and Human Behavior, 32*, 64-77.
- Kinsler, P., & Saxman, A. (2007). Traumatized offenders: Don't look now, but your jail's also your mental health center. *Journal of Trauma & Dissociation, 8*, 81-95.
- Laboratory of Community Psychiatry, Harvard Medical School. (1973). *Competency to stand trial and mental illness*, DHEW Publication No. (ADM) 77-103, Rockville, MD: NIMH, Department of Health, Education and Welfare.
- Leong, G. (2004). Commentary: No rational reasons for changing competency-to-stand-trial standard. *Journal of the American Academy of Psychiatry and the Law, 32*, 246-249.
- Lewis, J., Simcox, A., and Berry, D. (2002). Screening for feigned psychiatric symptoms in a forensic sample by using the MMPI-2 and the structured inventory of malingered symptomatology. *Psychological Assessment, 14*, 170-176.
- Lipsitt, P., Lelos, D., and McGarry, A. (1971). Competency for trial: A screening instrument. *American Journal of Psychiatry, 128*, 105-109.

- Maroney, T. (2006). Emotional competence, "rational understanding," and the criminal defendant. *The American Criminal Law Review*, 43, 1375-1435.
- McDermott, B. & Sokolow, G. (2009). Malingering in a correctional setting: The use of the structured interview of reported symptoms in a jail sample. *Behavioral Sciences and the Law*, 27, 753-765.
- McGarry, A. L., (1973). *Competency to stand trial and mental illness*. Washington, D.C.: National Institute of Mental Health.
- Melton, G., Petrila, J., Poythress, N., and Slobogin, C. (1997) *Psychological evaluations for the courts: A handbook for mental health professionals and lawyers (2nd ed.)*. New York, NY: Guilford Press.
- Merckelbach, H. & Smith, P. (2003). Diagnostic accuracy of the Structured Inventory of Malingered Symptomatology (SIMS) in detecting instructed malingering. *Archives of Clinical Neuropsychology*, 18, 145-152.
- Miller, H. (2004). Examining the use of the M-FAST with criminal defendants incompetent to stand trial. *International Journal of Offender Therapy and Comparative Criminology*, 48, 268-280.
- Miller, H. (2001). *M-FAST - Miller forensic assessment of symptoms test: Professional manual*. Lutz, FL: Psychological Assessment Resources, Inc.
- Miller, H. (2005). The Miller-Forensic Assessment of Symptoms Test (M-FAST) test generalizability and utility across race, literacy, and clinical opinion. *Criminal Justice and Behavior*, 32, 591-611.
- Miller, R. (2003). Criminal competence. In R. Rosner (Ed.). *Principles and practice of forensic psychiatry* (2nd ed., pp. 186-212). London: Arnold.
- Morris, G., Haroun, A., and Naimaark, D. (2004). Assessing competency competently: Toward a rational standard for competency-to-stand-trial assessments. *Journal of the American Academy of Psychiatry and the Law*, 32, 231-245.
- Mueller, C. & Wylie, M. (2007). Examining the effectiveness of an intervention designed for the restoration of competency to stand trial. *Behavioral Sciences & the Law*, 25, 891-900.
- Muhr, T. (2010). ATLAS.ti: The Knowledge Workbench (Version 6.16) [Computer Software]. Berlin, Germany: ATLAS.ti Scientific Software Development GmbH.

- Mumley, D., Tillbrook, C., and Grisso, T. (2003). Five year research update (1996-2000): Evaluations for competence to stand trial (adjudicative competence). *Behavioral Sciences & the Law*, 21, 329-350.
- Nicholson, R., Briggs, S., and Robertson, H. (1988). Instruments for assessing competency to stand trial: How do they work? *Professional Psychology: Research and Practice*, 19, 383-394.
- Nicholson, R. & Kugler, E. (1991). Competent and incompetent criminal defendants. *Psychological Bulletin*, 109, 355-370.
- Nicholson, R., Robertson, H., Johnson, W., and Jensen, G. (1988). A comparison of instruments for assessing competency to stand trial. *Law and Human Behavior*, 12, 313 - 321.
- Nussbaum, D., Hancock, M., Turner, I., Arrowood, J., and Melodick, S. (2008). Fitness/competency to stand trial: A conceptual overview, review of existing instruments, and cross-validation of the Nussbaum Fitness Questionnaire. *Brief Treatment and Crisis Intervention*, 8, 43-72.
- Otto, R. (2006). Competency to stand trial. *Applied Psychology in Criminal Justice*, 2, 82-113.
- Otto, R., Poythress, N., Nicholson, R., Edens, J., Monahan, J., Bonnie, R., Hoge, S., and Eisenberg, M. (1998). Psychometric properties of the MacArthur Competence Assessment Tool-Criminal Adjudication. *Psychological Assessment*, 10, 435-443.
- Poythress, N., Bonnie, R., Hoge, S., Monahan, J., and Oberlander, L. (1994). Client abilities to assist counsel and make decisions in criminal cases. *Law and Human Behavior*, 18, 437 - 452.
- Poythress, N., Nicholson, R., Otto, R., Edens, J., Bonnie, R., Monahan, J., and Hoge, S. (1999). *MACCAT-CA: The MacArthur Competence Assessment Tool-Criminal Adjudication: Professional manual*. Lutz, FL: Psychological Assessment Resources, Inc.
- Roesch, R., Zapf, P., Golding, S., Skeem, J., Hess, A. (Ed), and Weiner, I. (Ed). (1999). *Defining and assessing competency to stand trial. The handbook of forensic psychology (2nd ed.)*. Hoboken, NJ: John Wiley & Sons Inc.
- Roesch, R. & Golding, S. (1980). *Competency to stand trial*. Urbana, IL: University of Illinois Press.
- Roesch, R., Zapf, P., and Eaves, D. (2006). *FIT-R – Fitness Interview Test - Revised: Professional manual*. Sarasota, FL: Professional Resource Press.

- Rogers, R., Gillis, J., Dickens, S., and Bagby, R. (1991). Standardized assessment of malingering: Validation of the structured interview of reported symptoms. *Psychological Assessment, 3*, 89-96.
- Rogers, R., Grandjean, N., Tillbrook, C., Vitacco, M., and Sewell, K. (2001). Recent interview-based measures of competency to stand trial: A critical review augmented with research data. *Behavioral Sciences & the Law, 19*, 503-518.
- Rogers, R., Jackson, R., Sewell, K., and Harrison, K. (2004). An Examination of the ECST-R as a screen for feigned incompetency to stand trial. *Psychological Assessment, 16*, 139-145.
- Rogers, R., Jackson, R., Sewell, K., Tillbrook, C., and Martin, M. (2003). Assessing dimensions of competency to stand trial: Construct validation of the ECST-R. *Assessment, 10*, 344-351.
- Rogers, R. & Shuman, D. (2005). *Fundamentals of forensic practice: Mental health and criminal law*. New York, NY: Springer.
- Rogers, R., Sewell, K., Grandjean, N., and Vitacco, M. (2002). The detection of feigned mental disorders on specific competency measures. *Psychological Assessment, 14*, 177-183.
- Rogers, R., Tillbrook, C., and Sewell, K. (2004). *ECST-R – Evaluation of Competency to Stand Trial-Revised: Professional manual*. Lutz, FL: Psychological Assessment Resources, Inc.
- Rogers, R., Ustad, K., Sewell, K., and Reinhardt, V. (1996). Dimensions of incompetency: A factor analytic study of the Georgia court competency test. *Behavioral Sciences & the Law, 14*, 323-330.
- Schlesinger, L. (2003). A case study involving competency to stand trial: Incompetent defendant, incompetent examiner, or “malingering by proxy”? *Psychology, Public Policy, and Law, 9*, 381-399.
- Ustad, K., Rogers, R., Sewell, K., and Guarnaccia, C. (1996). Restoration of competency to stand trial: Assessment with the Georgia court competency test and the competency screening test. *Law and Human Behavior, 20*, 131 - 146.
- Vitacco, M., Rogers, R., Gabel, J., and Munizza, J. (2007). An evaluation of malingering screens with competency to stand trial patients: A known-groups comparison. *Law and Human Behavior, 31*, 249 - 260.
- Warren, J., Murrie, D., Stejskal, W., Colwell, L., Morris, J., Chauhan, P., and Dietz, P. (2006). Opinion formation in evaluating the adjudicative competence and

- restorability of criminal defendants: A review of 8,000 evaluations. *Behavioral Sciences & the Law*, 24, 113-132.
- Warren, J., Rosenfeld, B., Fitch, W., and Hawk, G. (1997). Forensic mental health clinical evaluation: An analysis of interstate and intersystemic differences. *Law and Human Behavior*, 21, 377-390.
- Weiss, K. (2004) [Review of the book *Criminal Competency on Trial*]. *The Journal of Psychiatry & Law*, 32, 225-228.
- Weiss, M. (1997). A legal evaluation of criminal competency standards: Competency to stand trial, competency to plead guilty, and competency to waive counsel. *Journal of Contemporary Criminal Justice*, 13, 213-223.
- Wildman, R. (2003). Letters. *Journal of the American Academy of Psychiatry and the Law*, 31, 393-394.
- Wildman, R., Batchelor, E., Thompson, L., Nelson, F., Moore, J., Patterson, M., and deLaosa, M. (1978). The Georgia court competency test: An attempt to develop a rapid, quantitative measure of fitness for trial. Unpublished manuscript, Forensic Services Division, Central State Hospital, Milledgeville, GA.
- Zapf, P., & Roesch, R. (2005). An Investigation of the construct of competence: A comparison of the FIT, the MacCAT-CA, and the MacCAT-T. *Law and Human Behavior*, 29, 229 - 252.
- Zapf, P., & Viljoen, J. (2003). Issues and considerations regarding the use of assessment instruments in the evaluation of competency to stand trial. *Behavioral Sciences and the Law*, 21, 351-367.
- Zapf, P., Skeem, J., and Golding, S. (2005). Factor structure and validity of the MacArthur Competence Assessment Tool – Criminal Adjudication. *Psychological Assessment*, 17, 433-445.

Appendix A
Legal References

Legal References

Revised Code of Washington (RCW)

RCW 10.77 Criminally insane – Procedure.

RCW 10.77.020 Rights of person under this chapter.

RCW 10.77.030 Establishing insanity as a defense.

RCW 10.77.050 Mental incapacity as bar to proceedings.

RCW 10.77.060 Plea of not guilty due to insanity - Doubt as to competency -
Examination - Bail - Report.

RCW 10.77.065 Mental condition evaluations - Reports and recommendations required.

RCW 10.77.070 Examination rights of defendant's expert or professional person.

RCW 10.77.090 Stay of proceedings - Commitment - Findings - Evaluation,
Treatment - Extensions of commitment - Alternative procedures - Procedure in
non-felony charge.

RCW 10.77.092 Involuntary medication - Serious offenses.

RCW 71.05 Mental illness.

RCW 71.05.020 Definitions.

United States Supreme Court Decisions

Cooper v. Oklahoma, 517 U. S. 348 (1996).

Daubert v. Merrell Dow Pharmaceuticals, 509 U. S. 579 (1993).

Drope v. Missouri, 420 U. S. 162 (1975).

Dusky v. United States, 362 U. S. 402 (1960).

Godinez v. Moran, 509 U. S. 389 (1993).

Jackson v. Indiana, 406 U. S. 715 (1972).

Medina v. California (90-8370), 505 U. S. 437 (1992).

Pate v. Robinson, 383 U. S. 375 (1966).

Riggins v. Nevada, 504 U. S. 127 (1992).

Sell v. United States, 539 U. S. 166 (2003).

Washington v. Harper 494 U. S. 210 (1990).

Wilson v. United States, 129 U. S. App. D.C. 107, 391 F.2d 460 (1968).

Washington State Case Law

State v. Adams, 77 Wash.App. 50, 888 P.2d 1207 (1995).

State v. Benn, 120 Wash.2d 631, 845 P.2d 289 (1993).

State v. Elridge, 17 Wash.App. 270, 562 P.2d 276 (1977).

State v. Erickson, Not Reported in P.2d, 90 Wash.App. 1024, 1998 WL 177548
(Wash.App. Div. 3) (1998).

State v. Fleming, 142 Wash.2d 853, 16 P.3d 610 (2001).

State v. Froehlich, Not Reported in P.3d, 120 Wash.App. 1041, 2004 WL 440206
(Wash.App.Div. 2) (2004).

State v. Gallegos, Not Reported in P.3d, 2006 WL 3734920 (Wash.App. Div. 2) (2006).

State v. Gordon, 39 Wash.App. 437, 693 P.2d 741 (1985).

State v. Gwaltney, 77 Wash.2d 906, 468 P.2d 433 (1970).

State v. Hahn, 41 Wash.App. 876, 707 P.2d 699 (1985).

State v. Helme, Not Reported in P.2d, 84 Wash.App. 1086, 1997 WL 35350 (Wash.App.
Div. 3) (1997).

State v. Hernandez-Ramirez, 129 Wash.App. 504, 119 P.3d 880 (2005).

State v. Hicks, 41 Wash.App. 303, 704 P.2d 1206 (1985).

State v. Israel, 19 Wash.App. 773, 577 P.2d 631 (1978).

State v. Jones, 99 Wash.2d 735, 664 P.2d 1216 (1983).

State v. Marshall, 144 Wash.2d 266, 27 P.3d 192 (2001).

State v. Martin, Not Reported in P.3d, 134 Wash.App. 1040, 2006 WL 2349943
(Wash.App. Div. 2) (2006).

State v. Minnix, 63 Wash.App. 494, 820 P.2d 956 (1991).

State v. Nelson, Not Reported in P.3d, 104 Wash.App. 1013, 2001 WL 44043
(Wash.App. Div. 2) (2001).

State v. O'Neal, 23 Wash.App. 899, 600 P.2d 570 (1979).

State v. Ortiz, 104 Wash.2d 479, 706 P.2d 1069 (1985).

State v. Price, Not Reported in P.3d, 121 Wash.App. 1049, 2004 WL 1147206
(Wash.App. Div. 1) (2004).

State v. Riofta, Not Reported in P.3d, 118 Wash.App. 1025, 2003 WL 22039947
(Wash.App. Div. 2) (2003).

State v. Singh, Not Reported in P.2d, 84 Wash.App. 1067, 1997 WL 11854 (Wash.App.
Div. 1) (1997).

State v. Smith, 50 Wash.App. 524, 749 P.2d 202 (1988).

State v. Swanson, 28 Wash.App. 759, 626 P.2d 527 (1981).

Appendix B

Definitions of CAI Content Areas and Psychological Dimensions

Definitions of CAI Content Areas and Psychological Dimensions.

- Anticipated outcome: The defendant's appraisal of the likely outcomes of the trial.
 - Attachment: The ability to trust others and to form meaningful interpersonal relationships.
 - Awareness of legal charges: The defendant's appreciation of legal charges.
 - Challenge witnesses: The capacity to realistically challenge prosecution witnesses.
 - Communicate with counsel: The ability to disclose pertinent facts to the defense attorney.
 - Courtroom behavior: Understanding of appropriate courtroom behaviors.
 - Courtroom participants: Factual knowledge of the roles of courtroom participants.
 - Disclosability: The ability to disclose pertinent facts to the defense attorney.
 - Insight: The defendant's inability to accurately identify inner thoughts and feelings.
 - Judgment: Limited ability to assess situations and the motives of others.
 - Knowledge of penalties: Appreciation of the possible penalties related to the alleged crime.
 - Knowledge of possible defenses: Insight regarding the appraisal of legal defenses.
 - Memory: Statements indicating ability to recall events or possible memory deficits.
 - Motivation: The ability to adequately self-protect and to employ legal safeguards.
 - Procedures: Understanding of Court procedure.
 - Strategic decision-making: Planning of legal strategy, including plea agreements.
 - Suspiciousness: The expression of feeling of distrust of the motives of others.
 - Testify relevantly: Ability to communicate effectively in courtroom situations.
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Appendix C

A Preliminary Pilot Study of the Cole Rationality Assessment Instrument (C-RAI)

A Preliminary Pilot Study of the Cole Rationality Assessment Instrument (C-RAI)

Introduction

The Cole Rationality Assessment Instrument (C-RAI) is the outcome of a study conducted into the dimensions of rationality specified in the U. S. Supreme Court's decision in *U. S. v. Dusky* (1960) regarding standards of a defendant's competency to stand trial. Assessments of a defendant's Competency to Stand Trial (CST) are critically important to the adjudication process as reflected by the fact that CST evaluations are the single most common type of evaluation performed by forensic evaluators for the Court. The number of defendant's with psychiatric disorders in the various U. S. prison systems is at epidemic proportions (Baillargeon, Binswanger, Penn, Williams, & Murray, 2008), and many correctional facilities across the U. S. consider themselves mental health institutions as well as correctional facilities (Easley, 2009; Kinsler & Saxon, 2007). As a result, the number of mentally ill defendants involved in the adjudication process has significantly increased. "One study found that over 50% of incarcerated individuals reported mental health problems. Many offenders reported signs of a serious psychiatric disorder, with approximately 50% of prisoners and jail inmates endorsing symptoms of mania, approximately 25-30% of prisoners and jail inmates endorsing symptoms of major depressive disorder, and slightly fewer endorsing symptoms of a psychotic disorder (15-24%)" (McDermott & Sokolov, 2009, p. 754). Baillargeon, et al. (2009) and Kinsler & Saxman (2007) reported that there are more than two million incarcerated individuals in the U. S. and in excess of one million of those individuals have at least one serious

psychiatric disorder and approximately 24% of those individuals experience a major depressive disorder, bipolar disorder or schizophrenia.

Cole's study into the dimensions of CST defined by Dusky, factual and rational understanding, found that descriptions of the rational dimensions of CST were scarcely evident in the literature on competency issues and that legal scholars, not psychologists, have done the bulk of the conceptualization work on rational dimensions of CST. In addition, Cole discovered that there are very few CST assessment instruments currently in use that address the defendant's rational capabilities and that they do so in a non-standardized manner.

Consequently, Cole devised the preliminary version of a tool that focused specifically on the definitions and measurement of a defendant's rational abilities. Cole's rationale for developing the C-RAI was based on the assumption that individuals identified by the tool as possessing inadequate rational capabilities would benefit from mental health treatment, which in turn would better ensure that they receive fair and just adjudication, as directed by the Dusky standard and guaranteed by the 14th Amendment right to due process.

Method

Background

The primary source relied upon for the construction of the C-RAI was the work of Fishman & Galguera (2003). The content validity and face validity of the C-RAI was addressed by drawing upon the facets and dimensions of rational capacity identified in the literature review and lists of behaviors symptomatic of mood disturbances found in the Diagnostic Statistical Manual, Fourth Edition, Text Revised (DSM IV-TR). In

addition, Cole developed the preliminary version of the C-RAI under the excellent supervision of forensic psychologist Philip Barnard, PhD, and with expert feedback provided by psychologists Mary Wieneke, PhD, and Catherine Koverola, PhD, as well as other colleagues at Antioch University Seattle.

The literature review was also utilized to address construct validity and revealed two subsets of the construct rational capacity as specified by the Dusky standard: ability to assist the defense and decision-making ability. Therefore, the C-RAI was designed to be comprised of questions focusing on the underlying dimensions that comprise the two subsets of rational understanding. In addition, the literature also revealed that a high percentage of individuals engaged in the adjudication process suffer from clinically significant mood disorders, which are likely to profoundly and negatively affect the defendant's ability to participate in his or her own defense and to make sound decisions. Therefore, a third subset of the rational abilities construct was included in the C-RAI to assess the defendant for symptoms of depressive and bipolar spectrum disorders.

Criterion-related validity was taken into account by administering the C-RAI to four incarcerated individuals whose competency to stand trial was in question. These individuals comprised a small sample of the precise population targeted by the C-RAI as requiring an accurate and effective assessment of rational capacities.

Design

The C-RAI consists of three parts: Part 1 measures the defendant's ability to assist the defense, Part 2 examines decision-making competency and Part 3 was designed to measure the presence of mood disorder. As noted above, Part 3 was added to the C-RAI to evaluate for the presences of symptoms of depression and mania, which are highly

likely to negatively affect a defendant's ability to participate in the defense and to make sound decisions. In particular, the author was interested in measuring the affect of symptoms of bipolar spectrum disorders (impulsivity, grandiosity, risky decision-making, hyper-focus on assumed outcomes, etc.) on a defendant's ability to think rationally and to engage effectively in all aspects of the adjudication process. It was hoped that the C-RAI would assist in identifying individuals whose subtle rational capabilities are compromised by mood disorders.

Cole first attempted to use a four-point Likert scale model for scoring participant responses to the C-RAI in the hope of acquiring data that would reveal nuances of rational capability. However, discussions within the test-development team produced the consensus that no additional useful information was likely to be obtained using this model and, in fact, the model made scoring of participant responses more vulnerable to the inadequacies of self-report and clinical judgment based analysis. Therefore, the C-RAI was redesigned using a basic true/false design. Part 1 and Part 2 are designed to be scored by the evaluator following a thorough psychosocial interview using clinical judgment.

Part 3 is administered to the defendant as a self-report measure. The participant is asked if they are currently experiencing 13 behaviors that are likely to reflect the presence of depression and/or mania.

Sample

The participants were incarcerated individuals whose CST was in question. The three men and one woman ranged in age from approximately 20 to 50 years old. Ethnicities were diverse: Native American, African-American, Caucasian and

Vietnamese. All were in county jails at the time of their testing (Yakima, Benton and Franklin Counties, WA) and were incarcerated for various charges: murder, domestic violence, violation of restraining orders and production of a controlled substance. The testing was administered by a trained mental health professional following the administration of a psychosocial interview with each defendant.

Results

The C-RAI initially used a cut score of 70% for the measures of all three parts of inadequate rational competence to determine clinical significance. A cut score of 70% was consistently represented by the other nominal scores included in many of the other CST assessment instruments reviewed for this study. However, as a result of a review of the clinical criteria for the presence of a mood disorder the researcher realized that the level established by the DSM IV-TR for a clinically significant presence of a mood disorder was a score of approximately 60%. The developer of the C-RAI decided to follow the lead of the DSM IV-TR and establish a cut off score of 60% as the point at which a mood disorder becomes clinically significant to an individual's ability to rationally participate in the adjudication process. A hypothesis proposed by the developer is that the threshold for inadequate rational capacities should be lower than that of the factual capacity, which is the primary focus of other CST assessment tools, because the effect of inadequate rational capacity is more detrimental to the defendant's ability to participate in the adjudication process and more difficult to correct than factual deficiencies.

The results of the C-RAI for each participant are listed below in Table 5. Part 1 lists results for the participant's ability to assist the defense (AD), Part 2 lists results for

decisional competence (DC), Part 3 lists results for disturbances of rational processing (DRP), and the total score is a composite of the three scores. Results are obtained by dividing the number of affirmative responses by the total number of possible responses.

Table 5. Results of Pilot Study of the C-RAI

Participants	Part 1 Assist the Defense (AD)	Part 2 Decisional Competence (DC)	Part 3 Disturbance of Rational Process. (DRP)	Composite Score
Participant One	0%	20%	54%	32%
Participant Two	62%	80%	40%	64%
Participant Three	20%	40%	23%	29%
Participant Four	0%	40%	62%	43%

Participant One exhibited an elevated, but not clinically significant, score for disruption of rational processing (mood disorder symptoms) but otherwise appeared well below the cut off score for deficiencies in the ability to assist the defense and to competently make decisions. In addition, the results of his CST assessment indicated that he was competent to stand trial. The elevated score on Part 3 could indicate, however, that he is susceptible to the affects of a mood disorder, which could elevate to clinical levels during the adjudication process. The defense should be aware of the symptoms of major depressive disorder and bipolar disorder in order to monitor the course of his mood, affect and behavior.

The scores produced by Participant Two indicated clinically significant deficiencies in his ability to effectively assist the defense and his ability to make competent decisions. His score on part three was not clinically significant but his overall

score did identify him as an individual whose rational competence was compromised. However, the CST of Participant Two was never evaluated because his case was dismissed before he went to trial. Unfortunately, he had been incarcerated for several months prior to his release, due in large part to his inability to effectively assist the defense against the initial erroneous charges.

Participant Three produced scores that indicated rational competence on each individual scale and the overall scale as well. Although her competence was questioned, which was likely due in large part on cultural and language issues, the result of her CST evaluation revealed that she was also competent to stand trial, which is consistent with her scores on the C-RAI.

The scores produced by Participant Four indicated that he was rationally competent overall to participate in the adjudication process. However, his score on the DRP scale was elevated, which indicated the presence of a mood disorder with primarily depressed features. Again, his level of rational competence appeared adequate to participate in the adjudication process, but the C-RAI suggested a note of caution that the defendant should be monitored on an ongoing basis for an exacerbation of symptoms of depression. This defendant was also determined to be competent to stand trial and his case was decided through a plea-bargaining process within which he was able to participate adequately.

Discussion

The C-RAI was simple to administer but the phraseology of the original version was somewhat confusing to the participants. The constructs of the questions were clarified and the scoring simplified. Outcomes clearly reflected the CST of the participants and

appeared to add a quantifiable measure of the participant's rational capabilities across three domains. The adjudication process would likely not have changed for three of the four participants, but the C-RAI did highlight areas of concern within the repertoire of rational competencies of two participants, which should be monitored throughout the adjudication process. The results of the C-RAI for the remaining participant clearly indicated significant rational deficiencies. It is probable that should his case have gone to trial the results of an assessment tool, such as the C-RAI, would have shed valuable light on his lack of rational competency, which may have gone unnoticed using conventional assessment instruments and methods.

A notable outcome of data analysis concerned the re-evaluation of the efficacy of the composite score. Table 5 includes a reflecting the totaled composite score of the three Parts of the C-RAI; however, upon further review it became apparent that a composite score that combines the results of the three widely divergent categories was not reliable data by which to arrive at meaningful information useful in the evaluation of rational competence. Incompetence in any one of these three areas could conceivably render a determination that the individual is incompetent to stand trial. A composite score may actually serve to under-emphasize the significance of the individual's rational disability if its significance is diminished by blending it with other categories reflecting lower levels of incompetence. Considering directions for future research, these findings suggest utility for the C-RAI to be further piloted for use in evaluating CST. Emphasis might be put on orthogonal (stand alone) use of each of the three constructs that when considered together provide a more-comprehensive picture of rational understanding, but without the composite score, which diminishes component specificity.

Summary

In summary, the pilot study of the C-RAI suggested that a tool assessing a defendant's rational competency would be a useful addition to the CST evaluation process. It is easy to administer and score, and the resulting information appears useful for forensic evaluation purposes and for identifying areas needing ongoing observation by advocates of the defendant during the adjudication process. In addition, the pilot study of the C-RAI demonstrated that it could be used easily and effectively in conjunction with current CST assessment instruments, such as the Evaluation of Competency to Stand Trial – Revised (ECST-R), the MacArthur Competency Assessment Tool – Criminal Adjudication (MacCAT-CA) or the venerable Competency to Stand Trial Assessment Instrument (CAI).

The reliability of the C-RAI was not effectively measured by this pilot study, the aim of which was simply to explore the possibility of devising an instrument that could possibly capture data that had previously not been defined or explored. The reliability of the instrument was not a focus, but should be in any future development. The results of the pilot test warrant future development, and it appears that the reliability of the C-RAI may be best established by comparing its results with the results produced by another tool. However, the literature review established that no other test has been developed to specifically measure rational ability as defined by the dimensions detailed in this study. Alternatively, parts of the more-comprehensive MMPI-2 could possibly be used to determine the reliability of all three parts of the C-RAI. Much would be learned about the C-RAI through a comparison of its results with a well-validated and reliable instrument,

such as the MMPI-2, especially if it were administered during the same time frame as the C-RAI administration.

Due to the specific design and focus of the C-RAI the researcher concluded that other methods of establishing reliability, the test-retest method, the split-halves method and the internal consistency method (e.g., Cronbach's alpha) would be less likely to be useful in determining the reliability of the C-RAI than a similar but significantly more comprehensive instrument.

Therefore, the author suggests that the C-RAI be further piloted with a much larger sample and with an eye toward definitively establishing validity and reliability to further determine if its utility would contribute to the effectiveness and standardization of CST evaluations.

Appendix D

Cole Rationality Assessment Instrument
(C-RAI)

Cole Rationality Assessment Instrument (C-RAI) Operational Definitions

Multiple sources of information may be required to determine the defendant's rational capacities: the ability to effectively assist in their own defense and decisional competencies, including the accuracy or lack thereof, of perceptual abilities. Collateral confirmation may be required to determine the accuracy of the defendant's interpretation of events.

Ability to Assist the Defense

Accurate Recall: The ability of the defendant to precisely recall facts and details of their case, which contributes to their ability to effectively engage in formulating defense strategies.

Communication Ability: The capacity of the defendant to accurately and effectively communicate their comprehension of opinions, thoughts and ideas. The inability to trust others significantly impacts how an individual communicates information.

Courtroom Functioning: The defendant's ability to function appropriately and effectively during courtroom proceedings while utilizing an adequate knowledge of the roles of various Court participants and Court procedures. It may be necessary to conduct collateral interviews with other individuals possessing knowledge of the defendant's capabilities in this area (e.g., defense attorney, relatives).

Information Utilization: The ability to accurately understand and effectively utilize facts and details of the alleged offense. The inability to trust what others are saying negatively affects how an individual assimilates and uses information.

Motivational Capacity: The defendant's willingness and eagerness to cooperate with defense counsel and to strenuously participate in his or her own defense.

Decisional Competencies

Effective Self-Protection: The defendant's self-protective capacity and the ability to make strategic decisions reflecting an appreciation for and understanding of their own self-interest. Self-protection involves guarding against potential and actual threats posed by others.

Emotional Stability: Emotional regulation and functionality is implicated in each stage of the decision-making process and affects a defendant's ability to make rational decisions. It is not a measurement of cognitive abilities but rather a measure of the defendant's ability to appropriately manage feelings, mood and affect.

Perception Accuracy: This dimension focuses on the accuracy of a defendant's perceptions of constantly changing situations and events and the actions of others, and measures the defendant's ability to formulate accurate assessments, interpretations and conclusions regarding evolving situations.

Perception Appreciation: The next phase of the decision-making process is to accurately conceptualize possible outcomes and ramifications of the perceived information addressed above. This dimension is a measurement of the defendant's ability to formulate an accurate understanding of information and developing situations and then to predict and appreciate possible outcomes.

Flexible Reasoning: An assessment of the defendant's level of fluid intelligence: the ability to use deductive and inductive reasoning, and the ability to incorporate background knowledge and personal goals for the future in the decision-making process.

Goal-Oriented Reasoning: The defendant's ability to process interpretations and conclusions using a reasoning process influenced by personally relevant goals.

Logical Conclusions: This category measures the defendant's ability to arrive at logical conclusions using deductive and inductive reasoning.

Expressible Conclusions: A measure of the defendant's ability to effectively express and communicate thoughts, ideas, opinions and conclusions regarding information relevant to the adjudication process.

Strategic Decision-Making: The ability of a defendant to formulate and develop appropriate strategic decisions based on accurate perception, valid understanding of perceptions, goal-related reasoning and logical expressible conclusions.

Decision Execution: A measure of the defendant's ability to execute decisions based on accurate perceptions, valid understanding of those perceptions, goal-related reasoning and logical, expressible conclusions.

Cole Rationality Assessment Instrument (C-RAI)

Name: _____ Date: _____

PART 1 Ability to Assist the Defense

The following competencies are scored by the evaluator following a thorough psychosocial interview with the defendant. Circle the number best representing the defendant's level of competence in each area. Enter the score in the right hand column.

	YES	NO	Score
1. Communicates effectively with the defense.	0	1	_____
2. Functions effectively in the courtroom.	0	1	_____
3. Accurately recalls details of alleged offense.	0	1	_____
4. Utilizes information effectively.	0	1	_____
5. Cooperates with the defense.	0	1	_____
		Total	_____

PART 2 Ability to Make Decisions Competently

The following competencies are scored by the evaluator following a thorough psychosocial interview with the defendant. Circle the number that best represents the defendant's level of competence in each area. Enter the score in the right hand column.

	YES	NO	Score
1. Accurate perception of facts and events.	0	1	_____
2. Accurate understanding of facts and events.	0	1	_____
3. Arrives at logical conclusions.	0	1	_____
4. Can express logical conclusions.	0	1	_____
5. Uses appropriate goal-related reasoning.	0	1	_____
6. Ability to make strategic decisions.	0	1	_____
7. Executes strategic decisions.	0	1	_____
8. Emotionally stable.	0	1	_____
9. Employs flexible reasoning.	0	1	_____
10. Effectively self-protects.	0	1	_____
		Total	_____

Cole Rationality Assessment Instrument (C-RAI)

PART 3 Disturbances of Rational Processing

Circle the number of the defendant's response to the following statements and enter the score in the right hand column.

	NO	YES	Score
1. I am better than most other people.	0	1	_____
2. I often cannot say everything that is on my mind.	0	1	_____
3. I never need very much sleep.	0	1	_____
4. I cannot keep my thoughts organized and focused.	0	1	_____
5. I am easily distracted from the things I need to do.	0	1	_____
6. I am very focused on things important to me.	0	1	_____
7. I cannot seem to fall asleep; even when I want to.	0	1	_____
8. I cannot use my mind as well as I could in the past.	0	1	_____
9. I cannot get motivated to do work or exercise.	0	1	_____
10. I feel worthless and that no one cares about me.	0	1	_____
11. I never seem able to relax.	0	1	_____
12. I care less about things that used to be important to me.	0	1	_____
13. I sometimes think about hurting or killing myself.	0	1	_____
		Total	_____

Scoring Procedure

Total the scores in the right hand column. Enter the score for each part in the template below and divide the total by the number of scores possible. Any outcome at or greater than 60% indicates clinically significant rational deficits.

PART 1: _____ /5 = _____%

PART 2: _____ /10 = _____%

PART 3: _____ /13 = _____%