

Toward a two-stage model for assessing adjudicative competence¹

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Important points emerge from a review of two new books on assessment of competency, Evaluating Competencies and Adjudicative Competence, leading toward a two-stage model for assessment. In stage one, evaluators should conduct a screening assessment and should routinely use a structured forensic assessment instrument. The second stage is a more comprehensive assessment of those subjects who may have competency deficits.

Evaluating Competencies: Forensic Assessments and Instruments, 2nd Ed., by Thomas Grisso, (New York: Kluwer Academic/Plenum Publishers), 2003, 541 pp., \$125.00 hard, \$55.00 soft.

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Adjudicative Competence: The MacArthur Studies, by Norman G. Poythress, Richard J. Bonnie, John Monahan, Randy Otto, and Steven K. Hoge, (New York: Kluwer Academic/Plenum Publishers), 2002, 165 pp., \$55.00.

Two new volumes in the Perspectives in Law and Psychology series, sponsored by the American Psychology-Law Society (Division 41 of the American Psychological Association), address assessments of competence. Both are worthy additions to the series and valuable contributions to the field of forensic psychology.

The authors of *Adjudicative Competence* focus on a series of studies on one instrument, the MacArthur Competence Assessment Tool – Criminal Adjudication (MacCAT-CA). Included are results and discussion of “the first multi-state, large sample study to develop interpretive norms for an adjudicative competence measure.”² The MacCAT-CA is not offered as a measure of legal competence *per se*. “Rather, the optimal (and intended) use of the MacCAT-CA results and the norms is to enable clinicians to a) characterize a defendant’s degree of impairment in discrete psycholegal abilities, and b) describe the defendant’s overall pattern of performance relative to a relevant comparison group.”³

Adjudicative Competence provides information, beyond that in the MacCAT-CA manual and previously published articles, to assist practitioners in understanding and conveying test results. It is worthwhile reading for anyone who conducts or consumes assessments of adjudicative competence, and it provides a handy reference for those who use the MacCAT-CA in those assessments.

The first edition of *Evaluating Competencies*, published in 1986, was the greatest thing since bell-bottom blue jeans. Even after it went out of print, it was considered the definitive source for understanding what forensic assessment instruments (FAIs) are, how they enhance forensic psychological

evaluations, and how to evaluate FAIs to decide whether and how to use them in clinical forensic assessments. As new research studies were completed, extant FAIs were modified, and new FAIs were developed, the first edition's critiques about specific FAIs became less useful. The second edition continues the cogent analytic style of the first edition and provides an up-to-date critique of the instruments reviewed.

Grisso notes that as the field of forensic psychology has developed, most practitioners have specialized. He therefore utilizes the services of others on some chapters: Randy Borum wrote "Not Guilty by Reason of Insanity," Randy K. Otto and John F. Edens wrote "Parenting Capacity," and Jennifer Moyer wrote "Guardianship and Conservatorship." Grisso wrote the introductory chapters, the concluding chapter, and three more chapters: "Competence to Stand Trial," "Waiver of Rights to Silence and Legal Counsel," and "Competence to Consent to Treatment." The chapter authors and Grisso use the same format, which defines the competency question, reviews law and current practice, considers a functional analysis of the competencies relevant to statutory and case law, reviews FAIs, and then summarizes the current status of the field in terms of research directions and clinical applications.

Grisso presents a five-component model for conducting forensic psychological assessments. Early chapters identify the components and guide practitioners in conceptualizing evaluations. Most fundamental is the functional component. "The assessment should be designed so that the examiner will not be caught unprepared when the judge asks: 'We understand that the defendant is schizophrenic and has severe delusions, Doctor. But that is not entirely the point. What can he do and what is he not able to do that is relevant for the question before this court?'"⁴

Evaluating Competencies provides an excellent framework for conducting legally relevant forensic evaluations. This new edition is *even better than* bell-bottom blues.

Emerging Points

As these two books are reviewed, five points about conducting assessments of adjudicative competence emerge:

1. Evaluators should routinely use an FAI in competence assessments.
2. There is a great need for a good screening procedure.
3. The MacCAT-CA is not useful for screening purposes.
4. The FIT-R [the Fitness Interview Test (Revised Edition)⁵] shows great promise for screening.
5. Fred and Reggie have no clothes.

1) Evaluators should routinely use an FAI in competence assessments

In *Evaluating Competencies*, Grisso makes this point succinctly:

[T]hese instruments...standardize the collection of information across defendants and across examiners. They provide some assurance that the data obtained will have legal relevance to the court in making a competence decision. Further, there is evidence that trained interviewers/raters can quantify their data reliably with these interview methods. . . . The advantages of standardization, therefore, strongly recommend the use of one of the instruments within the context of any assessment related to the question of competence to stand trial.⁶ (p. 146)

Two of the FAIs are reviewed most favorably. "The MacCAT-CA and the FIT-R come closer than earlier instruments to providing information that goes beyond 'factual understanding' to begin to address questions of defendants' decision-making capacities. This is an important advance."⁷ Grisso's critique of available instruments could lead an evaluator to routinely use either the MacCAT-CA or the FIT-R in *comprehensive* competency assessments. Next we consider screening assessments.

- 2) There is a great need for a good screening procedure**
- In *Evaluating Competencies* we learn that attorneys have concerns about their clients' competence in 10%—15% of their criminal cases and formally raise the issue in about half of those cases. Most defendants referred for competence assessments are eventually judicially determined to be competent, with incompetence rates ranging from 10%—30%. Many defendants who clearly meet criteria for competence are nevertheless referred for competence evaluations for a variety of reasons (e.g., to facilitate treatment or to delay legal proceedings).⁸ Because there is a high volume of people referred and some appear to easily meet criteria for being competent, an effective screening procedure would be welcomed. But because courts recognize the great cost of trying an incompetent defendant,⁹ it is essential that any screening procedure should classify no incompetent defendants as being competent.
- 3) The MacCAT-CA is not useful for screening purposes**
- In a sample of 170 patients who had been hospitalized due to incompetence and subsequently confirmed to be incompetent by clinical evaluators, "almost 25% do not show significant impairment in any of the psycholegal abilities measured by the MacCAT-CA measures."¹⁰ If the MacCAT-CA had been used to screen out defendants with no competency deficits, 25% of those labeled competent would have actually been incompetent. This type of error is unacceptable in a screening instrument. Available data clearly show that the MacCAT-CA cannot be used to screen out clearly competent defendants.
- 4) The FIT-R shows great promise for screening**
- When researchers compared decisions about fitness made by the FIT-R with decisions made after an institution-based evaluation of fitness for 57 males, the FIT-R reliably screened out many of those fit to stand trial, without erroneously classifying any who were not fit. "It is important that a screening instrument not lead the evaluator to make false negative errors (i.e., evaluate someone as fit who is truly unfit) as these individuals would then be inappropriately sent to trial. The FIT-R made no false negative errors in this

study.”¹¹ Two additional studies, of 100 subjects each, each showed a 2% false negative rate, and the authors suggest that even those errors could be avoided.¹²

If these findings with the FIT-R continue to hold up in other samples, then the FIT-R could effectively anchor relatively brief screening evaluations for competency. The evaluator would also review documents, collect a brief social history, and conduct a brief mental status exam.¹³ For those cases not screened out as clearly competent, the evaluator would conduct a second stage evaluation following the comprehensive model described in *Evaluating Competencies*. That would include procedures for assessing the source of suspected incompetence (e.g., mental illness, mental retardation) and for assessing response style (e.g., malingering).

**5) Fred and
Reggie have no
clothes**

I admit that this may be a bit exaggerated, but one cannot dispute that the apparel of these fictional characters is markedly more diaphanous than one expects to see in pool hall pugilists. Users of the MacCAT-CA will recognize Fred and Reggie as two characters in a vignette presented during the presentation of the Assessment of Understanding (items 1-8) and Assessment of Reasoning (items 9-16) sections of the tool. The tool authors suggest that this vignette methodology may have the benefit of “introducing legal issues in a way that emotionally distances a defendant from the specifics of his or her own case.”¹⁴ Undoubtedly this format contributes to standardization of test procedures and development of norms for the MacCAT-CA. In practice, though, I have sometimes found it hard to keep the attention of a defendant focused on the intricacies of someone else’s case, which confounds assessment of his competence to proceed with his own case. This has decreased my satisfaction with the MacCAT-CA, but until I undertook this review I continued to use the MacCAT-CA when I used an FAI because I thought it was the best instrument available.

We now turn to the issue with Fred and Reggie's clothes. Although the MacCAT-CA was developed to be a tool and not a test,¹⁵ I want an FAI that is going to help me form an opinion regarding a defendant's competency. In Florida, where I practice, 95% of community evaluations and 99% of hospital evaluations for competency address the ultimate legal issue.¹⁶ I want an FAI that will help me distinguish between competent and incompetent defendants, and that will assist me in communicating my opinion (and the basis for it) to the court. I realize that contextual issues (e.g., complexity of the legal case) and non-psychological issues (e.g., moral concerns, public opinion) may affect the judge's ultimate opinion about a defendant's competency, but I look to an FAI to assist with distinguishing competent defendants from incompetent defendants. As I read the research results presented in *Adjudicative Competence*, Fred and Reggie do not help much.

The key findings are presented in Table 5.17 and the accompanying text on page 140 of *Adjudicative Competence*. The authors examined the predictive value of clinically significant impairment in the three MacCAT-CA domains, alone and in combination. Impairment in Understanding or Reasoning alone was not predictive of findings of incompetence, and impairment in Understanding and Reasoning without impairment in Appreciation was only weakly predictive of findings of incompetence. In contrast, all but one pattern of scores that included impairment in Appreciation were moderately to strongly predictive of findings of incompetence.¹⁷ Fred and Reggie do not add much to the MacCAT-CA's ability to distinguish between competent and incompetent defendants.¹⁸

Toward a two-stage model

We have decided to use an FAI in the initial stage of every evaluation for competency to proceed, along with a records

review, a brief social history, and a mental status exam. We have noted that studies support the use of the FIT-R, but not of the MacCAT-CA, for this purpose. Because extant studies of the FIT-R have all employed samples of Canadian defendants, one might question its usefulness for defendants in the United States. According to the FIT-R manual:

This instrument was designed as a guide for evaluations of fitness to stand trial in Canada, although it could be applicable in other countries (e.g., United States, United Kingdom) since the definition of fitness in these countries shares historical roots in English common law. The main purpose of the FIT is to function as a semi-structured interview to ensure that all important aspects of fitness to stand trial are assessed and to increase the uniformity of fitness evaluations.¹⁹

There are differences between the fitness standard in Canada, for which the FIT-R was developed²⁰ and the competency standard in the United States for which the MacCAT-CA was developed.²¹ “The Canadian standard does not use words such as *appreciate* or *rational*, whereas the American standards do.”²² Evaluators in the United States will be pleased to know that the FIT-R does not ignore these aspects of competency:

The title of the FIT-R’s Section II (Understanding the Possible Consequences of the Proceedings) uses the term *understanding*. But the criterion phrases describing the three items in this section clearly indicate that their purpose is similar to that of the “Appreciation” section of the MacCAT-CA. That is, Section II is intended to identify whether the defendant has a “realistic” perception of the penalties, possibilities for defense, and outcome. The focus, therefore, is not merely on understanding of facts, but whether or not defendants have beliefs about how those matters apply to their own circumstances that are distorted by delusional or idiosyncratic beliefs. As such, the content of this section of the FIT-R seems to depart from the plain wording of Canada’s Criminal Code definition, which says nothing specifically about distorted beliefs (“appreciation,” or in *Dusky v. U.S.*, “rational understanding” as contrasted with “factual understanding”).

Because of the advantages of screening out clearly competent defendants early in the process, the FIT-R is certainly the

FAI of choice for initial stage evaluations in Canada. Given the conceptual breadth of the FIT-R just discussed, its excellent performance as a screening instrument in Canada, and the lack of utility when attempting to use the MacCAT-CA as a test rather than a tool, I propose that the FIT-R is the FAI of choice for initial stage evaluations in the United States as well.

I have used “screening” synonymously with “first stage” or “initial” evaluation throughout this review, using language consistent with that in the FIT-R manual: “Although the FIT can be used as part of an initial inpatient evaluation, it is also designed for use as a screening instrument. As such, it will overestimate the rate of unfitness. Accused individuals who score at an ‘unfit’ or a ‘questionably fit’ level will be referred for a more thorough evaluation of fitness to stand trial.”²³ The primary focus at this stage is the functional component, the first of the five components of the comprehensive evaluation described by Grisso in *Evaluating Competencies*. Does the defendant show apparent deficits in functional abilities, behaviors, or capacities that would interfere with his ability to proceed with his legal case? When the initial stage shows no such deficits, the evaluation is complete. When apparent deficits are detected, a more thorough second-stage evaluation ensues.²⁴

The second stage of assessment begins with defendants who appear (via their performance on the FIT-R) to have competency deficits. Further assessment will need to assist in distinguishing among the following: 1) response style (genuine vs. feigned psychopathology), 2) differentiation between state (e.g., intoxication, withdrawal) and trait (e.g., active psychotic symptoms of schizophrenia) causes of competence deficits, 3) finer distinctions about competency skills, and 4) other distinguishing factors.²⁵ It is only in the third of these distinctions that the MacCAT-CA could be of assistance.

Following guidelines developed by Rogers and Shuman,²⁶ we begin with the most reliable and valid test for the construct of adjudicative competence – the FIT-R – and then add any test or tests that have been shown to provide incremental validity. To my knowledge, no studies have tested whether the MacCAT-CA adds incremental validity to adjudicative competence assessments beyond that provided by the FIT-R. Given the relative predictive power across the three domains of the MacCAT-CA, it appears that the Appreciation measure of the MacCAT-CA might add incremental validity after consideration of scores on the FIT-R, but it is doubtful that the Understanding and Reasoning measures would add incremental validity. I predict that future empirical investigations of sequential administration of the FIT-R and the MacCAT-CA will show the Understanding and Reasoning measures of the MacCAT-CA to be superfluous for assessments following this model.

Future research of FAIs for assessment of adjudicatory competence should address the following:

- Does the FIT-R perform well as a screener in other populations, including defendants in the United States?
- Does the MacCAT-CA add incremental validity to competence assessments beyond that provided by the FIT-R? If so, which domain(s) add the incremental validity?
- Do instruments under development²⁷ add incremental validity to competence assessments beyond that provided by the FIT-R?

One final concern: Will a screening procedure reliably identify defendants with subtle paranoid disorders?²⁸ I think it can, and the FIT-R data described above provide support for that opinion. Unless one contends that the only way to detect subtle paranoid disorders is to conduct an evaluation over the

course of days, weeks, or months in an inpatient setting, then the key is to include assessment for subtle paranoid disorders in the screening procedure. Assessment for the type of functional deficits caused by subtle paranoid disorders is embedded in Section II of the FIT-R and in the Appreciation measure of the MacCAT-CA. The cautious evaluator could administer the complete FIT-R and then the Appreciation measure of the MacCAT-CA, all in the initial stage of assessment. That would allow one to eschew those scantily clad combatants Fred and Reggie without giving short shrift to assessment for subtle paranoid disorders.

Notes

1. Also known as competence to proceed, competence to stand trial, or (in Canada) fitness to stand trial. The terms are used interchangeably here.
2. Norman G. Poythress, Richard J. Bonnie, John Monahan, Randy Otto, and Steven K. Hoge, *Adjudicative Competence: The MacArthur Studies*, (New York: Kluwer Academic/Plenum Publishers), 2002, p. 142.
3. *Ibid*, p. 143.
4. Thomas Grisso, *Evaluating Competencies: Forensic Assessments and Instruments*, 2nd ed. (New York: Kluwer Academic/Plenum Publishers), 2003, p. 25.
5. Ronald Roesch, Patricia A. Zapf, Derek Eaves, & Christopher D. Webster, *Fitness Interview Test (Revised Edition)* (Burnaby, British Columbia, Canada: Mental Health Law and Policy Institute, Simon Fraser University), 1998. At the time of this writing, the manual is available from MHLPI at <http://www.sfu.ca/psychology/groups/mhlpi/publications.htm> for \$20 Canadian or \$14 US. The authors encourage test users to photocopy as needed, and there are no per use fees.
6. Grisso, note 4 *supra*, p. 146.
7. *Ibid*.
8. See Grisso, note 4 *supra*; Gary B. Melton, John Petrila, Norman Poythress, and Christopher Slobogin, *Psychological Evaluations for the Courts: A Handbook for Mental Health Professionals and Lawyers* (New York: Guilford), 1997; Roesch et al., note 5 *supra*.
9. *Pate v. Robinson*, 383 U.S. 375 (1966).

10. Note 2 *supra*, p. 140.
11. Note 5 *supra*, p. 19.
12. Patricia A. Zapf, Ronald Roesch, & Jodi L. Viljoen, Assessing Fitness to Stand Interview Test (Revised Edition) (2001), *Canadian Journal of Psychiatry*, 46, 426-432.
13. *Ibid.* See also Norman G. Poythress, Robert Nicholson, Randy K. Otto, John F. Edens, Richard J. Bonnie, John Monahan, and Steven K. Hoge, *MacCAT-CA: The MacArthur Competence Assessment Tool – Criminal Adjudication, Professional Manual* (Odessa, FL: Professional Resources Press), 1999.
14. Poythress et al., *ibid*, p. 8.
15. *Ibid*, p. 6.
16. Kirk Heilbrun & Stephen Collins, Evaluations of trial competency and mental state at time of offense: *Report characteristics, Professional Psychology: Research and Practice*, 26(1), 1995, 61-67.
17. The one exception was for impairment in Reasoning and in Appreciation without impairment in Understanding. This combination occurred rarely, in only about 1% of the subjects.
18. If the metaphor is unclear, substitute “presentation of the Understanding and Reasoning items of the MacCAT-CA” for “Fred and Reggie.” If unfamiliar with the reference, see Hans Christian Andersen’s “The Emperor’s New Suit,” accessed via the Internet at <http://hca.gilead.org.il/emperor.html> on 3/10/03. For an interesting sequel to the fable, see S.L. Wisenberg’s short story, “After the procession during which the child in the crowd shouted, ‘But the Emperor has no clothes!’” in *The North American Review*, 281(4), 1996, p. 13.
19. Note 5 *supra*, p. 17.
20. Regina v. Taylor 77 C. C. C. (3d) 551 (Ont. C. A.) (1992).
21. Dusky v. United States, 362 U. S. 402 (1960).
22. P. A. Zapf & R. Roesch, A comparison of the MacCAT-CA and the FIT for making determinations of competency to stand trial, *International Journal of Law and Psychiatry*, 24, 2001, 81-92.
23. Note 5 *supra*, p. 18.
24. Depending on local procedures, the second stage could mean a referral to an inpatient facility, a follow-up evaluation in the jail or

in the community by the same and/or other evaluator(s), or a continuation of a single face-to-face assessment session.

25. More detailed descriptions of comprehensive assessment of adjudicative competence can be found in the following: Grisso, note 4 *supra*; Thomas Grisso, *Competency to stand trial evaluations: A Manual for Practice* (Sarasota, FL: Professional Resource Exchange, Inc.), 1988; Melton et al., note 8 *supra*; Roesch et al., note 5 *supra*; David L. Shapiro, *Forensic Psychological Assessment: An Integrative Approach* (Needham Heights, MA: Allyn and Bacon), 1991; Kathleen Powers Stafford, Assessment of Competence to Stand Trial, in I. B. Weiner (series ed.) & A. M. Goldstein (vol. ed.), *Handbook of Psychology: Vol. 11. Forensic Psychology* (New York: John Wiley & Sons), 2003, pp. 359-380.
26. Richard Rogers & Daniel Shuman, *Conducting Insanity Evaluations* (2nd ed.) (New York: Guilford), 2000.
27. Grisso (*supra* note 4) mentions the “Evaluation of Competency to Stand Trial—Revised (ECST-R) being developed by Rogers, Tillbrook, & Sewell”; and D. Nussbaum, M. Mamak, H. Tremblay, P. Wright, & J. Callaghan, The METFORS Fitness Questionnaire (MFQ): A self-report measure for screening competency to stand trial, *American Journal of Forensic Psychology*, 16, 41-65.
28. Joel Dvoskin, personal communication, March 6, 2003.