PART

II

Forensic Applications

CHAPTER

7

The Use of the Rorschach Inkblot Method in Trial Competency Evaluations

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Competency to stand trial (CST) evaluations are among the most commonly conducted forensic evaluations in the United States, annually affecting thousands of defendants and tens of thousands of hours of court and forensic assessment effort. Legal standards for evaluating trial competency are well established—most jurisdictions have adopted the U.S. Supreme Court *Dusky* standard—as the basis for determining whether defendants comprehend and are capable of effectively participating in their own defense.

A keystone of American jurisprudence is the premise that an accused individual must be competent to stand trial. The U.S. Supreme Court formally recognized the concept of competency to stand trial as early as 1899 in the case of *Youtsey v. U.S.*, when the court opined:

> It is fundamental that an insane person can neither plead to an arraignment, be subjected to a trial, or, after trial, receive judgment, or, after judgment, undergo punishment. … If it appears after arraignment, and before trial, that the prisoner is probably not capable of making a rational defense, the proceedings should stop until the sanity of the prisoner is determined or restored. … It is not "due process of law" to subject an insane person to trial upon an indictment involving liberty or life.

This decision asserted that defendants must be fully cognizant of their legal situation and the available legal options and capable of making reasoned choices among those options. Failing this represents a threat to the individuals' Sixth Amendment right to due process, which assumes defendants' ability to take full part in their own defense. Melton, Petrila, Poythress, and Slobogin (1997) cite two additional reasons underlying the critical importance of trial competency. First, trials will inevitably yield more accurate results when the defendant is productively engaged in the adversarial process; second, the process becomes undignified if carried on in the presence of a defendant who lacks ade-

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quate understanding: "Even a proceeding that produces an accurate guilty verdict would be repugnant to our moral sense if the convicted individual were unaware of what was happening or why" (Melton et al., 1997, p. 121).

Questions of trial competency are among the most common forensic issues in which mental health professionals (MHPs) are asked to conduct assessments and offer opinions. CST evaluations are a mainstay in the practice of many forensic psychologists and psychiatrists (Hoge, Bonnie, Poythress, & Monahan, 1992; Steadman, Monahan, Hartstone, Davis, & Robbins, 1982). Because of the intertwining legal and clinical issues, MHPs must not only be knowledgeable of relevant legal standards, they must also be aware of the value and limitations of clinical and forensic instrumentation in developing valid and admissible information to the court.

This chapter reviews the legal foundations of trial competency, including legal standards, procedural strategies for assessment of competency to stand trial, and clinical and forensic tools for evaluating CST. The role and the value of the Rorschach test in CST evaluations are discussed in detail.

LEGAL STANDARDS FOR COMPETENCY TO STAND TRIAL[1]

English common law has recognized that a criminal defendant must be competent to ensure a fair and accurate trial since Frith's case in 1790 (Bardwell & Arrigo, 2002). This concept was tacitly acknowledged in the United States as early as 1835 when Richard Lawrence attempted to assassinate President Andrew Jackson. The court recognized Lawrence was seriously mentally ill and effectively refused to try him; he was placed in various facilities and spent the last several years of his life confined to Government Hospital for the Insane in Washington, DC.[2] Following the *Youtsey* decision, the courts reiterated the importance accorded of trial competence. For example, the Eighth District Court elucidated the issue in their jurisdiction by observing: "The court therefore must cause such an examination [of competency to stand trial] to be made in every case, where a motion is filed that cannot be declared to be without good faith or to be frivolous" *(Kenner v. U.S.*, 1960).

The issue of who may raise a question concerning competency was resolved with *Pate v. Robinson* (1966), when the Supreme Court ruled that any trial court must order a hearing *sua sponte* when any evidence is brought forth suggesting a defendant may be incompetent to stand trial (ICST), even if the issue is not raised by the defense. This finding was extended to include the prosecution's burden to raise the issue in *Drope v. Missouri* (1975).

Specific standards for competency to stand trial remained unarticulated until 1960 when the Supreme Court issued their opinion in *Dusky v. U.S* (1960). This opinion commented that "it is not enough for the district judge to find that 'the defendant is oriented to

[1]For a thorough consideration of case law pertaining to trial competency, see Frederick, DeMaier, & Tower (2004).

[2]The hospital was subsequently renamed St. Elizabeth's Hospital, the same facility where John Hinckley, the man who shot President Ronald Reagan in 1981, has been housed for more than 20 years.

time and place and has some recollection of events,'" and went on to define trial competency with this now-famous phrase: "The test must be whether he has sufficient present ability to consult with his lawyer with a reasonable degree of rational understanding and whether he has a rational as well as factual understanding of the proceedings against him" (*Dusky v. U.S.*, 1960). In *Cooper v. Oklahoma* (1966), the court established preponderance of the evidence as the standard of proof for demonstrating trial incompetency rather than the more rigorous clear and convincing evidence, the standard the state of Oklahoma had been using.

The *Dusky* formulation represents the basic standard for trial competency throughout the United States. Some jurisdictions have further elaborated the *Dusky* criteria, either legislatively or judicially. For example, in 1961 the Western District Court of Missouri outlined eight specific elements considered important to trial competency (*Wieter v. Settle*, 1961). A few states (notably Florida, Utah, and Texas) have included factors to be explicitly considered in evaluation of competency to stand trial (see Table 7–1). These factors make CST evaluations more straightforward because the defendant's functional psycholegal capacities are clearly specified.

Two points are important to note regarding these definitions. First, *trial competency* refers to the present functioning of the defendant. This is in direct contrast to mental state at the time of the offense (MSO) evaluations, which refer to the functioning of the individual *at the time of the offense* (Acklin, chap. 8, this vol.). These two issues, although often confused (note, e.g., reference to sanity in the quotation from the *Youtsey* case, cited earlier), are separate and distinct.

Second, the *Dusk*y standards do not establish the threshold requirement that a defendant be suffering from a mental disorder. Although psychiatric problems, particularly psychotic disorders, are the most common barrier to competency, the *Dusky* standard refers only to the defendant's functional psycholegal capacities. Indeed, even before *Dusky*, the Supreme Court had effectively concluded that mental illness does not automatically indicate incompetency (*Higgins v. McGrath*, 1951). In other words, mental ill-

TABLE 7–1

Functional Abilities Related to Trial Competency in Three States' Statutes

	State		
Does the Defendant Have the Capacity to:	***Texas***	***Utah***	***Florida***
Appreciate the charges against him/her	✔	✔	✔
Appreciate the possible consequences s/he might face	✔	✔	✔
Disclose relevant information to an attorney	✔	✔	✔
Engage in a reasoned choice of legal strategies and options	✔	✔	
Appreciate the adversarial nature of the legal system	✔	✔	✔
Exhibit appropriate courtroom behavior	✔	✔	✔
Testify	✔	✔	✔

ness is not a sufficient criterion for whether or not an individual is competent to stand trial. A mentally ill individual can be competent to stand trial and an incompetent individual is not necessarily mentally ill (although usually that person is). Many state jurisdictions, however, have established the threshold condition of a mental disorder for an individual to be determined incompetent to stand trial (e.g., Hawaii).

FORENSIC EVALUATION OF COMPETENCY TO STAND TRIAL

Historical Background

Through the first decades of the 20th century, most defendants found incompetent to stand trial were sent to state psychiatric hospitals, where they were detained for extensive evaluation over lengthy, usually indeterminant periods (hence the famous 1972 Supreme Court decision in *Jackson v. Indiana*, 406 U.S. 715: "A person charged by a State … who is committed solely on account of his incapacity to proceed to trial cannot be held more than a reasonable period of time necessary to determine whether there is a substantial probability that he will attain the capacity in the foreseeable future"). A routine part of the process was administration of a standard battery of psychological tests. With the movement toward deinstitutionalization that began in the 1970s, state hospital populations (and numbers of beds) were drastically reduced. In many locations, a model of community evaluation was adopted in which defendants were examined in jail or a clinician's private office (see Melton et al., 1997). Under this approach, the use of a battery of standard psychological tests was sometimes retained, although apparently less commonly than under the model of lengthy hospitalization.

In the 1980s, serious questions began to be raised concerning the quality of competency to stand trial evaluations that were being presented to attorneys and the courts (Grisso, 1988; Roesch & Golding, 1980). These issues were summarized in the first edition of the seminal work *Evaluating Competencies* (Grisso, 1986), where Grisso identified what have come to be known as his "five *I*'s": *Ignorance* of the legal process leads examiners to present *Irrelevant* psychological/psychiatric testimony, resulting in the *Intrusion* of psychological/psychiatric opinion into the legal arena. As a result, *Insufficient* evidence is often used to support the conclusions offered, and thus, evaluations are often seen as lacking *In credibility*.

Various jurisdictions have adopted legislative or judicial measures in attempting to improve the quality of CST evaluations. For a number of years, for example, Massachusetts has required evaluators to complete didactic training and mentoring program before being allowed to independently conduct competency evaluations, a move that has apparently been reasonably successful in improving the quality of work that has been done (Packer & Leavitt, 1998). A recent Texas statute pertaining to CST evaluations included two measures intended to achieve this goal: first, six factors to be considered in making a determination regarding trial competence were specifically identified that must be contained in reports (see Table 7–1); and second, the state mandated training requirements for forensic evaluators. Despite these legislative mandates, the level of adherence and quality in some situations remains dismally low (Gray, Black, Fulford, & Owen, 2005; Skeem & Golding, 1998). In a highly instructive study, Skeem and Golding (1998) surveyed forensic reports

submitted by community examiners highlighting the weaknesses, limitations, and errors commonly encountered in community-based competency to stand trial evaluations. They make specific recommendations for improving the quality of forensic reports.

Conceptual and Procedural Approaches to Assessing Competency to Stand Trial

When evaluating competency to stand trial, forensic clinicians benefit from legal knowledge, conceptual tools, and a procedural framework. First, forensic clinicians must be aware of the statutory criteria for competency to stand trial in their jurisdiction. Second, the work of University of Virginia law professor Richard Bonnie and his colleagues (Bonnie, 1992; Poythress et al., 1999) provides valuable conceptual tools for assessing competency to stand trial.[3] The basic understanding that one is a defendant in a legal proceeding or has rudimentary knowledge of judicial terms is insufficient to establish competency to stand trial. Bonnie refers to this rudimentary level of comprehension as *minimal* competence. In contrast, in order to meet the *Dusky* standards criterion for factual as well as rational understanding, Bonnie asserts that *decisional* competence is also required, namely, the ability to distinguish between various legal alternatives and make reasoned choices. Awareness of the factors associated with judicial knowledge and underlying cognitive and clinical issues sets the framework for forensic psychological evaluation and permits a more descriptive assessment of the defendant's functional skills and deficits. It should be reiterated that competency to stand trial is not based on the individual's legal knowledge, but the *capacity* and *present ability* to rationally and factually understand their legal situation and assist in their defense (Melton et al., 1997, quoting *Dusky*). In *Godinez v. Moran* (1993), the U.S. Supreme Court rules that a defendant who is found competent to stand trial is also competent to waive any other constitutional rights, such as the right to counsel or to plead to a charge.

Grisso (1986, 1988, 2003) has been highly influential in promoting a conceptual and procedural framework for the evaluation of both civil and criminal competencies. Originally applied to competency to stand trial evaluations, Grisso has since extended the model to encompass a variety of other civil competencies (e.g., Grisso, 2003; Grisso & Appelbaum, 1998).

Grisso (2003) identified five specific domains for assessing competence in general:

1. *Functional*: the particular abilities or knowledge that the individual should have with respect to the specific competency in question. The original version of this model (Grisso, 1986) included a sixth component, Contextual, which was more recently subsumed into the Functional component (Grisso, 2003). From an evaluative perspective, this represents "what the individual can do or accomplish, as well as to the knowledge, understanding, or beliefs that may be necessary for the accomplishment" (Grisso, 2003, pp. 23–24). It is important to emphasize that this component can be related to, but is nonetheless distinct from, psychiatric diagnosis, level of intellectual functioning, personality traits, and other areas that are the target of standard psychological assessment.

[3]The prosecutor in one well-known case involving a seriously disturbed individual is reported to have stated, "somebody described competent once as 'knowing the difference between a grapefruit and a judge'" (Ewing & McCann, 2006, p. 195), thus indicating the rather low threshold for competency in many jurisdictions.

The relevant aspects of an individual's functioning vary according to the psycholegal question posed by the specific legal context.

2. *Causal*: the underlying causes for any functional abilities/deficits as identified in the Functional Component. A primary issue is identification of the factors that are causing deficits in functional capabilities.

3. *Interactive*: the person's level of functional ability in relation to the demands of the specific psycholegal situation involved. An oft-cited example of this is *Wilson v. U.S.* (1968) in which the Supreme Court ruled that a defendant's amnesia may not be sufficient to warrant a finding of ICST (see Melton et al., 1997, for a detailed discussion of this case).

4. The final two domains in Grisso's model are *Judgmental* and *Dispositional*. The former refers to the determination of whether the incongruence between person/context is sufficient to warrant a finding of ICST, and the latter to the consequences of a CST/ICST finding. Grisso (2003) contended that these domains are properly the purview of the court, not MHPs, and that MHPs should not offer an opinion on the ultimate issue, a controversial view that is shared by other authorities (e.g., Heilbrun, 2001; Melton, et al., 1997). Buchanan offers an insightful discussion of the history and controversy associated with ultimate opinion testimony, especially as it evolved in the Federal Rule of Evidence (Buchanan, 2006). In some jurisdictions, however, such as Texas, Colorado, and Hawaii, the statutes mandate that an opinion be offered.

In summary, Grisso's competency evaluation model establishes a firm conceptual and procedural structure for the conduct of competency to stand trial evaluations, including application of psychological data to relevant legal standards and clarification of the functional deficits and their underlying causes in relation to the particular legal issues.

As already noted, for many years it was common practice to include a battery of psychological tests during evaluation of trial competency. Over time, however, an increasing number of jurisdictions began to rely more on a model under which community-based MHPs were conducting CST assessments. Almost simultaneously, awareness increased among academic psychologists and MHPs that the instruments used in routine psychological evaluation were not adequate for such purposes because they were not designed to address essential psycholegal questions (e.g., Heilbrun, 1992; Lanyon, 1986). As forensic psychology has evolved and matured, Grisso (2003) and others (Otto & Heilbrun, 2002) have drawn distinctions between *forensic assessment instruments*, *forensically relevant instruments*, and *clinical measures and assessment techniques*. Intelligence scales, the Rorschach test, and other standard psychological tests fall into the latter category, the use of which requires the formulation of inferences between clinical assessment data and relevant legal constructs. Within Grisso's model of forensic psychological evaluation (2003), standard clinical measures make their strongest contribution in describing the functional abilities and weaknesses of the defendant.

Borum and Grisso (1995) surveyed board certified psychiatrists and psychologists in the early 1990s and found that approximately half used psychological testing at least some of the time. Predictably, psychiatrists made use of tests less often than psychologists. Most psychologists reported using tests at least some of the time. Personality inventories and intellectual testing were most commonly employed. Less than 15% of the

psychologists used projective tests more than “sometimes.” Since the mid–1990s, a series of articles critical of projective techniques, the Rorschach test in particular, have appeared in the professional assessment literature, igniting a controversy that has continued to the present (Board of Trustees, 2005; Grove, Barden, Garb, & Lilienfeld, 2002; Weiner, 2005; Wood, Nezworski, Garb, & Lilienfeld, 2006; Wood, Nezworski, Stejskal, & McKinzey, 2001). Perhaps reflecting the adverse impact of this controversy, Lally’s (2003) survey of psychologists who had earned diplomate status with the American Board of Forensic Psychology indicated that over half (53%) considered the Rorschach test “unacceptable” for use in CST evaluations. This study focused only on board certified practitioners, and thus sampled only a small proportion of the MHPs who conduct such evaluations. Use of standards psychological assessment appears to be rarely utilized in CST evaluations, no doubt due to a combination of reasons based on policy, pragmatics, and concerns over scientific controversy. Similar results have been found in surveys of practitioners who evaluate CST with juveniles (Ryba, Cooper, & Zapf, 2003) and those working in other countries as well (Martin, Allan, & Allan, 2001). The reasons for this development are complex and deserve further attention. It seems likely that the decline of use of the Rorschach test in forensic psychological evaluations is the result of the controversies and criticisms of the test, unfounded timidity of Rorschach clinicians in understanding the controversy or the vigorous response of the Rorschach scholarly community (see Weiner, 2005), and perhaps, restraints imposed by time and economic concerns. No competent assessment psychologist would, however, use the Rorschach test, or presumably any other clinical instrument, as a sole basis for determining competency to stand trial.

In contrast to clinical assessment instruments, which describe functional capacities (e.g., attention, concentration, memory, thought organization), a number of forensic assessment instruments have been developed specifically to aid in evaluation of CST. Beginning in the early 1970s with the Competence to Stand Trial Instrument and Competence Screening Test (Laboratory of Community Psychiatry, Harvard Medical School, 1973), there has been continuous development of CST measures. In fact, a rather large and informative literature has grown up around the procedural, conceptual, and empirical aspects of CST evaluations. Subsequent efforts included the Georgia Court Competence Test (Nicholson, Briggs, & Robertson, 1988), and a specialized test designed for mentally retarded defendants, the Competence Assessment for Standing Trial for Defendants with Mental Retardation (Everington & Luckasson, 1992).

Tests that have received recent attention include the Evaluation of Competency to Stand Trial–Revised (ECST–R; Rogers, Jackson, Sewell, Tillbrook, & Martin, 2003), the MacArthur Competence Assessment Tool–Adjudicative Competence (MacCAT– CA) (Poythress et al., 1999; Poythress, Bonnie, Monahan, Otto, & Hoge, 2002), and the Fitness Interview Test–Revised (FIT–R; Roesch, Zapf, Eaves, & Webster, 1998). Each of these instruments has a somewhat different orientation. Most of the earlier tests, for example, tend to focus primarily on issues relating to factual or minimal competency, providing little information concerning the individuals’ rational understanding of their legal situation or ability to work with an attorney. The MacCAT–CA is based on Bonnie’s (1992) previously mentioned model of adjudicative competence, which places substantial emphasis on “decisional competence,” that is, the ability to make well-reasoned legal decisions. The

FIT–R was developed primarily with Canadian competency standards in mind, although there are many parallels to American-developed instruments. It has been amply demonstrated that most instruments specific to CST are susceptible to malingering (Rogers, Sewell, Grandjean, & Vitacco, 2002). Rogers's ECST–R, as an answer to previously developed measures, addresses both factual and decisional issues, and includes a series of scales designed to identify individuals who are malingering incompetence (Rogers, Jackson, Sewell, & Harrison, 2004).

The ECST–R uses an easel administered, structured interview format to assess the *Dusky* prongs: Consult with Counsel ("What do you expect your attorney to do for you?"), Factual Understanding of the Courtroom Proceedings ("Who is responsible for prosecuting the case?"), and Rational Understanding ("Putting aside the best and worst outcomes, what is the most likely outcome in your trial?"; Rogers, Tillbrook, & Sewell, 2004). The scale also permits assessment of Atypical Responding "by systematically screening a defendant for possible feigning" (Rogers, Tillbrook, & Sewell, 2004, p. 28). The issue of feigning or malingering on commonly used measures of competency has been well demonstrated (Rogers, Sewell, Grandjean, & Vitacco, 2002). Rogers and his colleagues have specifically assessed the vulnerability of the ECST–R to feigning or malingering (Rogers, Jackson, Sewell, & Harrison, 2004). ECST–R raw scores are transformed to standard scores based on a normative sample of competency referral and jail detainees.

The MacArthur Competence Assessment Tool–Criminal Adjudication (MacCAT–CA; Poythress et al., 1999) is the product of two major research initiatives sponsored by the MacArthur Foundation Research Network on Mental Health and the Law. The 22-item scale measures three competence-related abilities derived from the *Dusky* standard: Understanding, Reasoning, and Appreciation. In contrast to other competency assessment tools, the MacCAT–CA uses vignettes ("Fred and Reggie are playing pool in a bar and get into a fight") to illustrate factual and legal situations requiring more open-ended responses from the defendant, as well as items that assess the defendants' capacity to appreciate their own legal situation and circumstances ("We have talked a lot about Fred's case. I would like to ask you some questions about your situation."). The vignette-based semistructured interview format has the advantage of demonstrating the defendant's cognitive, language, and reasoning processes. The scale is normed on a sample of 729 defendants from three defendant groups: unscreened jail inmates, jail inmates receiving mental health services, and hospitalized incompetent defendants. The scoring summary permits normative interpretations of scores on the following scale: Minimal/no impairment, mild impairment, and clinically significant impairment. Clearly, the MacCAT–CA is a highly sophisticated tool in terms of its development and assessment of competency constructs.

The FIT–R is an interview-based rating scale using Canadian standards for fitness to stand trial (Roesch, Zapf, Eaves, & Webster, 1998) assessing Factual Knowledge of Criminal Procedure ("What happens in court to someone who pleads not guilty?"), Appreciation of Personal Involvement in and Importance of the Proceedings ("What do you think your lawyer should concentrate on in order to defend you best?"), and Ability to Participate in Defence ("Tell me how you got arrested."), with three levels of rated im-

pairment (none, possible/mild, and definite serious). Although the FIT–R has been empirically developed, the range and quality of the reliability and validity foundations do not yet appear to measure up to either the ECST–R or MacCAT–CA.

Despite efforts to establish an empirical basis for inference and admissibility, forensic assessment instruments developed for evaluation of CST do not appear to be widely employed (Borum & Grisso, 1995; Lally, 2003). The normative assessment procedure continues to be interview data alone, without use of any sort of psychometrically validated instrument. In many cases, use of a structured or semistructured interview may yield acceptable results (see, e.g., Rogers, 2001), so long as the relevant conceptual issues are addressed (Grisso, 2003). However, in many other situations, including situations where a mental disease, disorder, or defect is the threshold basis for trial incompetence, and where psychometrically sound inferences concerning a defendant's functional deficits are needed, additional data is required that can only be provided by clinical measures such as intelligence scales, neuropsychological screening, and personality testing. The Rorschach test offers a unique contribution at this stage of the competency assessment process.

UTILITY OF THE RORSCHACH TEST IN CST ASSESSMENT

Given the likelihood that the forensic clinician may testify in court on the issue of a defendant's current mental state (competency), some consideration of admissibility issues should be kept in mind. Depending on the jurisdiction, the court may rely on either *Frye* (1923) and *Daubert* (1993) tests, and/or Federal Rules of Evidence (2004) for admissibility. As noted earlier, the most common causes for the determination of incompetency to stand trial are psychotic disorders and mental deficiency. Fortunately, the Rorschach assessment of psychotic disorders rests on a robust behavioral science foundation (Acklin, 1999; chap. 8, this vol.). As already noted, in contrast to mental state at the time of the offense evaluations (MSO), CST evaluations are concerned about functional abilities and deficits at the time of the evaluation. There are a number of situations in which the Rorschach test is potentially valuable and may even be the only instrument that can adequately elucidate requisite information, particularly information concerning thought organization and pathology and malingering.

The Rorschach test takes its proper place in a psychological assessment methodology using multiple sources of information: self report, cross-informant and clinician observation, cognitive/neuropsychological performance measures, self-report personality tests, and performance measures (Acklin, Li, & Tyson, 2006). Gacono and Evans note that "the Rorschach provides an open structured, performance based cognitive perceptual problem solving task that is quite different from more closed structured instruments" (Gacono & Evans, preface, this vol.). The Rorschach test is of particular value in relation to the problems with self-report where individuals may feign, exaggerate, or malinger psychopathology (Ganellen, 1994, 1996; Ganellen, Wasyliw, Haywood, & Grossman, 1996; Grossman, Wasyliw, , Benn, & Gyoerkoe, 2002; Gacono, Evans, & Viglione, 2002). Increasingly, research has focused on obtaining base rate data on a variety of relevant forensic groups, making the Rorschach more valuable as a forensic assessment tool. Despite criticisms from established method critics, surveys continue to support the appropriate fo-

rensic use of the Rorschach test (Acklin, chap. 8, this vol.; Meloy, Hansen, & Weiner, 1997; Weiner, 2005).

It has been noted that a large majority of individuals who are found ICST are diagnosed with some sort of psychotic disorder (Roesch & Golding, 1980; Viljoen, Roesch, & Zapf, 2002; Viljoen, Zapf, & Roesch, 2003), with the resultant clinical impairment contributing substantially to an inability to meet one or more of the functional requirements of trial competency. The Rorschach test has been shown to be particularly helpful in identifying psychotic illness, a point that is sometimes even conceded by the test's harshest critics. Acklin (1992, 1999, chap. 8, this vol.) provides comprehensive coverage of factors associated with psychosis in the clinical and forensic application of Rorschach data. The Thought Disorder Index (TDI), in particular (Johnston & Holzman, 1979), has been especially useful for such purposes (see Holtzman, Levy, & Johnston, 2005; also Acklin chap. 8, this vol.). This was well illustrated by the case of a man in his mid-thirties who was facing two counts of capital murder, and who by virtue of his family/cultural background, considered mental illness to be an indication of a lack of religious faith. He was therefore incensed at the thought that he would be considered ICST. Although he was reluctant to participate in formal evaluation ("I have no need for this, my way his His way …"), he produced an interpretable Rorschach that included important elevations on *WSum6* and *TDI*. This confirmed the opinion that he did indeed have a psychotic illness, and highlighted the disturbed thinking that interfered with the requisite functional abilities involved in trial competency. It should be recalled not all psychotic individuals are necessarily ICST. Indeed, we often see people who remain manifestly ill, yet meet the basic requirements to be considered CST.[3] Such individuals may, for example, manifest delusional/psychotic thinking that is sufficiently circumscribed to allow them adequate functioning to make reasoned choices within the legal arena.

The Rorschach test has unique utility to assist in clarifying functional abilities and deficits with relevance to trial competency. As observed by Skeem and Golding (1998), clinicians may provide an opinion concerning a defendant's diagnosis or competency to stand trial without describing the reasoning underlying their opinion, that is, failing to link functional deficits and causal components of Grisso's assessment model (2003). Rorschach test data offers the potential of helping to fill in this missing element by assisting in establishing the functional deficits that result from mental health issues, in turn allowing the clinician to more effectively document what is causing the defendant to be ICST. For example, we know of cases in which the person presents with obvious symptoms of psychosis and has been diagnosed with Schizophrenia, yet the Rorschach test has demonstrated a substantial affective component to the illness. In such cases, not only was a more accurate diagnosis clarified and more effective treatment made possible, but the functional deficits causing the person to be ICST were more clearly elucidated. A Rorschach assessment of personality also aids the examiner in providing information concerning problematic courtroom behavior, and/or in formulating recommendations for maintaining trial competency once it has been achieved (including elucidating the potential impact of continued incarceration on the individual's mental stability).

Gacono and Evans (preface, this vol.) provide a useful assessment scenario that demonstrates the Rorschach Inkblot Method's (RIM) role in ICST evaluations. In the case of an identified psychopath (PCL–R ≥ 30) suspected of malingering Schizophrenia, the evaluation of competency to stand trial would be aided by a strategy that incorporates the Rorschach, the Structured Interview of Reported Symptoms (SIRS), the PCL–R, and collateral data. Whereas the assessment of malingering may necessitate administration of the SIRS (Rogers, Bagy, & Dickens, 1992), an observation of ward behavior, the assessment of thought disorder (with the Rorschach), and an evaluation of psychopathy level would add weight to the examiner's conclusions. First, the context of the evaluation suggests potentially high motivation for feigning a mental illness. Second, ward observations might reveal inconsistencies in the patient's presentation, such as interacting in a normal manner when he doesn't realize staff is observing him. Third, Rorschach indices of disturbed thinking, perception, and reality testing may be inconsistent with psychosis, but consistent with character disordered or nonpatient samples. Finally, the elevated PCL–R total score along with a substantiated history of lying, conning, and manipulation (scores of 2 on PCL items 4 & 5) adds additional data to the hypothesis that the patient may be malingering. Knowledge of the Rorschach malingering literature is, of course, essential in assessing the validity of feigned, exaggerated, and malingered psychosis (Netter & Viglione, 1994). Thus, in a multisource assessment database, the Rorschach test provides unique and invaluable information describing functional clinical and forensic deficits.

Finally, in cases where functional deficits are clearly present, for example, in documenting clinical psychosis that interferes with reasoning, the Rorschach test can be utilized in re-testing after treatment or restoration efforts have been initiated. Such data are also of value in determinations of the proper level of disposition and management (Jumes, Oropeza, Gray, & Gacono, 2002; Weiner, 2004, 2005).

CONCLUSIONS

It is a foundational element of American jurisprudence that a criminal defendant be competent to stand trial. This is supported by hundreds of years of common law, an abundance of case law, as well as legislative efforts to define and clarify the psycholegal issues involved. Various legislative, judicial, and scholarly initiatives have encouraged careful and comprehensive evaluation when the question is raised. Unfortunately, however, MHPs have not always lived up to the challenge posed by the judicial system in applying empirically developed psychological/psychiatric evidence pertaining to the CST issue (e.g., Nicholson & Norwood, 2000; Skeem & Golding, 1998).

For many years, it was standard practice to administer batteries of psychological tests, often including a Rorschach test, to individuals who were hospitalized for extensive evaluation after being found incompetent to stand trial. This is no longer the most common approach, however, in large part because of social policy and institutional changes in the management of criminal defendants (i.e., a shift from hospital-based to community-based evaluation in many jurisdictions) and a more refined and delimited understanding of the strengths and weaknesses of psychological tests, including their direct

relevance to legal statutes. As forensic psychological assessment has matured as a discipline, forensic assessment instruments have been developed for the specific purpose of evaluating competency to stand trial. A burgeoning empirical literature provides guidance to forensic behavioral scientists and clinicians. Nevertheless, clinical instrumentation that effectively evaluates self-reported symptoms, cognitive skills and deficits, thought organization, and reality testing remain essential to the clinical and forensic task.

Psychological evaluation instruments, however, remain invaluable in articulating the functional abilities and deficits that underlie trial competency or other criminal competencies, particularly when linked to forensic assessment instruments. The Rorschach test is of particular value where issues related to the defendant's reality testing, thought organization, and reasoning are of interest. The Rorschach test remains the premier instrument for detection and elucidation of the nature of psychotic processes (Acklin, 1992, 1999, chap. 8, this vol.). In addition, malingering of mental illness is not uncommon in populations where questions of competency to stand trial are raised, and standardized tests, including the Rorschach test, can be quite helpful in uncovering cases of feigned symptoms or inconsistent effort. Rorschach clinicians must not only be knowledgeable of relevant legal standards in their jurisdiction, but they must also have a sophisticated understanding of the technical utility and limitations of their instruments.

Consistent with feedback from jurists and attorneys as well as community surveys (Skeem & Golding, 1998), the most common criticism of CST evaluations has focused on the failure to explain how observed deficits (e.g., symptoms of serious mental illness) cause the individual to be ICST. This is precisely where clinical assessment tools, including the Rorschach test, are of greatest potential value, in that clinical assessment tools specifically address the functional and causal domains of Grisso's competency evaluation model. Grisso summarizes the point thusly: "The causal component of legal competence constructs focuses on explanations for an individual's apparent deficits in relevant functional abilities, in order to assure that the consequences of a finding of incompetence are not misapplied" (Grisso, 2003, p. 30).

Despite criticisms and controversy, clinical assessment measures, including the Rorschach test, remain the most valuable tools in the forensic clinician's armamentarium, particularly with respect to issues of methodological rigor, scientific certainty, and admissibility in court (whether *Frye* or *Daubert*). The clinical and behavioral science of psychological evaluation in general is the foundation of empirically-based and validated efforts to assess human skills and deficits, particularly when vulnerable individuals find themselves in legal jeopardy.

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